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Subpart V—Alternative Forms of Annuities

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AUTHORITY: 5 U.S.C. 8347; §831.102 also issued under 5 U.S.C. 8334; §831.106 also issued under 5 U.S.C. 552a; §831.108 also issued under 5 U.S.C. 8336(d)(2); §831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); §831.204 also issued under section 102(e) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; §831.303 also issued under 5 U.S.C. 8334(d)(2); §831.502 also issued under 5 U.S.C. 8337; §831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; §831.663 also issued under 5 U.S.C. 8339 (j) and (k)(2); §§831.663 and 831.664 also issued under section 11004(c)(2) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, 107 Stat. 410; §831.682 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330–275; §831.2203 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, 104 Stat. 1388–328.

SOURCE: 33 FR 12498, Sept. 4, 1968, unless otherwise noted.

Subpart A—Administration and General Provisions

§831.101 Administration.

(a) OPM has charge of the adjudication of all claims arising under subchapter III of chapter 83 of title 5, United States Code, and of all matters directly or indirectly concerned with these adjudications.

(b) In the adjudication of claims arising under subchapter III of chapter 83 of title 5, United States Code, OPM shall consider and take appropriate action on counterclaims filed by the Government as set-offs against amounts in the Civil Service Retirement and Disability Fund.

(c) For purposes of this part, the term ''Associate Director'' means the Associate Director for Compensation in OPM.

[33 FR 12498, Sept. 4, 1968, as amended at 34 FR 17617, Oct. 31, 1969]

§831.102 Basic records.

Every Federal department, agency, corporation or branch, whether executive, legislative, or judicial, and the District of Columbia Government (included in this part collectively in the term department or agency) having employees or Members of Congress (hereinafter referred to in this part as Members) subject to subchapter III of chapter 83 of title 5, United States Code, shall initiate and maintain retirement accounts for those employees and Members as prescribed in Federal Personnel Manual Supplement 831–1.

§831.103 Evidence.

(a) Standard Form 2806 (Individual Retirement Record) is the basic record for action on all claims for annuity or refund, and those pertaining to deceased employees, deceased Members, or deceased annuitants.

(b) When the records of the department or agency concerned are lost, destroyed, or incomplete, the department or agency shall request the General Accounting Office, through OPM, to furnish the data that it considers necessary for a proper determination of the rights of the claimant. When an official record cannot develop the required information, the department, agency, or OPM should request inferior or secondary evidence which is then admissible.

§831.104 Application.

(a) Except as provided in paragraph (b) of this section, applications under subchapter III of chapter 83 of title 5, United States Code, shall be filed with OPM and shall be on forms prescribed by OPM.

(b) Applications to make deposit for military service shall be filed in accordance with subpart U of this part.

[48 FR 38783, Aug. 26, 1983]

§ 831.105 Computation of interest.

(a) The computation of interest is on the basis of 30 days to the month. Interest is computed for the actual calendar time involved in each case, but whenever applicable the rule of average applies.

(b) Interest is allowed on current deductions and deposits at the rate of 4 percent per year to December 31, 1947, and 3 percent per year thereafter, compounded annually, to December 31, 1956. After December 31, 1956, except as provided below, interest is allowed at the rate of 3 percent per year, compounded annually, to date of final separation or transfer to a position that is not covered by the retirement system. After December 31, 1956, interest is not allowed:

(1) When an employee has one year or less of covered service,

(2) For any fractional part of a month in the total service, or

(3) For more than five years' civilian service.

(c) Interest at the rate of 3 percent per year through December 31, 1984, and, thereafter, at the yearly rate determined by the Secretary of Treasury, compounded annually, is allowed on voluntary contributions during periods of employment and, after the employee or Member has completed at least 5 years' civilian service, during periods of separation until the beginning date of annuity or death, whichever is earlier. For refund purposes, however, interest on voluntary contributions terminates on the date of the employee's or Member's final separation or on the date of the employee's or Member's last transfer to a position in which he or she is not subject to subchapter III of chapter 83 of title 5, United States Code

(d) For noncontributory service performed before October 1, 1982, and for redeposits of refunds paid on an application received by either the individual's employing agency or OPM before October 1, 1982, interest at the rate of 4 percent per year to December 31, 1947, and at the rate of 3 percent per year thereafter, compounded annually, is charged. Interest is charged on the outstanding balance of a deposit from the midpoint of each service period for which deposit is involved; interest is charged on the outstanding balance of a refund from the date the refund was paid. Interest is charged to the date of deposit or commencing date of annuity, whichever is earlier, except that interest is not charged for any period of separation from the service which began before October 1, 1956.

