

## FEDERAL PENSIONS – PENSION VALUATIONS PRESENT CASH VALUE FOR DIVORCE PURPOSES

Failure to use reasonable pension valuation assumptions are likely to result in significant error when a divorce action seeks to determine the present cash value of a Federal Employee's Pension. The intent of this Article is to alert all parties to a few simple assumptions and guides that result in a fair and equitable pension valuation.

A factor that is most likely to result in an overstatement of both the participant's monthly accrued benefit and its present cash value is use of incorrect pay information. This error is more likely when the pension valuation is being prepared for the spouse of the participant. This spouse is likely to rely on a tax return or a W-2 for pay information. What is required for a more accurate calculation is the participant's "Basic Pay" for the 36 months preceding the commencement of the marriage dissolution action. Failure to use this pay data results in a flawed calculation of the pension's worth. Hence, a best effort should be made to obtain this data. To facilitate use of this pay data the Federal Employee should provide this data to her or his attorney or to the person performing the pension valuation.

A second pension valuation factor is that the correct rate of annual benefit accrual be used. Thus, for a FERS participant the rate of annual benefit accrual should be 1%, unless as of the date the action for divorce began, the Federal Employee had twenty years of credited Federal Service. If the Federal Employee as of the date the action for divorce began, had acquired more than twenty years of credited Federal Service then the rate of annual accrual should be 1.1%. (Note these rates of accrual are not for special occupations such as Law Enforcement or Air Traffic Controllers. These Federal Employees have a different rate of accrual).

A third pension valuation factor is the "Retirement Age" assumption. Use this schedule to determine the Retirement Age Assumption applicable to your pension valuation.

- 30 Years of Federal Service: Retirement at Any Age
- 20 Years of Federal Service: Retirement at Age 60
- 5 Years of Federal Service: Retirement at Age 62

A fourth pension valuation factor is “Life Expectancy” Assumption. A suggested Life Expectancy Table to use is: National Vital Statistics Reports, Unisex Life Table for Total U.S. Population. The most recent version of this Table is September 28, 2011. The mandate for the use of Unisex Life Expectancy Tables is found at Title VII of the Civil Rights Act of 1964 and the U.S. Supreme Court’s decisions in *Manhart* and *Arizona v. Norris*.

What is to be avoided is use of a table for a not healthy individual. The decision that a person has a reduced Life Expectancy is a medical conclusion. Unless persuasive medical testimony is offered the assumption should be that the subject employee is “healthy”.

A fifth pension valuation factor is “rate of interest”. Based on Federal Register, Volume 76, Number 107 Friday, June 3, 2011, the Current Rate is 5.75%. It is suggested that this rate be used in a pension valuation of a FERS employee or retiree.

Generally, a pension valuation that fails to disclose the above indicated assumptions is to be viewed with suspicion. It is essential that any person comfortable with pension valuation be able to apply the assumptions found in a pension valuation and duplicate the findings presented. If your pension evaluator is not able to duplicate a submitted pension valuation it is suggested that attorneys and parties to the action be cautious in use of such a pension valuation.

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