Federal Retirement Benefits Bench Card

Vocabulary	• CSRS = Civil Service Retirement System, precursor plan to FERS. Only minor differences between the plans and they are divided by the same DRO. • FERS = Federal Employee Retirement System, pension plan for federal employees. • COAP = Court Order Acceptable for Processing, a DRO for FERS/CSRS. • OPM = Office of Personnel Management, the federal agency that processes and implements COAPs. • FSSA = Former Spouse Survivor Annuity, survivor benefit plan for FERS/CSRS. • TSP = Thrift Savings Plan, a defined contribution plan in which the vast majority of federal employees participate. • RBCO = Retirement Benefits Court Order, a DRO for TSP.
Federal Retirement Basics	• FERS/CSRS ○ Generally divided via the time rule formula. ○ Out-spouse must wait for in-spouse to retire to receive their share from the plan. ○ OPM does not provide preapproval for draft DROs. ○ Not possible to place a hold on the pension with a Notice of Adverse Interest or Joinder; OPM will reject both. • TSP ○ Does preapprove draft DROs. ○ Notice of Adverse Interest will place a hold on the benefits. ○ The appropriate time for the parties to conduct discovery and make claims about separate property in retirement benefits is pre-trial, not after Judgment or when the DRO process begins. Pursuant to *In re Marriage of Mix*, the in-spouse bears the burden of proof regarding separate property in their retirement plans.[1] ○ Assuming they can prove it up, an in-spouse's premarital separate property interest includes not just the funds in the account as of the date of marriage, but also gains/losses on those premarital funds accrued during the marriage.
FERS DRO Processing	• Certified copy of the DRO must be served on OPM with a certified copy of the Judgment. • It takes OPM *at least* a year to process DROs. • Correspondence from OPM is very challenging for most litigants to understand.

[1] In re Marriage of Mix (1975) 14 Cal.3d 604.

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Former Spouse Survivor Annuity (FSSA)	• FSSA are pension payments made to the out-spouse after the in-spouse's death. From the plan's perspective, these are a separate benefit from the pension payments made during the in-spouse's life.
	• First Order Rule: FSSA benefits must be included in the first order dividing the federal pension.[2]
	    ○ If the Judgment does not award survivor benefits and if the in-spouse retires or dies before the DRO is completed, it is almost impossible for the out-spouse to obtain survivor benefits.
	    ○ If Judgment does not award the FSSA, DRO may still be able to award the benefits so long as the in-spouse has not retired or died.
	    ○ First order cannot be amended *nunc pro tunc* to provide for survivor benefits.[3]
	• Even if it is properly awarded, the out-spouse will lose the FSSA if they were married to the in-spouse for fewer than 30 years and remarry before reaching age 55.[4]

Federal Employees Health Benefits (FEHB)	• DRO can award the out-spouse continued coverage under the Federal Employees Health Benefits (FEHB). To be eligible, out-spouse must meet several requirements, including being enrolled at any time during the 18-month period before the date of divorce.[5] • The out-spouse must submit an enrollment application within 60 days of the dissolution of marriage. [6]

Railroad Pension	• Railroad Retirement Board Pension Plan has two benefits:
	• Tier 1
	    ○ Calculated same way as Social Security benefit & is reduced by amount of any Social Security benefit received.
	    ○ Is NOT divisible.
	• Tier 2
	    ○ Based on retirement credits, similar to private employer pension plans.
	    ○ Is divisible between spouses and can be payable for life of out-spouse even if they outlive the in-spouse.
	• Like with FERS, it is not possible to place a hold on the pension with a Notice of Adverse Interest or Joinder.

[2] 5 C.F.R. § 838.1004(e)(1)(ii).
[3] 5 C.F.R. § 838.806(e).
[4] U.S. Office of Personnel Management, *Court Ordered Benefits for Former Spouses* (RI 84-1, rev. July 2014) p.5.
[5] 5 U.S.C. § 8901(10).
[6] 5 U.S.C. § 8905(c)(1).