(e) For noncontributory service performed on or after October 1, 1982, and for redeposits of refunds paid on an application received by the individual's employing agency or OPM on or after October 1, 1982, interest is charged at the rate of 3 percent per year through December 31, 1984, and, thereafter, at the yearly rate determined by the Secretary of Treasury, compounded annually. Interest is charged on the outstanding balance of a deposit from the midpoint of each service period for which deposit is involved; interest is charged on the outstanding balance of a refund from the date the refund was paid. Interest is charged to the date of deposit.

(f) No interest is charged on a deposit for military service if that deposit is made before October 1, 1984, or within 2 years of the date that an individual first becomes an employee or Member under the civil service retirement system, whichever is later. When interest is charged on a deposit for military service, it is charged on the outstanding balance at the rate of 3 percent per year, compounded annually, from October 1, 1984, or 2 years from the date the individual first becomes an employee or Member, whichever is later, through December 31, 1984, and thereafter at the yearly rate determined by the Secretary of the Treasury.

(g) For calendar year 1985 and for each subsequent calendar year, OPM will publish a notice in the FEDERAL REGISTER to notify the public of the interest rate that will be in effect during that calendar year.

(h) Interest under §§ 831.631, 831.632, 831.682, and 831.684 is compounded annually and accrued monthly.

(1) The initial interest on each monthly difference between the reduced annuity rate and the annuity rate actually paid equals the amount of the monthly difference times the difference between (i) 1.06 raised to the power whose numerator is the number of months between the date when the monthly difference in annuity rates occurred and the date when the initial interest is computed and whose denominator is 12; and (ii) 1.

(2) The total initial interest due is the sum of all of the initial interest on each monthly difference computed in accordance with paragraph (h)(1) of this section.

(3) Additional interest on any uncollected balance will be compounded annually and accrued monthly. The additional interest due each month equals the remaining balance due times the difference between (i) 1.06 raised to the 1/12th power; and (ii) 1.

(i)(1) When an individual's civilian service involves several deposit and/or redeposit periods, OPM will normally use the following order of precedence in applying each installment payment against the full amount due:

(i) Redeposits of refunds paid on applications received by the individual's employing agency or OPM on or after October 1, 1982;

(ii) Redeposits of refunds paid on applications received by the individual's employing agency or OPM before October 1, 1982;

(iii) Deposits for noncontributory civilian service performed on or after October 1, 1982; and

(iv) Deposits for noncontributory service performed before October 1, 1982.

(2) If an individual specifically requests a different order of precedence, that request will be honored.

(j) Interest under §831.662 is compounded annually and accrued monthly.

(1) The initial interest on each monthly difference between the reduced annuity rate and the annuity rate actually paid equals the amount of the monthly difference times the difference between—

(i) The sum of one plus the interest rate set under §831.105(g) raised to the power whose numerator is the number of months between the date when the monthly difference in annuity rates occurred and the date when the initial interest is computed and whose denominator is 12; and

(ii) 1.

(2) The total initial interest due is the sum of all of the initial interest on each monthly difference computed in accordance with paragraph (j)(1) of this section.

[33 FR 12498, Sept. 4, 1968, as amended at 47 FR 43637, Oct. 1, 1982; 48 FR 38783, Aug. 26, 1983; 51 FR 31931, Sept. 8, 1986; 52 FR 32287, Aug. 27, 1987; 55 FR 9099, Mar. 12, 1990; 58 FR 52880, Oct. 13, 1993]

§831.106 Disclosure of information.

(a)(1) The Office has in its possession or under its control records containing the following types of information:

(i) Documentation of Federal service subject to the Civil Service Retirement System.

(ii) Documentation of service credit and refund claims made under the Civil Service Retirement System.

(iii) Retirement and death claims files, including documents supporting the retirement application, health benefits and life insurance eligibility, medical records supporting disability claims, and designations of beneficiaries.

(iv) Claims review and correspondence files pertaining to benefits under the Federal Employees Health Benefits Program.

(v) Suitability determination files on applicants for Federal employment found unsuitable for employment on medical grounds.

(vi) Documentation of claims made for life insurance and health benefits by annuitants under a Federal Government retirement system other than the Civil Service Retirement System.

(vii) Documentation of voluntary contributions made by eligible individuals.

(viii) Health Unit medical records for OPM employees.

(2) These records may be disclosed to the individual to whom the information pertains, or with prior written consent of the individual to any agency or other person, *except* that medical

evidence about which a prudent physician would hesitate to inform the individual, will be disclosed only to a licensed physician designated in writing for that purpose by the individual or by his or her representative.

(3) Civil service retirement records will be disclosed consistent with the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), including, but not limited to, disclosures.

