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## [QdroDesk.com](http://QdroDesk.com) - March 2013 QDRO Newsletter - Volume 2, Issue 2

The goal of our monthly QDRO Newsletter is to keep you informed of Hot Topics regarding all aspects of QDROs. If you find our newsletter valuable, please forward it to a colleague. We hope you enjoy this month's topic.

### **SOCIAL SECURITY OFFSET**

**Definition:** A Social Security offset is a consideration or reduction of either spouses' hypothetical or actual Social Security benefits in determining the equitable distribution of the parties' property.

**General Discussion:** Many courts struggle with the question of how Social Security benefits should be treated in equitable distribution because by federal statute, these benefits are not subject to equitable distribution in divorce actions. However, under many public pension plans, government employees do not participate in the Social Security system. For these employees, government pensions, such as those given by Civil Service Retirement System (CSRS), replace Social Security. Therefore, an argument exists whether government pensions are sheltered from equitable distribution when they substitute for Social Security.

Moreover, the controversy persists whether actual Social Security benefits can or should be considered, if not divided.

There are essentially two viewpoints on the issue. One side advocates the consideration or reduction of either spouses' hypothetical or actual Social Security benefits in determining the equitable distribution of the parties' property. This argument works best in equitable distribution states. Unlike community property states, equitable distribution states do not require an equal split of all property acquired during the marriage but give the court discretion to consider all of the parties' property to arrive at a just and reasonable division. Alternatively, the opposition argues that no consideration or reduction should be made in accordance with federal statute. Several courts have concluded that a pension that is a substitute for Social Security may nonetheless be treated as marital property.

**Classification:** According to federal statute, Social Security benefits are not divisible in divorce proceedings and therefore cannot be considered a marital asset.

**Valuation:** If it has been determined that one or both spouses' hypothetical or actual Social Security benefits will be considered in determining the equitable distribution of the parties' property, then the benefit(s) may be valued in several different ways according to whether the parties agree to an immediate or deferred distribution of their other property.

Social Security is the federal government's version of a defined benefit plan. A defined benefit pension plan promises to pay a specified benefit at retirement. When a spouse's rights under a

defined benefit plan are valued for immediate distribution, it is necessary to reduce the benefits to present value.

This requires a number of steps calculate a present value. First, the value of the pension at retirement age must be ascertained based on the amount of the monthly benefit, the employee's mortality, and an appropriate interest rate. Second, that value must be reduced to account for interest, mortality, and the possibility that the pension will not fully vest. Third, a coverture fraction must be applied to determine what amount is attributable to the marriage.

**Distribution:** Security benefits are not divisible in divorce proceedings and therefore cannot be distributed as a marital asset.

--Conclusion--

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If you have any questions regarding our Newsletter or [QdroDesk.com](http://www.QdroDesk.com), please let me know and thank you for giving us the opportunity to share our Newsletter with you. We appreciate your business, and the confidence you have placed in us.

For more QDRO information and online QDRO preparation services, please visit us online at: <http://www.QdroDesk.com>

Sincerely,

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