(i) Pursuant to a routine use promulgated for such records and printed in the Office's annual publication of notices of systems of records, except that;

(ii) A beneficiary designated in accordance with the provisions of the Civil Service Retirement law (5 U.S.C. 8342(b)) shall, during the lifetime of the designator, be disclosed to the designator only, at his or her signed, written request. Such beneficiary designations that may appear in records being disclosed must be removed before access to a record is permitted. If information pertaining to a designation of beneficiary is specifically asked for by a court of competent jurisdiction, it may be released to the court, but with a written notice that it is released under protest.

(4) Except as provided in paragraphs (a)(2) and (a)(3) of this section, the Office shall not disclose information from the files, records, reports, or other papers and documents pertaining to a claim filed with the Office, whether potential, pending, or adjudicated. This information is deemed privileged and confidential.

(b) On written request the Office shall return, to the person entitled to them, certificates of discharges, adoption papers, marriage certificates, decrees of divorce, letters testamentary or of administration, when they are no longer needed in the settlement of the claim. If papers returned constitute part of the material and essential evidence in a claim, the Office shall retain in the file photo or other copies of them or of the parts which appear to be of evidential value.

[47 FR 12937, Mar. 26, 1982]

§ 831.107 Computation of time.

In computing a period of time prescribed by this part, the day of the action or event after which the designated period of time begins to run is not included. The last day of the period is included unless it is a Saturday, a Sunday, or a legal holiday; in this event, the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

[33 FR 12498, Sept. 4, 1968. Redesignated at 44 FR 37889, June 29, 1979]

§ 831.108 Major reorganization, reduction in force, or transfer of function.

Determinations of major reorganization, major reduction in force, or major transfer of function for purposes of early optional retirement under section 8336(d)(2) of title 5, United States Code, as amended, will be made by the Office of Personnel Management only after receipt of written request to make the determinations from the agency, or his or her designee.

[44 FR 44815, July 31, 1979; 45 FR 2837, Jan. 15, 1980]

§ 831.109 Initial decision and reconsideration.

(a) *Who may file.* Except as noted in paragraph (b) of this section any individual or agency whose rights or interests under the Civil Service Retirement System are affected by an initial decision of the Office of Personnel Management (OPM) may request OPM to review its initial decision.

(b) *Actions covered elsewhere.* (1) A request for reconsideration of termination of annuity payments under 5 U.S.C. 8311–22 shall be made in accordance with the procedures set out in subpart K of this part.

(2) A request for reconsideration of a decision to collect a debt will be made in accordance with § 831.1304(b).

(c) *Initial decision.* A decision shall be considered an initial decision when rendered by OPM in writing and stating the right to reconsideration. However, a decision initially rendered at the highest level of review available within OPM will not be subject to reconsideration, but will give an appeal right direct to the Merit Systems Protection Board (MSPB).

(d) *Reconsideration.* A request for reconsideration must be in writing, must include the individual's name, address,

date of birth and claim number, if applicable, and must state the basis for the request.

(e) *Time limits on reconsideration.* (1) A request for reconsideration must be received by OPM within 30 calendar days from the date of the original decision.

(2) The representative of the Associate Director for Compensation responsible for reconsiderations may extend the time limit for filing when the individual shows that he/she was not notified of the time limit and was not otherwise aware of it, or that he/she was prevented by circumstances beyond his/her control from making the request within the time limit.

(f) *Final decision.* After reconsideration, the Associate Director's representative shall issue a final decision which shall be in writing, shall fully set forth the findings and conclusions of the reconsideration, and shall contain notice of the right to request an appeal provided in § 831.110. Copies of the final decision shall be sent to the individual, to any competing claimants and, where applicable, to the agency.

(g) *Competing claimants.* (1) When a competing claimant files a request for reconsideration under this section, the other competing claimants shall be notified of the request and given an opportunity to submit written substantiation of their claim.

(2) When a determination in favor of one claimant would affect another claimant, all claimants concerned will be notified of that decision and those adversely affected will be given an opportunity to request reconsideration. OPM shall not execute its decision until the time limit for requesting reconsideration has expired. If reconsideration has been requested, OPM shall take no action after the reconsideration decision is rendered until the time limit to appeal has expired.

[45 FR 23632, Apr. 8, 1980, as amended at 49 FR 1330, Jan. 11, 1984; 50 FR 34664, Aug. 27, 1985]

§ 831.110 Appeals.

Appeals to MSPB. Except as noted in this paragraph, an individual or agency whose rights or interests under the Civil Service Retirement System (Subchapter III of chapter 83, title 5, United States Code) are affected by a final decision of the representative of the Associate Director for Compensation, Office of Personnel Management, may request the Merit Systems Protection Board to review such decision in accord with procedures prescribed by the Board. Decisions of OPM and the Associate Director for Compensation made in accord with the procedures referenced in § 831.109(b)(1) are made under subchapter II of chapter 83, title 5, United States Code. Such decisions are not appealable to the Merit Systems Protection Board under 5 U.S.C. 8347(d).

[44 FR 37890, June 29, 1979, as amended at 45 FR 23633, Apr. 8, 1980; 48 FR 38784, Aug. 26, 1983]

§ 831.111 Employee deductions and agency contributions.

(a) *Agency share.* When an agency fails to withhold some or all of an employee deduction under 5 U.S.C. 8334(a) for any pay period, the agency is still responsible for submitting the correct agency contribution to OPM. The agency must submit as the agency share, a payment equal to the amount that would have been submitted if the error had not been made (or a payment equal to the difference between the amount already submitted as the agency share and the amount that should have been submitted). The payment should be submitted to OPM in the manner currently prescribed for the transmission of withholdings and contributions as soon as possible, but not later than provided by standards established by OPM in the Federal Personnel Manual.

(b) *Employee share.* (1) If, through administrative error, an agency did not withhold any of the employee deductions required by 5 U.S.C. 8334(a) for any pay period, the employee may, at his or her option—

(i) Request the agency that employed him or her when the error was made to correct his or her records and arrange to pay any resulting overpayment of pay to the agency (unless it is waived by the agency); or

(ii) Pay the deposit plus any applicable interest (under certain conditions, the deposit may be made at any time until the final adjudication of his or her application for retirement) directly to OPM by submitting SF 2803; or

(iii) Have the period of service treated like the nondeduction service described in § 831.303.

(2) When the agency withholds part of the required employee deductions for any pay period, the balance must be submitted to OPM in the manner currently prescribed for the transmission of withholdings and contributions as soon as possible, but not later than provided by standards established by OPM in the Federal Personnel Manual. The agency must correct its error. The employee does not have the option to pay a deposit directly to OPM when partial deductions have been withheld.

(3) If the agency waives the employee's repayment of the salary overpayment that resulted from the administrative error, the agency must also submit (in addition to the agency contribution) the employee's share of the unpaid contributions to OPM in the manner currently prescribed for the transmission of withholdings and contributions.

[53 FR 35295, Sept. 13, 1988]

§ 831.112 Definitions of employee.

(a) *Determinations involving an employee's ability to make a deposit or redeposit.* A person may make a deposit or redeposit under section 8334 of title 5, United States Code, if he or she is an ''employee.'' For purposes of this paragraph, an *employee* is—

(1) A person currently employed in a position subject to the civil service retirement law; or

(2) A former employee (whose annuity has not been finally adjudicated) who retains civil service retirement annuity rights based on a separation from a position in which retirement deductions were properly withheld and remain (or have been redeposited in whole or in part) in the Civil Service Retirement and Disability Fund.

(b) *Determinations involving the payment of survivor benefits at an employee's or former employee's death.* To determine entitlement to survivor benefits, OPM establishes whether the deceased individual was an ''employee'' or a ''retiree'' on the date of death. If the decedent was an ''employee'' on the date of death, survivor benefits are paid as though the individual died in service. If the decedent was a ''retiree'' on the date of death, survivor benefits are only paid as provided in the individual's election, provided it was properly made. However, if a former employee was eligible only for a deferred annuity at age 62, survivor benefits are only paid if the individual was a ''retiree'' on the date of death. For purposes of this paragraph—

(1) *Employee* is a person—

(i) Who had not been separated from service prior to his or her death, even if he or she had applied for retirement (for example, an applicant for disability annuity) and the application had been approved; or

(ii) Whose death occurs before the commencing date of annuity, even though separation has occurred.

(2) *Retiree* or *annuitant* is a person—

(i) Who has been separated from service and met all the requirements to receive an annuity including having filed an application for the annuity prior to his or her death; and

(ii) Whose death occurs on or after the commencing date of annuity.

(c) *Determinations involving the requirement of spousal consent for elections of alternative annuity and survivor annuity benefits.* Spousal consent is required as specified in §§ 831.614 and 831.2203(c), if the employee/annuitant is married on the commencing date of annuity, regardless of whether that date is before or after the date of separation from service.

[56 FR 45883, Sept. 9, 1991, as amended at 58 FR 52880, Oct. 13, 1993]

§ 831.113 Payments to children.

For purposes of section 8345(e) of title 5, United States Code, persons who have attained age 18 are considered adults regardless of the age of majority in the jurisdiction in which they reside.

[56 FR 45884, Sept. 9, 1991]

Subpart B—Coverage

§ 831.201 Exclusions from retirement coverage.

(a) The following groups of employees in the executive branch of the Government are excluded from subchapter III of chapter 83 of title 5, United States Code: