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the overall effectiveness of the Government-wide program, as well as those programs at individual agencies, based on program information required of agencies.

[49 FR 27921, July 9, 1984]

§ 792.105 Agency responsibilities.

(a) Agencies shall establish and administer programs through which practitioners who are knowledgeable in counseling and referral services can offer and provide employees who have alcohol and/or drug problems short-term counseling and/or referrals for long-term counseling or treatment.

(b) Agencies shall issue internal instructions implementing the requirements of 42 U.S.C. 290dd–1(a) and 290ee–1(a) and this regulation.

(c) Whenever a manager/supervisor becomes aware that a Federal employee's use of alcohol and/or drugs may be contributing to a performance or conduct deficiency, the manager/supervisor shall recommend counseling and refer the employee to the agency counseling program. If an employee fails to participate in any rehabilitative program or, having participated, the employee fails to bring conduct or performance up to satisfactory level, the agency shall evaluate the employee accordingly and initiate an appropriate performance-based or adverse action.

(d) As requested, agencies shall annually submit a report to OPM on their counseling activities for the past fiscal year at a time, and in a manner, set by OPM.

[49 FR 27921, July 9, 1984, as amended at 50 FR 16692, Apr. 29, 1985]

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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:

(1) Employees serving under appointments limited to one year or less, except annuitants appointed by the President to fill unexpired terms of office on or after January 1, 1976.

(2) Intermittent employees—non-full-time employees without a prearranged regular tour of duty.

(3) Employees whose salary, pay, or compensation on an annual basis is $12 a year or less.

(4) Member or patient employees in Government hospitals or homes.

(5) Employees paid on a piecework basis, except those whose work schedule provides for regular or full-time service.

(6) Intermittent alien employees engaged on work outside the continental limits of the United States.

(7) Employees serving under temporary appointments pending establishment of registers, or pending final determination of eligibility for permanent appointment.

(8) Officers in Charge, clerks in fourth-class post offices, substitute rural carriers, and special-delivery messengers at second- third-, and fourth-class post offices.

(9) Consular agents appointed under authority of section 551 of the Foreign Service Act of 1946 (22 U.S.C. 951).

(10) Employees serving under emergency-indefinite appointments not exceeding 5 years.

(11) United States citizens given ''overseas limited appointments.''

(12) Employees serving under nonpermanent appointments made pursuant to section 1 of Executive Order 10180 of November 13, 1950.

(13) Employees serving under nonpermanent appointments, designated as indefinite, made after January 23, 1955, the effective date of the repeal of Executive Order 10180.

(14) Employees serving under term appointments.

(15) Temporary employees of the Census Bureau employed under temporary limited appointments exceeding 1 year.

(16) Employees serving under limited term, limited emergency and noncareer (designated as indefinite) appointments in the Senior Executive Service.

(17) Health care employees of the National Health Service Corps serving under appointments limited to four years or less in health manpower shortage areas.

(b) Paragraph (a) of this section does not deny retirement coverage when:

(1) Employment in an excluded category follows employment subject to subchapter III of chapter 83 of title 5, United States Code, without a break in service or after a separation from servvice of 3 days or less, except in the case of an alien employee whose duty station is located in a foreign country;

(2) The employee receives a career or career-conditional appointment under part 315 of this chapter;

(3) The employee is granted competitive status under legislation, Executive order, or civil service rules and regulations, while he or she is serving in a position in the competitive service; or

(4) The employee is granted merit status under 35 CFR chapter I, subchapter E;

(5) The appointment meets the definition of a provisional appointment contained in §§316.401 and 316.403 of this chapter;

(6) The employee receives an interim appointment under §772.102 of this chapter and was covered by CSRS at the time of the separation for which interim relief is required.

(c) Members of the following boards and commissions of the government of the District of Columbia appointed on or after August 13, 1960, are excluded from subchapter III of chapter 83 of title 5, United States Code, except that this exclusion does not operate in the case of a member serving on August 13, 1960, who is reappointed on expiration of term without a break in service or after a separation from serwice of 3 days or less:

Board of Accountancy.
Board of Examiners and Registrars of Architects.
Board of Barber Examiners.
Boxing Commission.
Board of Cosmetology.
Board of Dental Examiners.
Electrical Board.
Commission on Licensure to Practice the Healing Arts.
Board of Examiners in the Basic Sciences.
Board of Examiners in Medicine and Osteopathy.
Motion Picture Operators' Board.
Nurses' Examining Board.
Board of Optometry.
Board of Pharmacy.

Plumbing Board.
Board of Podiatry Examiners.
Board of Registration for Professional Engineers.
Real Estate Commission.
Refrigeration and Air Conditioning Board.
Steam and Other Operating Engineers' Board.
Undertakers' Committee.
Board of Examiners of Veterinarian Medicine.

(d) The following groups of employees of the government of the District of Columbia, appointed on or after October 1, 1965, are excluded from subchapter III of chapter 83 of title 5, United States Code:

(1) Employees serving under appointments limited to one year or less, except temporary teachers of the District of Columbia public school system.

(2) Intermittent employees—non-full-time employees without a prearranged regular tour of duty.

(3) Employees whose pay on an annual basis is $12.00 per year or less.

(4) Patient or inmate employees in District Government hospitals, homes or penal institutions.

(5) Employees paid on a contract or fee basis.

(6) Employees paid on a piecework basis, except those whose work schedule provides for regular or full-time service.

(7) Employees serving under temporary appointments pending establishment of registers, or pending final determination of eligibility for permanent appointment.

(e) Paragraph (d) of this section does not deny retirement coverage when (1) employment in an excluded category follows employment subject to subchapter III of chapter 83 of title 5, United States Code, without a break in service or after a separation from service of 3 days or less, or (2) the employee is granted competitive status under legislation, Executive order, or the Civil Service rules and regulations, while he is serving in a position in the competitive service.

(f) Also excluded are any temporary employees, appointed for one year or less, by the government of the District of Columbia under any program or project established pursuant to the Economic Opportunity Act of 1964 (42 U.S.C. 2701 *et seq.*), and summer trainees employed by the Government of the District of Columbia in furtherance of the President's Youth Opportunity Campaign.

(g) Individuals first employed by the government of the District of Columbia on or after October 1, 1987, are excluded from subchapter III of chapter 83 of title 5, United States Code. However, employees of St. Elizabeths Hospital who were hired before January 1, 1984, and who were covered under subchapter III of chapter 83 of title 5, United States Code, and accept offers of employment with the District of Columbia government without a break in service, as provided in section 6 of Pub. L. 98–621, continue to be covered by this part.

(h) Employees who have elected coverage under another retirement system in accordance with part 847 of this chapter are excluded from subchapter III of chapter 83 of title 5, United States Code, during that and all subsequent periods of service (including service as a reemployed annuitant).

[33 FR 12498, Sept. 4, 1968, as amended at 45 FR 24856, Apr. 11, 1980; 45 FR 46782, July 11, 1980; 47 FR 2285, Jan. 15, 1982; 48 FR 38784, Aug. 26, 1983; 51 FR 23037, June 25, 1986; 52 FR 38220, Oct. 15, 1987; 53 FR 42936, Oct. 25, 1988; 56 FR 4930, Feb. 7, 1991; 56 FR 10142, Mar. 11, 1991; 57 FR 3713, Jan. 31, 1992; 61 FR 41720, Aug. 9, 1996]

§ 831.202 Continuation of coverage for food service employees of the House of Representatives.

(a) Congressional employees who provide food service operations for the House of Representatives can elect to continue their retirement coverage under subchapter III of chapter 83 of title 5, United States Code, when such food service operations are transferred to a private contractor. These regulations also apply to any successor contractors.

(b) *Eligibility requirements.* To be eligible for continuation of retirement coverage, an employee must:

(1) Be a Congressional employee (as defined in section 2107 of title 5, United States Code), other than an employee of the Architect of the Capitol, engaged in providing food service operations for the House of Representatives under the administrative control of the Architect of the Capitol;

(2) Be subject to subchapter III of chapter 83 of title 5, United States Code;

(3) Elect to remain covered under civil service retirement provisions no later than the day before the date on which the food service operations transfer from the House of Representatives to a private contractor; and

(4) Become employed to provide food services under contract without a break in service. A ''break in service'' means a separation from employment of at least three calendar days.

(c) *Employee deductions.* An employee who elects to continue coverage under title 5 retirement provisions is deemed to consent to deductions from his or her basic pay for the Civil Service Retirement and Disability Fund in the amount determined in accordance with 5 U.S.C. 8334(k). The employer providing the food services under contract must, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund the amounts deducted from an employee's pay.

(d) *Employer contributions.* The employer providing food services under contract must, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund amounts equal to any agency contributions that would be required if the individual were a Congressional employee covered by the Civil Service Retirement System.

[52 FR 5069, Feb. 19, 1987, and 53 FR 10055, Mar. 29, 1988. Redesignated at 53 FR 10055, Mar. 29, 1988]

§ 831.203 Continuation of coverage for employees of the Metropolitan Washington Airports Authority.

(a) Permanent Federal Aviation Administration employees assigned to Washington National Airport or Dulles International Airport who elect to transfer to the Metropolitan Washington Airports Authority, retain their retirement coverage under subchapter III of chapter 83 of title 5, United States Code.

(b) *Eligibility requirements.* To be eligible for continuation of retirement coverage, an employee must (1) be a permanent Federal Aviation Administration employee assigned to the Metropolitan Washington Airports who elects to transfer to the Airports Authority; (2) be subject to subchapter III chapter 83 of title 5 United States Code on the day before the date the lease takes effect; and (3) become continually employed by the Airports Authority without a break in service. A ''break in service'' means a separation from employment of at least 3 calendar days.

(c) *Employee deductions.* Employees of the Airports Authority who have continuing coverage under title 5 retirement provisons are deemed to consent to deductions from their basic pay for the Civil Service Retirement and Disability Fund. The amounts deducted will be the same as if the employees were still employed by the Federal Government. The Airports Authority must, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund the amounts deducted from an employee's pay.

(d) *Employer contributions.* The Airports Authority must, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund amounts equal to any agency contributions that would be required for employees covered by the Civil Service Retirement System.

(e) *Sick leave.* An employee who retires, or dies leaving a survivor entitled to an annuity, from the Airports Authority within the 5 year period beginning on the date the lease takes effect will be permitted to credit unused sick leave in his or her annuity computation. After the 5 year period, use of unused sick leave in the annuity computation will be permitted if the employee is under a formal leave system as defined in § 831.302.

[52 FR 19125, May 21, 1987, and 53 FR 10055, Mar. 29, 1988. Redesignated at 53 FR 10055, Mar. 29, 1988]

§ 831.204 Elections of retirement coverage under the District of Columbia Financial Responsibility and Management Assistance Act of 1995.

(a) *Who may elect*—(1) *General rule.* Any individual appointed by the District of Columbia Financial Responsibility and Management Assistance Authority (the Authority) in a position

not excluded from CSRS coverage under §831.201 may elect to be deemed a Federal employee for CSRS purposes unless the employee has elected to participate in a retirement, health or life insurance program offered by the District of Columbia.

(2) *Exception.* A former Federal employee being appointed by the Authority on or after October 26, 1996, no more than 3 days (not counting District of Columbia holidays) after separation from Federal employment cannot elect to be deemed a Federal employee for CSRS purposes unless the election was made before separation from Federal employment.

(b) *Opportunity to elect FERS.* An individual who elects CSRS under paragraph (a) of this section after a break of more than 3 days between Federal service and employment with the Authority may elect FERS in accordance with 5 CFR 846.201(b)(ii).

(c) *Procedure for making an election.* The Authority or the agency providing administrative support services to the Authority (Administrative Support Agency) must establish a procedure for notifying employees of their election rights and for accepting elections.

(d) *Time limit for making an election.* (1) An election under paragraph (a)(1) of this section must be made within 30 days after the employee receives the notice under paragraph (c) of this section.

(2) The Authority or its Administrative Support Agency will waive the time limit under paragraph (d)(1) of this section upon a showing that—

(i) The employee was not advised of the time limit and was not otherwise aware of it; or

(ii) Circumstances beyond the control of the employee prevented him or her from making a timely election and the employee thereafter acted with due diligence in making the election.

(e) *Effect of an election.* (1) An election under paragraph (a) of this section is effective on the commencing date of the employee's service with the Authority.

(2) An individual who makes an election under paragraph (a) of this section is ineligible, during the period of employment covered by that election, to participate in any retirement system for employees of the government of the District of Columbia.

(f) *Irrevocability.* An election under paragraph (a) of this section becomes irrevocable when received by the Authority or its Administrative Support Agency.

(g) *Employee deductions.* The Authority or its Administrative Support Agency must withhold, from the pay of an employee of the District of Columbia Financial Responsibility and Assistance Authority who has elected to be deemed a Federal employee for CSRS purposes, an amount equal to the percentage withheld from Federal employees' pay for periods of service covered by CSRS and, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund the amounts deducted from an employee's pay.

(h) *Employer contributions.* The District of Columbia Financial Responsibility and Assistance Authority must, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund amounts equal to any agency contributions required under CSRS.

[61 FR 58458, Nov. 15, 1996]

Subpart C—Credit for Service

§ 831.301 Military service.

(a) *Service of an individual who first became an employee or Member under the civil service retirement system before October 1, 1982.* A period of honorable active service after December 31, 1956, in the Army, Navy, Marine Corps, Air Force, or Coast Guard of the United States, or, after June 30, 1960, in the Regular Corps or Reserve Corps of the Public Health Service, or, after June 30, 1961, as a commissioned officer of the National Oceanic and Atmospheric Administration (formerly Coast and Geodetic Survey and Environmental Science Services Administration), performed before the date of separation on which civil service annuity entitlement is based shall be included in the computation of the annuity provided—

(1) The employee or Member has completed 5 years' (18 months' for survivors of employees or Members who die in service) civilian service;

(2) The employee or Member is not receiving military retired pay awarded for reasons other than (i) service-connected disability incurred in combat with an enemy of the United States, (ii) service-connected disability caused by an instrumentality of war and incurred in line of duty during a period of war (as that term is used in chapter 11 of title 38, United States Code), or (iii) under chapter 67 of title 10, United States Code; and

(3)(i) The employee, Member, or survivor is not entitled, or upon application would not be entitled, to monthly old-age or survivors benefits under § 202 of the Social Security Act (41 U.S.C. 402) based on the individual's wages or self-employment income, or

(ii) For an employee, Member, or survivor who is entitled, or upon application would be entitled, to monthly old-age or survivors benefits under § 202 of the Social Security Act (41 U.S.C. 402) based on the individual's wages or self-employment income, the employee, Member, or survivor has completed a deposit in accordance with subpart U of this part, for each full period of such military service performed after December 1956.

If a deposit has not been completed, periods of military service performed after December 31, 1956 (other than periods of military service covered by military leave with pay from a civilian position), are excluded from credit from and after the first day of the month in which the individual (or survivor) becomes entitled, or upon proper application would be entitled, to Social Security benefits under § 202. Military service performed prior to January 1957 is included in the computation of the annuity regardless of whether a deposit is made for service after December 31, 1956.

(b) *Service of an individual who first becomes an employee or Member under the civil service retirement system on or after October 1, 1982.* A period of honorable active service after December 31, 1956, in the Army, Navy, Marine Corps, Air Force, or Coast Guard of the United States, or, after June 30, 1960, in the Regular Corps or Reserve Corps of the Public Health Service, or, after June 30, 1961, as a commissioned officer of the National Oceanic and Atmospheric Administration (formerly Coast and Geodetic Survey and Environmental Science Services Administration), performed before the date of separation on which civil service annuity entitlement is based shall be included in the computation of the annuity provided—

(1) The employee or Member has completed 5 years' (18 months' for survivors of employees or Members who die in service) civilian service;

(2) The employee or Member is not receiving military retired pay awarded for reasons other than (i) service-connected disability incurred in combat with an enemy of the United States, (ii) service-connected disability caused by an instrumentality of war and incurred in line of duty during a period of war (as that term is used in chapter 11 of title 38, United States Code), or (iii) under chapter 67 of title 10, United States Code; and

(3) The employee, Member, or survivor had completed a deposit in an amount equal to 7 percent of his or her basic pay under section 204 of title 37, United States Code, (plus interest, if any) for each full period of such military service performed after December 1956. Military service performed prior to January 1957 is included in the computation of the annuity regardless of whether a deposit is made for service after December 31. 1956.

(c) *Military retirees and recipients of Veterans Administration benefits.* An employee or Member applying for annuity, who otherwise meets all conditions for receiving credit for military service, but who is in receipt of retired or retainer pay which bars credit for military service, may elect to waive the retired or retainer pay and have the military service added to civilian service for annuity computation purposes. An applicant for disability retirement, who is receiving a Veterans Administration pension or compensation in lieu of military retired or retainer pay, may elect to waive the retired or retainer pay and renounce the Veterans Administration pension or compensation and have the military service added to civilian service for annuity computation purposes.

(d) *Widow(er)s and former spouses entitled to annuity based on the service of employees or Members who die in service*—(1)

Military service is included unless the widow(er) or former spouse elects otherwise. Effective April 25, 1987, unless a widow(er) or former spouse of an employee or Member who dies—on or after that date—before being separated from service files a written election to the contrary, his or her annuity will include credit for periods of military service (subject to the provisions of paragraphs (a) and (b) of this section) that would ordinarily be excluded from the computation of the employee's or Member's annuity under 5 U.S.C. 8332(c)(2).

(2) *Reduction by the amount of survivor benefits payable based on the military service.* (i) In paragraph (d)(2)(ii) of this section, ''survivor benefits under a retirement system for members of the uniformed services'' means survivor benefits before any offsets for benefits payable from another Federal benefit system except for those payable under title II of the Social Security Act. The amount of the survivor benefit to be deducted will be the amount payable to the current or former spouse and attributable to the decedent's retired or retainer pay for the period of military service to be included in the CSRS survivor annuity. However, the survivor benefit will never be reduced below the amount payable based on the civilian service alone.

(ii) OPM will obtain information on the amount of any monthly survivor benefits payable to each applicant for CSRS current or former spouse annuity. OPM will reduce the CSRS survivor annuity by the monthly military survivor benefit on its commencing date. OPM will not make a subsequent adjustment unless it is necessary to increase or decrease the CSRS survivor benefit because of a change in the amount of military survivor benefits attributable to the period of service or a change in the period of military service to be included in the CSRS annuity when the survivor annnuitant becomes eligible for benefits under title II of the Social Security Act.

(3) *Widow(er)s or former spouses of employees or Members who die on or after April 25, 1987—election not to be included.* OPM will accept a written election from a widow(er) or former spouse who does not wish to be covered by §831.301(d) provided it is postmarked within the period ending 30 calendar days after the date of the first regular monthly annuity payment.

(4) *Widow(er)s or former spouses of employees or Members who die before April 25, 1987—application to OPM for credit.* Widow(er)s or former spouses of employees or Members who died before April 25, 1987, must apply to OPM in writing to have credit for military service included in the survivor annuity computation. If the survivor annuity is increased by including credit for the military service, the increase will be effective on the first of the month following the 60th calendar day after the date the written application for inclusion of the military service is received in OPM.

[48 FR 38784, Aug. 26, 1983, as amended at 51 FR 31931, Sept. 8, 1986; 52 FR 10026, Mar. 30, 1987; 53 FR 6555, Mar. 2, 1988]

§ 831.302 Unused sick leave.

(a) For annuity computation purposes, the service of an employee who retires on immediate annuity or dies leaving a survivor entitled to annuity is increased by the days of unused sick leave to his credit under a formal leave system.

(b) An immediate annuity is one which begins to accrue not later than 1 month after the employee is separated.

(c) A formal leave system is one which is provided by law or regulation or operates under written rules specifying a group or class of employees to which it applies and the rate at which sick leave is earned.

(d) In general, 8 hours of unused sick leave increases total services by 1 day. In cases where more or less than 8 hours of sick leave would be charged for a day's absence, total service is increased by the number of days in the period between the date of separation and the date that the unused sick leave would have expired had the employee used it (except that holidays falling within the period are treated as work days, and no additional leave credit is earned for that period).

(e) If an employee's tour of duty changes from part time to full time or full time to part time within 180 days

before retirement, the credit for unused sick leave is computed as though no change had occurred.

[34 FR 17617, Oct. 31, 1969]

§ 831.303 Civilian service.

(a) *Periods of civilian service performed before October 1, 1982, for which retirement deductions have not been taken.* Periods of creditable civilian service performed by an employee or Member after July 31, 1920, but before October 1, 1982, for which retirement deductions have not been taken shall be included in determining length of service to compute annuity under subchapter III of chapter 83 of title 5, United States Code; however, if the employee, Member, or survivor does not elect either to complete the deposit describes by section 8334(c) of title 5, United States Code, or to eliminate the service from annuity computation, his or her annuity is reduced by 10 percent of the amount which should have been deposited (plus interest) for the period of noncontributory service.

(b) *Periods of service for which refunded deductions have not been redeposited, and periods of civilian service performed on or after October 1, 1982, for which retirement deductions have not been taken.* Except as provided in paragraph (c) of this section, a period of service for which refunded deductions have not been redeposited, and a period of creditable civilian service performed by an employee or Member on or after October 1, 1982, for which retirement deductions have not been taken, shall be included in determining length of service to compute the annuity under subchapter III of chapter 83 of title 5, United States Code, only if—

(1) The employee or Member subsequently becomes eligible for an annuity payable under subchapter III of chapter 83 of title 5, United States Code; and

(2) The employee, Member, or survivor makes a deposit (or redeposit) for the full period of service. If more than one distinct period of service is covered by a single refund, the periods of service covered by that refund are considered to be single full periods of service. However, in all other instances, a distinct period of nondeduction civilian service (i.e., a period of nondeduction service that is not interrupted by a break in service of more than three days) and a distinct period of redeposit civilian service (i.e., a period of redeposit service that is not interrupted by a break in service of more than three days) are considered as separate full periods of service, even when they are immediately consecutive. A period of nondeduction service which begins before October 1, 1982, and ends on or after that date is also considered two full periods of service: one ending on September 30, 1982, and the other beginning on October 1, 1982.

(c)(1) An employee or Member who has not completed payment of a redeposit for refunded deductions based on a period of service that ended before October 1, 1990, will receive credit for that service in computing the nondisability annuity for which the individual is eligible under subchapter III of chapter 83 of title 5, United States Code, provided the nondisability annuity commences after December 1, 1990.

(2) The beginning monthly rate of annuity payable to a retiree whose annuity includes service credited in accordance with paragraph (c)(1) of this section will be reduced by an amount equal to the redeposit owed, or unpaid balance thereof, divided by the present value factor for the retiree's attained age (in full years) at the time of retirement. The reduced monthly rate will then be rounded down to the next lower dollar amount and becomes the rate of annuity payable.

(3) For the purpose of paragraph (b)(2) of this section, the terms ''present value factor'' and ''time of retirement'' have the same meaning as in § 831.2202.

[48 FR 38785, Aug. 26, 1983, as amended at 56 FR 6550, Feb. 19, 1991]

§ 831.304 Service with the Cadet Nurse Corps during World War II.

(a) *Definitions and special usages.* In this section—

(1) *Basic pay* is computed at the rate of $15 per month for the first 9 months of study; $20 per month for the 10th through the 21st month of study; and $30 per month for any month in excess of 21.

(2) *Cadet Nurse Corps service* means any student or graduate nurse training,

in a non-Federal institution, as a participant in a plan approved under section 2 of the Act of June 15, 1943 (57 Stat. 153).

(3) *CSRS* means the Civil Service Retirement System.

(b) *Conditions for creditability*. As provided by Pub. L. 99–638, an individual who performed service with the Cadet Nurse Corps is entitled to credit under CSRS if—

(1) The service as a participant in the Corps totaled 2 years or more;

(2) The individual submits an application for service credit to OPM no later than January 10, 1988;

(3) The individual is employed by the Federal Government in a position subject to CSRS at the time he or she applies to OPM for service credit; and

(4) The individual makes a deposit for the service before separating from the Federal Government for retirement purposes. Contrary to the policy ''deeming'' the deposit to be made for alternative annuity computation purposes, these deposits must be physically in the possession of the individual's employing agency before his or her separation for retirement purposes.

(c) *Processing the application for service credit.* Upon receiving an application requesting credit for service with the Cadet Nurse Corps, OPM will determine whether all conditions for creditability have been met, compute the deposit (including any interest) as specified by sections 8334(e) (2) and (3) of title 5, United States Code, based upon the appropriate percentage of basic pay that would have been deducted from the individual's pay at the time the service was performed, and advise the agency and the employee of the total amount of the deposit due.

(d) *Agency collection and submission of deposit.* (1) The individual's employing agency must establish a deposit account showing the total amount due and a payment schedule (unless deposit is made in one lump sum), and record the date and amount of each payment.

(2) lf the individual cannot make payment in one lump sum, the employing agency must accept installment payments (by allotments or otherwise). However, the employing agency is not required to accept individual checks in amounts less than $50.

(3) If the employee dies before completing the deposit, the surviving spouse may elect to complete the payment to the employing agency in one lump sum; however, the surviving spouse will not be able to initiate an application for such service credit.

(4) Payments received by the employing agency must be remitted to OPM immediately for deposit to the Civil Service Retirement and Disability Fund.

(5) Once the employee's deposit has been paid in full or closed out, the employing agency must submit the documentation pertaining to the deposit to OPM in accordance with published instructions.

[52 FR 43047, Nov. 9, 1987]

§ 831.305 Service with a nonappropriated fund instrumentality after June 18, 1952, but before January 1, 1966.

(a) *Definitions and special usages.* In this section—

(1) *Service in a nonappropriated fund instrumentality* is any service performed by an employee that involved conducting arts and crafts, drama, music, library, service (i.e., recreation) club, youth activities, sports or recreation programs (including any outdoor recreation programs) for personnel of the armed forces. Service is not creditable if it was performed in programs other than those specifically named in this subsection.

(2) *Certification by the head of a nonappropriated fund instrumentality* can also be certification by the National Personnel Records Center or by an official of another Federal agency having possession of records that will verify an individual's service.

(3) *CSRS* means the Civil Service Retirement System.

(b) *Conditions for creditability*. Pursuant to Pub. L. 99–638 and provided the same period of service has not been used to obtain annuity payable from a nonappropriated fund retirement plan, an individual who performed service in a nonappropriated fund instrumentality is entitled to credit under CSRS if—

(1) The service was performed after June 18, 1952, but before January 1, 1966; and

(2) The individual was employed in a position subject to CSRS on November 9, 1986.

(c) *Deposit for service is not necessary.* It is not necessary for an individual to make a deposit for service performed with a nonappropriated fund instrumentality to receive credit for such service. However, if the individual does not elect to make a deposit, his or her annuity is reduced by 10 percent of the amount that should have been deposited for the period of service (including any interest) as specified by sections 8334(e) (2) and (3) of title 5, United States Code. When an employee elects an alternative annuity and also elects to make the deposit, OPM will deem the deposit to be made for purposes of conputing the alternative annuity.

[52 FR 43048, Nov. 9, 1987]

§ 831.306 Service as a National Guard technician before January 1, 1969.

(a) *Definitions.* In this section—(1) *Service as a National Guard technician* is service performed under section 709 of title 32, United States Code (or under a prior corresponding provision of law) before January 1, 1969.

(2) *CSRS* means the Civil Service Retirement System.

(b) *Conditions for crediting service to CSRS employees after November 5, 1990.* An employee subject to CSRS retirement deductions whose only service as a National Guard technician was performed prior to January 1, 1969, is entitled to credit under CSRS if—

(1) The individual submits to OPM an application for service credit in a form prescribed by OPM;

(2) The individual is employed by the Federal Government in a position subject to CSRS retirement deductions after November 5, 1990; and

(3) The individual completes the deposit for the service through normal service credit channels before final adjudication of his or her application for retirement or has the deposit deemed made when he or she elects the alternative form of annuity.

(c) *Processing the CSRS employee's application for service credit.* (1) If an employee described in paragraph (b) of this section makes an application for service credit, OPM will determine whether all conditions for creditability have been met, compute the deposit and send the employee notice of the payment required and the procedures for submitting the payments to OPM.

(2) The deposit will be computed based on—

(i) The appropriate percentage of basic pay that would have been deducted from the individual's pay at the time the service was performed; and

(ii) Interest at the rate of 3 percent per year computed as specified by section 8334(e)(2) of title 5, United States Code, until the date the deposit is paid.

(d) *Conditions for crediting service to CSRS annuitants and former Federal employees who separated after December 31, 1968, and before November 6, 1990*—(1) *Former Federal employees.* Former Federal employees who were subject to CSRS retirement deductions and separated after December 31, 1968, but before November 6, 1990, with title to a deferred annuity, may make a deposit for pre-1969 National Guard technician service provided they—

(i) Submit a written service credit application for the pre-1969 National Guard technician service to OPM before November 6, 1991; and

(ii) Complete a deposit for the additional service in a lump sum or in installment payments of $50 or more. Payments must be completed before their retirement claim is finally adjudicated, unless the deposit is deemed made when they elect an alternative form of annuity.

(2) *Annuitants and survivors.* Individuals who were entitled to receive an immediate annuity (or survivor annuity benefits) as of November 6, 1990, may make a deposit for pre-1969 National Guard technician service provided they—

(i) Submit a written application for service credit to OPM before November 6, 1991; and

(ii) Complete a deposit for the additional service in a lump sum or in equal monthly annuity installments to be completed within 24 months of the date of the complete written application.

(3) To determine the commencing date of the deposit installment payment period for annuitants and survivors, the ''date of application'' will be considered to be the first day of the

second month beginning after OPM receives a complete written application from the individual.

(4) To be a complete application, the individual's written request for pre-1969 National Guard technician service credit must also include a certification of the dates of employment and the rates of pay received by the individual during the employment period. The individual may obtain certification of his or her service from the Adjutant General of the State in which the service was performed.

(e) *Processing annuitants', survivors' or former employees' applications for service credit*—(1) *OPM determines creditable service.* OPM will determine whether all conditions for crediting the additional service have been met, compute the amount of the deposit, and notify the individual.

(2) *Computing the deposit.* The deposit will be computed based on—

(i) The appropriate percentage of basic pay that would have been deducted from the individual's pay at the time the service was performed; and

(ii) Interest at the rate of 3 percent per year as specified by section 8334(e)(2) of title 5, United States Code, to—

(A) The midpoint of the 24-month installment period or if paid in a lump sum, the date payment is made if the individual is an annuitant or survivor; or

(B) The date the deposit is paid or the commencing date of annuity, whichever comes first, if the individual is a former employee.

(3) *Individuals who are annuitants or survivors as of November 6, 1990.* (i) OPM will notify annuitants and survivors of the amount of the deposit and give them a proposed installment schedule for paying the deposit from monthly annuity payments. The proposed installment payments will consist of equal monthly payments that will not exceed a period 24 months from the date a complete written application is received by OPM.

(ii) The annuitant or survivor may allow the installments to be deducted from his or her annuity as proposed or make payment in a lump sum within 30 days from the date of the notice.

(iii) Increased annuity payments will begin to accrue the first day of the month after OPM receives a complete written application.

(iv) If an annuitant dies before completing the deposit installment payments, the remaining installments will be deducted as established for the annuitant, from benefits payable to the survivor annuitant (but not if the only survivor benefit is payable to a child or children of the deceased), if any. If no survivor annuity is payable, OPM may collect the balance of the deposit from any lump-sum benefits payable or the decedent's estate, if any.

(4) *Former employees who separated after December 31, 1968, but before November 6, 1990.* A former employee with title to a deferred annuity that commences after November 6, 1990, will be billed for the amount of the deposit due and informed of the procedures for sending payments to OPM. If payment is to be made in installments, each payment must be at least $50 and the total deposit due must be completed before final adjudication of the retirement claim, unless the deposit is deemed made when he or she elects an alternative form of annuity.

[56 FR 6554, Feb. 19, 1991, as amended at 56 FR 55595, Oct. 29, 1991; 56 FR 67467, Dec. 31, 1991]

§ 831.307 Contract service.

Contract service with the United States will only be included in the computation of, or used to establish title to, an annuity under subchapter III of chapter 83 of title 5, United States Code, if—

(a) The employing agency exercised an explicit statutory authority to appoint an individual into the civil service by contract; or

(b) The head of the agency which was party to the contract, based on a timely-filed application, in accordance with section 110 of Public Law 100–238, and the regulations promulgated by OPM pursuant to that statute, certifies that the agency intended that an individual be considered as having been appointed to a position in which (s)he would have been subject to subchapter III of chapter 83 of title 5, United States Code,

and deposit has been paid in accordance with OPM's regulations.

[55 FR 53135, Dec. 27, 1990]

Subpart D—Voluntary Contributions

SOURCE: 56 FR 43863, Sept. 5, 1991, unless otherwise noted.

§ 831.401 Purpose and scope.

This subpart describes the procedures that employees and Members must follow in making voluntary contributions under the Civil Service Retirement System (CSRS). This subpart also describes the procedures that the Office of Personnel Management (OPM) will follow in accepting voluntary contributions, crediting interest on voluntary contribution accounts, and paying benefits based on voluntary contributions.

§ 831.402 Definitions.

In this subpart:

Applicant for retirement means a person who is currently eligible to retire under CSRS on an immediate or deferred annuity, and who has filed an application to retire that has not been finally adjudicated.

Balance means the amount of voluntary contributions deposited and not previously withdrawn, plus earned interest on those voluntary contributions, less any amount paid as additional annuities (including any amount paid as survivor annuity) based on the voluntary contributions.

CSRS means the Civil Service Retirement System as described in subchapter III of chapter 83 of title 5, United States Code.

Eligible individual means a person eligible to make voluntary contributions under § 831.403.

Voluntary contributions means contributions to the Civil Service Retirement and Disability Fund under section 8343 of title 5, United States Code.

§ 831.403 Eligibility to make voluntary contributions.

(a) Voluntary contributions may be made only by—

(1) Employees or Members currently subject to CSRS, and

(2) Applicants for retirement.

(b) Voluntary contributions may not be accepted from an employee, Member, or applicant for retirement who—

(1) Has not deposited amounts covering all creditable civilian service performed by him or her; or

(2) Has previously received a refund of voluntary contributions and who has not been reemployed subject to CSRS after a separation of more than 3 calendar days.

(c) An employee or Member covered by the Federal Employees Retirement System (FERS), including an employee or Member who elected to transfer or was automatically placed in FERS, may not open a voluntary contributions account or make additional contributions to an existing voluntary contribution account.

§ 831.404 Procedure for making voluntary contributions.

(a) To make voluntary contributions to the Civil Service Retirement and Disability Fund, an eligible individual must first apply on a form prescribed by OPM. OPM will establish a voluntary contribution account for each eligible individual who elects to make voluntary contributions and notify the individual that a voluntary contribution account has been established. An eligible individual may not make voluntary contributions until notified by OPM that an account has been so established.

(b) After receiving notice from OPM under paragraph (a) of this section, an eligible individual may forward voluntary contributions to the Office of Personnel Management, at the address designated for that purpose. Voluntary contributions must be in the amount of $25 or multiples thereof, by money order, draft, or check payable to OPM.

(c) The total voluntary contributions made by an employee or Member may not exceed, as of the date any contribution is received, 10 percent of the aggregate basic pay received by the eligible individual.

(1) Employees are responsible for not exceeding the 10 percent limit.

(2) When the employee retires or withdraws the voluntary contributions, OPM will check to determine whether the 10 percent limit has been exceeded.

(3) If the total of voluntary contributions received from the employee exceeds the 10 percent limit, OPM will refund without interest any amount that exceeds the 10 percent limit.

§ 831.405 Interest on voluntary contributions.

(a) Interest on voluntary contributions is computed under § 831.105.

(b) Voluntary contributions begin to earn interest on the date deposited by OPM.

(c) Except as provided in paragraph (d) of this section, voluntary contributions stop earning interest on the earliest of—

(1) The date when OPM authorizes payment to the individual of the balance as a withdrawal (831.406);

(2) The date when the employee or Member separates or transfers to a position not subject to CSRS or FERS; or

(3) The date when the employee transfers to a retirement system other than CSRS or FERS.

(d) If an employee separates with entitlement to a deferred annuity and either dies without withdrawing his or her voluntary contributions or uses his or her voluntary contributions to purchase additional annuity, voluntary contributions stop earning interest on the earlier of—

(1) The date the former employee or Member dies; or

(2) The commencing date of the former employee's or Member's deferred annuity.

§ 831.406 Withdrawal of voluntary contributions.

(a) Before receiving additional annuity payments based on the voluntary contributions, a person who has made voluntary contributions may withdraw the balance while still an employee or Member, or after separation.

(b) A person entitled to payment of lump-sum benefits under the CSRS order for precedence set forth in section 8342(c) of title 5, United States Code, is entitled to payment of the balance, if any, on the death of—

(1) An employee or Member;

(2) A separated employee or Member who has not retired;

(3) A retiree, unless a survivor benefit is payable based on an election under § 831.407; or

(4) A person receiving a survivor annuity based on voluntary contributions.

§ 831.407 Purchase of additional annuity.

(a) At the time of retirement CSRS (or under FERS, if transferred from CSRS), a person may use the balance of a voluntary contribution account to purchase one of the following types of additional annuity:

(1) Annuity without survivor benefit; or

(2) Reduced annuity payable during the life of the employee or Member with one-half of the reduced annuity to be payable after his or her death to a person, named at time of retirement, during the life of the named person.

(b) Any natural person may be designated as survivor under paragraph (a)(2) of this section.

(c) If the applicant for retirement elects an annuity without survivor benefit, each $100 credited to his or her voluntary contribution account, including interest, purchases an additional annuity at the rate of $7 per year, plus 20 cents for each full year, if any, he or she is over age 55 at date of retirement.

(d) If the applicant for retirement elects an annuity with survivor benefit, each $100 credited to his or her voluntary contribution account, including interest, purchases an additional annuity at the rate of $7 per year, plus 20 cents for each full year, if any, he or she is over age 55 at date of retirement, multiplied by the following percentage:

(1) Ninety percent of such amount if the named person is the same age or older than the applicant for retirement, or is less than 5 years younger than the applicant for retirement;

(2) Eighty-five percent if the named person is 5 but less than 10 years younger;

(3) Eighty percent if the named person is 10 but less than 15 years younger;

(4) Seventy-five percent if the named person is 15 but less than 20 years younger;

(5) Seventy percent if the named person is 20 but less than 25 years younger;

(6) Sixty-five percent if the named person is 25 but less than 30 years younger; and

(7) Sixty percent if the named person is 30 or more years younger.

Subpart E—Eligibility for Retirement

§ 831.501 Time for filing applications.

Employees or Members who are eligible for retirement must file a retirement application with their agency. Former employees or Members who are eligible for retirement must file a retirement application with OPM. The application should not be filed more than 60 days before becoming eligible for benefits. If the application is for disability retirement, the applicant and the employing agency should refer to subpart L of this part.

[58 FR 49179, Sept. 22, 1993]

§ 831.502 Automatic separation; exemption.

(a) When an employee meets the requirements for age retirement on any day within a month, he is subject to automatic separation at the end of that month. The department or agency shall notify the employee of the automatic separation at least 60 days in advance of the separation. If the department or agency fails through error to give timely notice, the employee may not be separated without his consent until the end of the month in which the notice expires.

(b)(1) The head of the agency, when in his or her judgment the public interest so requires, may exempt a law enforcement officer or firefighter from automatic separation until that employee becomes 60 years of age.

(2) The Secretary of Transportation and the Secretary of Defense, under such regulations as each may prescribe, may exempt an air traffic controller having exceptional skills and experience as a controller from automatic separation until that controller becomes 61 years of age.

(c) When a department or agency lacks authority and wishes to secure an exemption from automatic separation for one of its employees other than a Presidential appointee, beyond the age(s) provided by statute, i.e., age 60 for a law enforcement officer or firefighter, age 61 for an air traffic controller, and age 62 for an employee of the Alaska Railroad in Alaska or an employee who is a citizen of the United States employed on the Isthmus of Panama by the Panama Canal Commission, the department or agency head shall submit a recommendation to that effect to OPM.

(1) The recommendation shall contain:

(i) A statement that the employee is willing to remain in service;

(ii) A statement of facts tending to establish that his/her retention would be in the public interest;

(iii) The period for which the exemption is desired, which period may not exceed 1 year; and,

(iv) The reasons why the simpler method of retiring the employee and immediately reemploying him or her is not being used.

(2) The recommendation shall be accompanied by a medical certificate showing the physical fitness of the employee to perform his or her work.

(d) OPM may approve an exemption only before the automatic separation date applicable to the employee. For this reason, the department or agency shall forward the recommendation to OPM at least 30 days before this separation date.

[33 FR 12498, Sept. 4, 1968, as amended at 34 FR 593, Jan. 16, 1969; 48 FR 38786, Aug. 26, 1983. Redesignated at 58 FR 49179, Sept. 22, 1993]

§ 831.503 Retirement based on involuntary separation.

(a) *General.* An employee who would otherwise be eligible for retirement based on involuntary separation from the service is not entitled to an annuity under section 8336(d)(1) of title 5, United States Code, if the employee has declined a reasonable offer of another position.

(b) *Criteria for reasonable offer.* For the purposes of determining entitlement to annuity based on such involuntary separation, the offer of a position must meet all of the following conditions to be considered a reasonable offer:

(1) The offer must be made in writing;

(2) The employee must meet established qualification requirements; and

(3) The offered position must be—

(i) In the employee's agency, including an agency to which the employee with his or her function is transferred in a transfer of functions between agencies;

(ii) Within the employee's commuting area as defined in §831.1202 of this part, unless geographic mobility is a condition of the employee's employment;

(iii) Of the same tenure and work schedule; and

(iv) Not lower than the equivalent of two grades or pay levels below the employee's current grade or pay level, without consideration of the employee's eligibility to retain his or her current grade or pay under part 536 of this chapter or other authority. In movements between pay schedules or pay systems, the representative rate of the grade or pay level that is two grades below that of the current position shall be compared with the representative rate of the grade or pay level of the offered position. For this purpose, ''representative rate'' has the meaning given that term in §536.102 of this chapter.

[48 FR 38786, Aug. 26, 1983. Redesignated and amended at 58 FR 49179, Sept. 22, 1993]

Subpart F—Survivor Annuities

SOURCE: 50 FR 20070, May 13, 1985, unless otherwise noted.

ORGANIZATION AND STRUCTURE OF REGULATIONS ON SURVIVOR ANNUITIES

§831.601 Purpose and scope.

(a) This subpart explains the annuity benefits payable in the event of the death of employees, retirees, and Members; the actions that employees, retirees, Members, and their current spouses, former spouses, and eligible children must take to qualify for survivor annuities; and the types of evidence required to demonstrate entitlement to provide survivor annuities or qualify for survivor annuities.

(b) Unless otherwise specified, this subpart, except §§831.682 and 831.683 and the provisions relating to children's survivor annuities, only applies to employees and Members who retire under a provision of law that permits election of a reduced annuity to provide a survivor annuity.

[55 FR 9099, Mar. 12, 1990, as amended at 58 FR 52880, Oct. 13, 1993]

§831.602 Relation to other regulations.

(a) Part 838 of this chapter contains information about former spouses' entitlement to survivor annuities based on provisions in court orders or court-approved property settlement agreements.

(b) Subpart T of this part contains information about entitlement to lump-sum death benefits.

(c) Parts 870, 871, 872 and 873 of this chapter contain information about coverage under the Federal Employees' Group Life Insurance Program.

(d) Part 890 of this chapter contains information about coverage under the Federal Employees Health Benefits Program.

(e) Section 831.109 contains information about the administrative review rights available to a person who has been denied a survivor annuity or an opportunty to make an election under this subpart.

(f) Subparts C and U of this part contain information about service credit deposits by survivors of employees or Members.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31931, Sept. 8, 1986; 58 FR 43493, Aug. 17, 1993]

§831.603 Definitions.

As used in this subpart—

CSRS means subchapter III of chapter 83 of title 5, United States Code.

Current spouse means a living person who is married to the employee, Member, or retiree at the time of the employee's, Member's, or retiree's death.

Current spouse annuity means a recurring benefit under CSRS that is payable (after the employee's, Member's, or retiree's death) to a current spouse who meets the requirements of §831.642.

Deposit means a deposit required by the Civil Service Retirement Spouse Equity Act of 1984, Pub. L. 98–615, 98 Stat. 3195. *Deposit*, as used in this subpart does not include a service credit

deposit or redeposit under sections 8334(c) or (d) of title 5, United States Code.

First regular monthly payment means the first annuity check payable on a recurring basis (other than an estimated payment or an adjustment check) after OPM has initially adjudicated the regular rate of annuity payable under CSRS and has paid the annuity accrued since the time of retirement. The ''first regular monthly payment'' is generally preceded by estimated payments before the claim can be adjudicated and by an adjustment check (including the difference between the estimated rate and the initially adjudicated rate).

Former spouse means a living person who was married for at least 9 months to an employee, Member, or retiree who performed at least 18 months of creditable service in a position covered by CSRS and whose marriage to the employee was terminated prior to the death of the employee, Member, or retiree. Except in §§ 831.682 and 831.683, *former spouse* includes only persons who were married to an employee or Member on or after May 7, 1985, or who were the spouse of a retiree who retired on or after May 7, 1985, regardless of the date of termination of the marriage.

Former spouse annuity means a recurring benefit under CSRS that is payable to a former spouse after the employee's, Member's, or retiree's death.

Fully reduced annuity means the recurring payments under CSRS received by a retiree who has elected the maximum allowable reduction in annuity to provide a current spouse annuity and/or a former spouse annuity or annuities.

Insurable interest annuity means the recurring payments under CSRS to a retiree who has elected a reduction in annuity to provide a survivor annuity to a person with an insurable interest in the retiree.

Marriage means a marriage recognized in law or equity under the whole law of the jurisdiction with the most significant interest in the marital status of the employee, Member, or retiree unless the law of that jurisdiction is contrary to the public policy of the United States. If a jurisdiction would recognize more than one marriage in law or equity, the Office of Personnel Management (OPM) will recognize only one marriage, but will defer to the local courts to determine which marriage should be recognized.

Member means a Member of Congress.

Net annuity means the net annuity as defined in § 838.103 of this chapter.

Partially reduced annuity means the recurring payments under CSRS to a retiree who has elected less than the maximum allowable reduction in annuity to provide a current spouse annuity or a former spouse annuity.

Present value factor means the amount of money (earning interest at an assumed rate) required at the time of retirement to fund an annuity that starts out at the rate of $1 a month and is payable in monthly installments for the annuitant's lifetime based on mortality rates for non-disability annuitants under the Civil Service Retirement System; and increases each year at an assumed rate of inflation. Interest, mortality, and inflation rates used in computing the present value are those used by the Board of Actuaries of the Civil Service Retirement System for valuation of the System, based on dynamic assumptions. The present value factors are unisex factors obtained by averaging six distinct present value factors, weighted by the total dollar value of annuities typically paid to new retirees at each age.

Qualifying court order means a court order that awards a former spouse annuity and that satisfies the requirements of section 8341(h) of title 5, United States Code, for awarding a former spouse annuity.

Retiree means a former employee or Member who is receiving recurring payments under CSRS based on service by the employee or Member. ''Retiree,'' as used in this subpart, does not include a current spouse, former spouse, child, or person with an insurable interest receiving a survivor annuity.

Self-only annuity means the recurring unreduced payments under CSRS to a retiree with no survivor annuity to anyone.

Time of retirement means the effective commencing date for a retired employee's or Member's annuity.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31931, Sept. 8, 1986; 57 FR 33597–33598, July 29, 1992; 58 FR 52880, Oct. 13, 1993]

ELECTIONS AT THE TIME OF RETIREMENT

§ 831.611 Election at time of retirement of fully reduced annuity to provide a current spouse annuity.

(a) A married employee or Member retiring under CSRS will receive a fully reduced annuity to provide a current spouse annuity unless—

(1) The employee or Member, with the consent of the current spouse, elects a self-only annuity, a partially reduced annuity, or a fully reduced annuity to provide a former spouse annuity, in accordance with § 831.612(b) or § 831.614; or

(2) The employee or Member elects a self-only annuity, a partially reduced annuity or a fully reduced annuity to provide a former spouse annuity, and current spousal consent is waived in accordance with § 831.608.

(b) Qualifying court orders that award former spouse annuities prevent payment of current spouse annuities to the extent necessary to comply with the court order and § 831.614.

(c) The maximum rate of a current spouse annuity is 55 percent of the rate of the retiring employee's or Member's self-only annuity if the employee or Member is retiring based on a separation from a position under CSRS on or after October 11, 1962. The maximum rate of a current spouse annuity is 50 percent of the rate of the retiring employee's or Member's self-only annuity if the employee or Member is retiring based on a separation from a position covered under CSRS between September 30, 1956, and October 11, 1962.

(d)(1) The amount of the reduction to provide a current spouse annuity equals 2½ percent of the first $3600 of the designated survivor base plus 10 percent of the portion of the designated survivor base which exceeds $3600, if—

(i) The employee's or Member's separation on which the retirement is based was on or after October 11, 1962; or

(ii) The reduction is to provide a current spouse annuity (under § 831.631) for a spouse acquired after retirement.

(2) The amount of the reduction to provide a current spouse annuity under this section for former employees or Members whose retirement is based on separations before October 11, 1962, equals 2½ percent of the first $2400 of the designated survivor base plus 10 percent of the portion of the designated survivor base which exceeds $2400.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31931, Sept. 8, 1986; 58 FR 52880, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

EDITORIAL NOTE: At 58 FR 52880, Oct. 13, 1993, in § 831.604, paragraph (b) was amended by changing the reference ''831.608'' and paragraph (c) was amended by changing the reference ''831.614''. However, neither of these references exist in their respective paragraphs in the 1993 edition of this volume.

§ 831.612 Election at time of retirement of a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity.

(a) An unmarried employee or Member retiring under CSRS may elect a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity or annuities.

(b) A married employee or Member retiring under CSRS may elect a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity or annuities instead of a fully reduced annuity to provide a current spouse annuity, if the current spouse consents to the election in accordance with § 831.614 or spousal consent is waived in accordance with § 831.618.

(c) An election under paragraph (a) or (b) of this section is void to the extent that it—

(1) Conflicts with a qualifying court order; or

(2) Would cause the total of current spouse annuities and former spouse annuities payable based on the employee's or Member's service to exceed 55 percent (or 50 percent if based on a separation before October 11, 1962) of the self-only annuity to which the employee or Member would be entitled.

(d) Any reduction in an annuity to provide a former spouse annuity will terminate on the first day of the

month after the former spouse remarries before age 55 or dies, or the former spouse's eligibility for a former spouse annuity terminates under the terms of a qualifying court order, unless—

(1) The retiree elects, within 2 years after the former spouse's death or remarriage, to continue the reduction to provide or increase a former spouse annuity for another former spouse, or to provide or increase a current spouse annuity; or

(2) A qualifying court order requires the retiree to provide another former spouse annuity.

(e) The maximum rate of a former spouse annuity under this section or §831.632 is 55 percent of the rate of the retiring employee's or Member's self-only annuity if the employee or Member is retiring based on a separation from a position under CSRS on or after October 11, 1962. The maximum rate of a former spouse annuity under this section or §831.632 is 50 percent of the rate of the retiring employee's or Member's self-only annuity if the employee or Member is retiring based on a separation from a position covered under CSRS between September 30, 1956, and October 11, 1962.

(f)(1) The amount of the reduction to provide one or more former spouse annuities or a combination of a current spouse annuity and one or more former spouse annuities under this section equals 2½ percent of the first $3600 of the total designated survivor base plus 10 percent of the portion of the total designated survivor base which exceeds $3600, if—

(i) The employee's or Member's separation on which the retirement is based was on or after October 11, 1962; or

(ii) The reduction is to provide a former spouse annuity (under §831.632) for a former spouse from whom the employee or Member was divorced after retirement.

(2) The amount of the reduction to provide one or more former spouse annuities or a combination of a current spouse annuity and one or more former spouse annuities under this section for employees or Members whose retirement is based on separations before October 11, 1962, equals 2½ percent of the first $2400 of the total designated survivor base plus 10 percent of the portion of the total designated survivor base which exceeds $2400.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31931, Sept. 8, 1986; 55 FR 9100, Mar. 12, 1990; 58 FR 52880, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§831.613 Election of insurable interest annuity.

(a) At the time of retirement, an employee or Member in good health, who is applying for a non-disability annuity, may elect an insurable interest annuity. Spousal consent is not required, but an election under this section does not exempt a married employee or Member from the provisions of §831.611(a).

(b) An insurable interest annuity may be elected by an employee or Member electing a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity or a former spouse annuity or annuities.

(c)(1) In the case of a married employee or Member, an election under this section may not be made on behalf of a current spouse unless that current spouse has consented to an election not to provide a current spouse annuity in accordance with §831.611(a)(1).

(2) A consent (to an election not to provide a current spouse annuity in accordance with §831.611(a)(1)) required by paragraph (c)(1) of this section to be eligible to be the beneficiary of an insurable interest annuity is cancelled if—

(i) The retiree fails to qualify to receive the insurable interest annuity; or

(ii) The retiree changes his or her election to receive an insurable interest annuity under §831.621; or

(iii) The retiree elects a fully or partially reduced annuity to provide a current spouse annuity under §831.685.

(3) An election of a partially reduced annuity under §831.622(b) or §831.685 to provide a current spouse annuity for a current spouse who is the beneficiary of an insurable interest annuity is void unless the spouse consents to the election.

(4) If a retiree who had elected an insurable interest annuity to benefit a current spouse elects a fully reduced

annuity to provide a current spouse annuity (or, with the consent of the current spouse, a partially reduced annuity to provide a current spouse annuity) under § 831.622(b) or § 831.685, the election of the insurable interest annuity is cancelled.

(5)(i) A retiring employee or Member may not elect a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity and an insurable interest annuity to benefit the same former spouse.

(ii) If a retiring employee or Member who is required by court order to provide a former spouse annuity elects an insurable interest annuity to benefit the former spouse with the court-ordered entitlement—

(A) If the benefit based on the election is greater than or equal to the benefit based on the court order, the election of the insurable interest annuity will satisfy the requirements of the court order as long as the insurable interest annuity continues.

(B) If the benefit based on the election is less than the benefit based on the court order, the election of the insurable interest annuity is void.

(iii) An election under § 831.632 of a fully reduced annuity or a partially reduced annuity to benefit a former spouse by a retiree who elected and continues to receive an insurable interest annuity to benefit that former spouse is void.

(d) To elect an insurable interest annuity, an employee or Member must indicate the intention to make the election on the application for retirement; submit evidence to demonstrate that he or she is in good health; and arrange and pay for the medical examination that shows that he or she is in good health. A report of the medical examination, signed and dated by a licensed physician, must be furnished to OPM on such forms and at such time and place as OPM may prescribe through the Federal Personnel Manual system or other issuances.

(e) An insurable interest annuity may be elected to provide a survivor benefit only for a person who has an insurable interest in the retiring employee or Member.

(1) An insurable interest is presumed to exist with—

(i) The current spouse;

(ii) A blood or adopted relative closer than first cousins;

(iii) A former spouse;

(iv) A person to whom the employee or Member is engaged to be married;

(v) A person with whom the employee or Member is living in a relationship which would constitute a common-law marriage in jurisdictions recognizing common-law marriages.

(2) When an insurable interest in not presumed, the employee or Member must submit affidavits from one or more persons with personal knowledge of the named beneficiary's insurable interest in the employee or Member. The affidavits must set forth the relationship, if any, between the named beneficiary and the employee or Member, the extent to which the named beneficiary is dependent on the employee or Member, and the reasons why the named beneficiary might reasonably expect to derive financial benefit from the continued life of the employee or Member.

(3) The employee or Member may be required to submit documentary evidence to establish the named beneficiary's date of birth.

(f) After receipt of all required evidence to support an election of an insurable interest annuity, OPM will notify the employee or Member of initial monthly annuity rates with and without the election of an insurable interest annuity and the initial rate payable to the named beneficiary. No election of an insurable interest annuity is effective unless the employee or Member confirms the election in writing, dies, or becomes incompetent no later than 60 days after the date of the notice described in this paragraph.

(g) (1) When an employee or Member elects both an insurable interest annuity and a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity and/or a former spouse annuity or annuities, each reduction is computed based on the self-only annuity computation. The combined reduction may exceed the maximum 40 percent reduction in the retired employee's or Member's annuity permitted under section 8339(k)(1) of title 5, United States Code, applicable to insurable interest annuities.

(2) The rate of annuity paid to the beneficiary of an insurable interest election, when the employee or Member also elected a fully reduced annuity or a partially reduced annuity, equals 55 (or 50 percent if based on a separation before October 11, 1962) percent of the rate of annuity after the insurable interest reduction. The additional reduction to provide a current spouse annuity or a former spouse annuity is not considered in determining the rate of annuity paid to the beneficiary of the insurable interest election.

(h)(1) Except as provided in §831.612(d), if a retiree who is receiving a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity has also elected an insurable interest annuity to benefit a current spouse and if the eligible former spouse remarries before age 55, dies, or loses eligibility under the terms of the court order, and no other former spouse is entitled to a survivor annuity based on an election made in accordance with §831.632 or a qualifying court order, the retiree may elect, within 2 years after the former spouse's remarriage, death, or loss of eligibility under the terms of the court order, to convert the insurable interest annuity to a fully reduced annuity to provide a current spouse annuity, effective on the first day of the month following the event causing the former spouse to lose eligibility.

(2) An election under paragraph (h)(1) of this section cancels any consent not to receive a current spouse annuity required by paragraph (c) of this section for the current spouse to be eligible for an annuity under this section.

(3) When a former spouse receiving an annuity under section 8341(h) of title 5, United States Code, loses eligibility to that annuity, a beneficiary of an insurable interest annuity who was the current spouse at both the time of the retiree's retirement and death may, within 2 years after the former spouse's death, remarriage, or loss of eligibility under the terms of the court order, elect to receive a current spouse annuity instead of the annuity he or she had been receiving. The election is effective on the first day of the month following the event causing the former spouse to lose eligibility.

(i) Upon the death of the current spouse, a retiree whose annuity is reduced to provide both a current spouse annuity and an insurable interest benefit for a former spouse is not permitted to convert the insurable interest annuity to a reduced annuity to provide a former spouse annuity.

(j) An employee or Member may name only one natural person as the named beneficiary of an insurable interest annuity. OPM will not accept the designation of contingent beneficiaries and such a designation is void.

(k)(1) An election under this section is prospectively voided by an election of a reduced annuity to provide a current spouse annuity under §831.631 that would benefit the same person.

(2)(i) If the spouse is not the beneficiary of the election under this section, a retiree may prospectively void an election under this section at the time the retiree elects a reduced annuity to provide a current spouse annuity under §831.631.

(ii) A retiree's election to void an election under paragraph (k)(2)(i) of this section must be filed at the same time as the election under §831.631.

(3) An annuity reduction under this section terminates on the first day of the month after the beneficiary of the insurable interest annuity dies.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31931, Sept. 8, 1986; 52 FR 10216, Mar. 31, 1987; 55 FR 9100, Mar. 12, 1990; 58 FR 52880, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§831.614 Election of a self-only annuity or partially reduced annuity by married employees and Members.

(a) A married employee may not elect a self-only annuity or a partially reduced annuity to provide a current spouse annuity without the consent of the current spouse or a waiver of spousal consent by OPM in accordance with §831.618.

(b) Evidence of spousal consent or a request for waiver of spousal consent must be filed on a form prescribed by OPM.

(c) The form will require that a notary public or other official authorized to administer oaths certify that the current spouse presented identification, gave consent, signed or marked

the form, and acknowledged that the consent was given freely in the notary's or official's presence.

(d) The form described in paragraph (c) of this section may be executed before a notary public, an official authorized by the law of the jurisdiction where executed to administer oaths, or an OPM employee designated for that purpose by the Associate Director.

[50 FR 20070, May 13, 1985, as amended at 55 FR 9100, Mar. 12, 1990; 58 FR 52880, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.615 [Reserved]

§ 831.616 Elections by previously retired retiree with new title to an annuity.

(a) A reemployed retiree (after 5 or more years of reemployed annuitant service) who elects a redetermined annuity under section 8344 of title 5, United States Code, is subject to §§ 831.611 through 831.622 at the time of the redetermination.

(b) A disability retiree who recovers from disability or is restored to earning capacity is subject to §§ 831.611 through 622 at the time that he or she retires under section 8336 or 8338 of title 5, United States Code.

(c) A retiree who is dropped from the retirement rolls and subseqently gains a new annuity right by fulfilling the requirements of section 8333(b) of title 5, United States Code, is subject to §§ 831.611 through 831.622 when he or she retires under that new annuity right.

[50 FR 20070, May 13, 1985, as amended at 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.617 [Reserved]

§ 831.618 Waiver of spousal consent requirement.

(a) The spousal consent requirement will be waived upon a showing that the spouse's whereabouts cannot be determined. A request for waiver on this basis must be accompanied by—

(1) A judicial determination that the spouse's whereabouts cannot be determined; or

(2) (i) Affidavits by the employee or Member and two other persons, at least one of whom is not related to the employee or Member, attesting to the inability to locate the current spouse and stating the efforts made to locate the spouse; and

(ii) Documentary corroboration such as tax returns filed separately or newspaper stories about the spouse's disappearance.

(b) The spousal consent requirement will be waived based on exceptional circumstances if the employee or Member presents a judicial determination finding that—

(1) The case before the court involves a Federal employee who is in the process of retiring from Federal employment and the spouse of that employee;

(2) The nonemployee spouse has been given notice and an opportunity to be heard concerning this order;

(3) The court has considered sections 8339(j)(1) of title 5, United States Code, and this section as they relate to waiver of the spousal consent requirement for a married Federal employee to elect an annuity without a reduction to provide a survivor benefit to a spouse at retirement; and

(4) The court finds that exceptional circumstances exist justifying waiver of the nonemployee spouse's consent.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31932, Sept. 8, 1986; 55 FR 9100, Mar. 12, 1990. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.619 Marital status at time of retirement.

An employee or Member is unmarried at the time of retirement for all purposes under this subpart only if the employee or Member was unmarried on the date that the annuity begins to accrue.

[50 FR 20070, May 13, 1985. Redesignated at 58 FR 52882, Oct. 13, 1993]

CHANGES OF SURVIVOR ELECTIONS

§ 831.621 Changes of election before final adjudication.

An employee or Member may name a new survivor or change his election of type of annuity if, not later than 30 days after the date of the first regular monthly payment, the named survivor dies or the employee or Member files with OPM a new written election. All required evidence of spousal consent or

justification for waiver of spousal consent, if applicable, must accompany any new written election under this section.

[50 FR 20070, May 13, 1985. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.622 Changes of election after final adjudication.

(a) Except as provided in section 8339 (j) or (k) of title 5, United States Code, or §§ 831.682, 831.684, 831.685, or paragraph (b) of this section, an employee or Member may not revoke or change the election or name another survivor later than 30 days after the date of the first regular monthly payment.

(b)(1) Except as provided in § 831.613 and paragraphs (b)(2) and (b)(3) of this section, a retiree who was married at the time of retirement and has elected a self-only annuity, or a partially reduced annuity to provide a current spouse annuity, or a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity, or an insurable interest annuity may elect, no later than 18 months after the time of retirement, an annuity reduction or an increased annuity reduction to provide a current spouse annuity.

(2) A current spouse annuity based on an election under paragraph (b)(1) of this section cannot be paid if it will, when combined with any former spouse annuity or annuities that are required by court order, exceed the maximum survivor annuity permitted under § 831.641.

(3) To make an election under paragraph (b)(1) of this section, the retiree must pay, in full, a deposit determined under § 831.662, plus interest, at the rate provided under § 831.105(g), no later than 18 months after the time of retirement.

(4) If a retiree makes an election under paragraph (b)(1) of this section and is prevented from paying the deposit within the 18-month time limit because OPM did not send him or her a notice of the amount of the deposit at least 30 days before the time limit expires, the time limit for making the deposit will be extended to 30 days after OPM sends the notice of the amount of the deposit.

(5) An election under paragraph (b)(1) of this section, cancels any spousal consent under § 831.611 to the extent of the election.

(6) An election under paragraph (b)(1) of this section is void unless it is filed with OPM before the retiree dies.

(7) If a retiree who had elected a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity or former spouse annuities makes an election under paragraph (b)(1) of this section which would cause the combined current spouse annuity and former spouse annuity (or annuities) to exceed the maximum allowed under § 831.641, the former spouse annuity (or annuities) must be reduced to not exceed the maximum allowable under § 831.641.

[51 FR 31932, Sept. 8, 1986, as amended at 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

POST-RETIREMENT ELECTIONS

§ 831.631 Post-retirement election of fully reduced annuity or partially reduced annuity to provide a current spouse annuity.

(a) Except as provided in paragraph (c) of this section, in cases of retirees who retired before May 7, 1985, and married after retirement but before February 27, 1986:

(1) A retiree who was unmarried at the time of retirement may elect, within 1 year after a post-retirement marriage, a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity.

(2) A retiree who was married and elected a fully reduced annuity or a partially reduced annuity at the time of retirement may elect, within 1 year after a postretirement marriage, to provide a current spouse annuity. If a retiree elects a fully reduced annuity or a partially reduced annuity under this paragraph, the election must equal the election made at the time of retirement.

(3) The reduction under paragraphs (a)(1) or (a)(2) of this section commences on the first day of the month beginning 1 year after the date of the post-retirement marriage.

(b) Except as provided in paragraph (c) of this section, in cases involving retirees who retired on or after May 7,

1985, or married on or after February 27, 1986—

(1) A retiree who was unmarried at the time of retirement may elect, within 2 years after a post-retirement marriage, a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity.

(2) A retiree who was married at the time of retirement may elect, within 2 years after a post-retirement marriage—

(i) A fully reduced annuity or a partially reduced annuity to provide a current spouse annuity if—

(A) The retiree was awarded a fully reduced annuity under § 831.611 at the time of retirement; or

(B) The election at the time of retirement was made with a waiver of spousal consent in accordance with § 831.618; or

(C) The marriage at the time of retirement was to a person other than the spouse who would receive a current spouse annuity based on the post-retirement election; or

(ii) A partially reduced annuity to provide a current spouse annuity no greater than the current spouse annuity elected for the current spouse at retirement if—

(A) The retiree elected a partially reduced annuity under § 831.614 at the time of retirement;

(B) The election at the time of retirement was made with spousal consent in accordance with § 831.614; and

(C) The marriage at the time of retirement was to the same person who would receive a current spouse annuity based on the post-retirement election.

(3)(i) Except as provided in paragraph (b)(3)(ii) or (b)(4) of this section, a retiree making an election under this section must deposit an amount equal to the difference between the amount of annuity actually paid to the retiree and the amount of annuity that would have been paid if the reduction elected under paragraphs (b)(1) or (b)(2) of this section had been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date when each difference occurred.

(ii) An election under this section may be made without deposit, if that election prospectively voids an election of an insurable interest annuity.

(4)(i) An election under this section is irrevocable when received by OPM.

(ii) An election under this section is effective when the marriage duration requirements of § 831.642 are satisfied.

(iii) If an election under paragraph (b)(1) or (b)(2) of this section does not become effective, no deposit under paragraph (b)(3) of this section is required.

(iv) If payment of the deposit under paragraph (b)(3) of this section is not required because the election never became effective and if some or all of the deposit has been paid, the amount paid will be returned to the retiree, or, if the retiree has died, to the person who would be entitled to any lump-sum benefits under the order of precedence in section 8342 of title 5, United States Code.

(5) Any reduction in an annuity to provide a current spouse annuity will terminate effective on the first day of the month after the marriage to the current spouse ends, unless—

(i) The retiree elects, within 2 years after a divorce terminates the marriage, to continue the reduction to provide for a former spouse annuity; or

(ii) A qualifying court order requires the retiree to provide a former spouse annuity.

(c)(1) Qualifying court orders prevent payment of current spouse annuities to the extent necessary to comply with the court order and § 831.641.

(2) If an election under this section causes the total of all current and former spouse annuities provided by a qualifying court order or elected under § 831.612, § 831.632, or this section to exceed the maximum survivor annuity permitted under § 831.641, OPM will accept the election but will pay the portion in excess of the maximum only when permitted by § 831.641(c).

(d) The amount of the reduction to provide a current spouse annuity under this section equals 2½ percent of the first $3600 of the designated survivor base plus 10 percent of the portion of

the designated survivor base which exceeds $3600.

[55 FR 9101, Mar. 12, 1990, as amended at 56 FR 16263, Apr. 22, 1991; 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.632 Post-retirement election of fully reduced annuity or partially reduced annuity to provide a former spouse annuity.

(a)(1) Except as provided in paragraphs (b) and (c) of this section, when the marriage of a retiree who retired on or after May 7, 1985, terminates after retirement, he or she may elect in writing a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity. Such an election must be filed with OPM within 2 years after the retiree's marriage to the former spouse terminates.

(2) Except as provided in paragraphs (b) and (c) of this section, a retiree who retired before May 7, 1985, and whose marriage was terminated on or after May 7, 1985, may elect in writing a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity if the retiree while married to the former spouse had elected, prior to May 7, 1985, a reduced annuity to provide a current spouse annuity for that spouse. Such an election must be filed with OPM within 2 years after the retiree's marriage to the former spouse terminates.

(3) Except as provided in paragraphs (b) and (c) of this section, a retiree who retired on or after May 7, 1985, and before February 27, 1986, and whose marriage terminated before May 7, 1985, may elect in writing a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity. Such an election must be made no later than February 27, 1988.

(b)(1) Qualifying court orders prevent payment of former spouse annuities to the extent necessary to comply with the court order and § 831.641.

(2) A retiree who elects a fully or partially reduced annuity to provide a former spouse annuity may not elect to provide a former spouse annuity in an amount that either—

(i) Is smaller than the amount required by a qualifying court order; or

(ii) Would cause the sum of all current and former spouse annuities based on a retiree's elections under §§ 831.611, 831.612, 831.631 and this section to exceed 55 percent of the rate of the retiree's self-only annuity if the retiree's retirement was based on a separation from a position under CSRS on or after October 11, 1962, or 50 percent of the rate of the retiree's self-only annuity if the retiree's retirement was based on a separation from a position under CSRS before October 11, 1962.

(3) An election under this section is void—

(i) In the case of a married retiree, if the current spouse does not consent to the election on a form as described in § 831.614(c) and spousal consent is not waived by OPM in accordance with § 831.618; or

(ii) To the extent that it provides a former spouse annuity for the spouse who was married to the retiree at the time of retirement in an amount that is inconsistent with any joint designation or waiver made at the time of retirement under § 831.611 (a)(1) or (a)(2); or

(iii) In the case of an election under paragraph (a)(2) of this section, to the extent that it provides a former spouse annuity that exceeds the proportion of the retiree's annuity to which the former spouse would have been entitled as a current spouse annuity as of May 7, 1985.

(c) An election under this section is not permitted unless the retiree agrees to deposit the amount equal to the difference between the amount of annuity actually paid to the retiree and the amount of annuity that would have been paid if the reduction elected under paragraph (a) of this section had been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date when each difference occurred.

(d) Any reduction in an annuity to provide a former spouse annuity will terminate on the first day of the month after the former spouse remarries before age 55 or dies, or the former spouse's eligibility for a former spouse annuity terminates under the terms of a qualifying court order, unless—

(1) The retiree elects, within 2 years after the event causing the former spouse to lose eligibility, to continue the reduction to provide or increase a former spouse annuity for another former spouse, or to provide or increase a current spouse annuity; or

(2) A qualifying court order requires the retiree to provide another former spouse annuity.

(e)(1) The amount of the reduction to provide one or more former spouse annuities or a combination of a current spouse annuity and one or more former spouse annuities under this section equals 2½ percent of the first $3600 of the total designated survivor base plus 10 percent of the portion of the total designated survivor base which exceeds $3600, if—

(i) The employee's or Member's separation on which the retirement is based was on or after October 11, 1962; or

(ii) The reduction is to provide a former spouse annuity (under § 831.632) for a former spouse whom the employee or Member married after retirement.

(2) The amount of the reduction to provide one or more former spouse annuities or a combination of a current spouse annuity and one or more former spouse annuities under this section for employees or Members whose retirement is based on separations before October 11, 1962, equals 2½ percent of the first $2400 of the total designated survivor base plus 10 percent of the portion of the total designated survivor base which exceeds $2400.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31932, Sept. 8, 1986; 52 FR 3209, Feb. 3, 1987; 55 FR 9100, Mar. 12, 1990; 56 FR 16262, Apr. 22, 1991; 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

ELIGIBILITY

§ 831.641 Division of a survivor annuity.

(a) Except as provided in §§ 831.682 and 831.683, the maximum combined total of all current and former spouse annuities (not including any benefits based on an election of an insurable interest annuity) payable based on the service of a former employee or Member equals 55 percent (or 50 percent if based on a separation before October 11, 1962) of the rate of the self-only annuity that otherwise would have been paid to the employee, Member, or retiree.

(b) By using the elections available under this subpart or to comply with a court order under subpart Q, a survivor annuity may be divided into a combination of former spouse annuities and a current spouse annuity so long as the aggregate total of current and former spouse annuities does not exceed the maximum limitation in paragraph (a) of this section.

(c) Upon termination of former spouse annuity payments because of death or remarriage of the former spouse, or by operation of a court order, the current spouse will be entitled to a current spouse annuity or an increased current spouse annuity if—

(1) The employee or Member died while employed in a position covered under CSRS; or

(2) The current spouse was married to the employee or Member continuously from the time of retirement and did not consent to an election not to provide a current spouse annuity; or

(3) The current spouse married a retiree after retirement and the retiree elected, under § 831.631, to provide a current spouse annuity for that spouse in the event that the former spouse annuity payments terminate.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31933, Sept. 8, 1986; 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52282, Oct. 13, 1993]

§ 831.642 Marriage duration requirements.

(a) The surviving spouse of a retiree who retired on or after May 7, 1985, or of a retiree who retired before May 7, 1985, but married that surviving spouse on or after November 8, 1984, or of an employee or Member who dies while serving in a position covered by CSRS on or after May 7, 1985, or of an employee or Member who died while serving in a position covered by CSRS before May 7, 1985, but married that surviving spouse on or after November 8, 1984, can qualify for a current spouse annuity only if—

(1) The surviving spouse and the employee, Member, or retiree had been

married for at least 9 months, as explained in paragraph (b) of this section; or

(2) A child was born of the marriage, as explained in paragraph (c) of this section; or

(3) The death of the employee, Member, or retiree was accidental as explained in paragraph (d) of this section.

(b) For satisfying the 9-month marriage requirement of paragraph (a)(1) of this section, the aggregate time of all marriages between the spouse applying for a current spouse annuity and the employee, Member, or retiree is included.

(c) For satisfying the child-born-of-the-marriage requirement of paragraph (a)(2) of this section, any child, including a posthumous child, born to the spouse and the employee, Member, or retiree is included. This includes a child born out of wedlock or of a prior marriage between the same parties.

(d)(1) A death is accidental if it results from homicide or from bodily injuries incurred solely through violent, external, and accidental means. The term ''accidental'' does not include a death—

(i) Caused wholly or partially, directly or indirectly, by disease or bodily or mental infirmity, or by medical or surgical treatment or diagnosis thereof; or

(ii) Caused wholly or partially, directly, or indirectly, by ptomaine, by bacterial infection, except only septic infection of and through a visible wound sustained solely through violent, external, and accidental means; or

(iii) Caused wholly or partially, directly or indirectly, by hernia, no matter how or when sustained; or

(iv) Caused by or the result of intentional self-destruction or intentionally self-inflicted injury, while sane or insane; or

(v) Caused by or as a result of the self-administration or illegal or illegally obtained drugs.

(2) A State judicial or administrative adjudication of the cause of death for criminal or insurance purposes is conclusive evidence of whether a death is accidental.

(3) A death certificate showing the cause of death as accident or homicide is *prima facie* evidence that the death was accidental.

[50 FR 20070, May 13, 1985; 50 FR 21031, May 22, 1985, as amended at 51 FR 31933, Sept. 8, 1986; 56 FR 16263, Apr. 22, 1991. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.643 Time for filing applications for death benefits.

(a) A survivor of a deceased employee, Member, or retiree, may file an application for annuity, personally or through a representative, at any time within 30 years after the death of the employee, Member, or retiree.

(b) A former spouse claiming eligibility for an annuity based on § 831.683 may file an application at any time between November 8, 1984 and May 7, 1989. Within this period, the date that the first correspondence indicating a desire to file a claim is received by OPM will be treated as the application date for meeting timeliness deadlines and determining the commencing date of the survivor annuity under § 831.683 if the former spouse is eligible on that date.

[55 FR 9102, Mar. 12, 1990, as amended at 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.644 Remarriage.

(a)(1) If a recipient of a current spouse annuity remarried before November 8, 1984, the current spouse annuity terminates on the last day of the month before the recipient remarried before attaining age 60.

(2) If a recipient of a current spouse annuity remarries on or after November 8, 1984, a current spouse annuity terminates on the last day of the month before the recipient remarries before attaining age 55.

(b) A former spouse annuity or eligibility for a future former spouse annuity terminates on the last day of the month before the month in which the former spouse remarries before attaining age 55.

(c) If a current spouse annuity is terminated because of remarriage of the recipient, the annuity is reinstated on the day of the termination of the remarriage by death, annulment, or divorce if—

(1) The surviving spouse elects to receive this annuity instead of a survivor

benefit to which he or she may be entitled, under CSRS or another retirement system for Government employees, by reason of the remarriage; and

(2) Any lump sum paid on termination of the annuity is repaid (in a single payment or by withholding payment of the annuity until the amount of the lump sum has accrued).

(d) (1) If present or future entitlement to a former spouse annuity is terminated because of remarriage before age 55, the entitlement will not be reinstated upon termination of the remarriage by death or divorce.

(2) If present or future entitlement to a former spouse annuity is terminated because of remarriage before age 55, the entitlement will not be reinstated upon annulment of the remarriage unless—

(i) The decree of annulment states that the marriage is without legal effect retroactively from the marriage's inception; and

(ii) The former spouse's entitlement is based on section 4(b)(1)(B) or section (4)(b)(4) of Pub. L. 98–615.

(3) If a retiree who is receiving a reduced annuity to provide a former spouse annuity and who has remarried that former spouse (before the former spouse attained age 55) dies, the retiree will be deemed to have elected to continue the reduction to provide a current spouse annuity unless the retiree requests (or has requested) in writing that OPM terminate the reduction.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31935, Sept. 8, 1986. Redesignated at 58 FR 52882, Oct. 13, 1993, as amended at 60 FR 14202, Mar. 16, 1995]

§ 831.645 Elections between survivor annuities.

(a) A current spouse annuity cannot be reinstated under § 831.644 unless—

(1) The surviving spouse elects to receive the reinstated current spouse annuity instead of any other payments (except any accrued but unpaid annuity and any unpaid employee contributions) to which he or she may be entitled under CSRS, or any other retirement system for Government employees, by reason of the remarriage; and

(2) Any lump sum paid on termination of the annuity is returned to the Civil Service Retirement and Disability Fund.

(b) A current spouse is entitled to a current spouse annuity based on an election under § 831.631 only upon electing this current spouse annuity instead of any other payments (except any accrued but unpaid annuity and any unpaid employee contributions) to which he or she may be entitled under CSRS, or any other retirement system for Government employees.

(c) A former spouse who marries a retiree is entitled to a former spouse annuity based on an election by that retiree under § 831.632, or § 831.682, or a qualifying court order terminating that marriage to that retiree only upon electing this former spouse annuity instead of any other payments (except any accrued but unpaid annuity and any unpaid employee contributions) to which he or she may be entitled under CSRS, or any other retirement system for Government employees.

(d) As used in this section, ''any other retirement system for Government employees'' does not include Survivor Benefit Payments from a military retirement system or social security benefits.

[55 FR 9103, Mar. 12, 1990, as amended at 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

PAYMENT OF SURVIVOR ANNUITIES

§ 831.651 Commencing and terminating dates of survivor annuities.

(a) Except as provided in paragraph (b) of this section, current spouse annuities, former spouse annuities, children's survivor annuities, and survivor annuities for beneficiaries of insurable interest annuities under CSRS begin to accrue on the day after death of the employee, Member, or retiree.

(b)(1) A current spouse annuity begins to accrue—

(i) Upon attainment of age 50 when, under section 12 of the Civil Service Retirement Act Amendments of February 29, 1948, the annuity is deferred until age 50; or

(ii) Upon OPM's receipt of a claim for an annuity authorized for unremarried widows and widowers by section 2 of the Civil Service Retirement Act

Amendments of June 25, 1958, 72 Stat. 218.

(2) A former spouse annuity begins to accrue—

(i) For annuities under §831.683, on the later of the day after date of death of the retiree or the first day of the second month after the date the application for annuity is received in OPM; or

(ii) For annuities when a former spouse annuity is authorized by court order under section 8341(h) of title 5, United States Code, on the later of the day after the date of death of the employee, Member, or retiree or the first day of the second month after the court order awarding the former spouse annuity and the supporting documentation required by §838.721 or §838.1005 of this chapter are received in OPM.

(c) A survivor annuity terminates at the end of the month preceding death or any other terminating event.

(d) A current spouse annuity terminated for reasons other than death may be restored under conditions defined in sections 8341(e)(2) and 8341(g) of title 5, United States Code.

(e) A survivor annuity accrues on a daily basis, one-thirtieth of the monthly rate constituting the daily rate. An annuity does not accrue for the 31st day of any month, except in the initial month if the survivor's (of a deceased employee) annuity commences on the 31st day. For accrual purposes, the last day of a 28-day month constitutes 3 days and the last day of a 29-day month constitutes 2 days.

(f) Initial cost-of-living increases on current and former spouse annuities, and annuities to beneficiaries of insurable interest annuities are prorated under section 8340(c) of title 5, United States Code.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31933, Sept. 8, 1986; 55 FR 9102, Mar. 12, 1990; 57 FR 33597, July 29, 1992; 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

SURVIVOR ELECTION DEPOSITS

§831.661 Deposits not subject to waiver.

(a) The deposits required to elect fully or partially reduced annuities under §§831.622, 831.631, 831.632, 831.682, 831.684, or 831.685 are not annuity overpayments and their collection is not subject to waiver. They are subject to reconsideration only to determine whether the amount has been correctly computed.

(b) [Reserved]

[50 FR 20070, May 13, 1985, as amended at 51 FR 31935, Sept. 8, 1986; 57 FR 33597, July 29, 1992; 58 FR 52881, Oct. 13, 1993. Redesignated and amended at 58 FR 52882, Oct. 13, 1993]

§831.662 Deposits required to change an election after final adjudication.

The amount of the deposit required under §831.622 or §831.685 equals the sum of the monthly differences between the annuity paid to the retiree and the annuity that would have been paid if the additional annuity reduction elected under §831.622 or §831.685 had been in effect since the time of retirement, plus 24.5 percent of the increase in the designated base (computed as of the time of retirement) on which the survivor annuity is calculated.

[51 FR 31935, Sept. 8, 1986, as amended at 58 FR 52881, Oct. 13, 1993. Redesignated and amended at 58 FR 52882, Oct. 13, 1993]

§831.663 Actuarial reduction in annuity of retirees who make post-retirement elections to provide a current spouse annuity or a former spouse annuity.

(a) *Applicability of this section.* This section applies to all retirees who are required to pay deposits under §831.631 or §831.632 and have not paid any portion of the deposit prior to October 1, 1993, or from annuity accruing before that date.

(b) *Other methods of payment not available.* Retirees described in paragraph (a) of this section must have a permanent annuity reduction computed under paragraph (d) of this section.

(c) *Commencing date of the reduction.* A reduction under this section commences on the same date as the annuity reduction under §831.631 or §831.632.

(d) *Computing the amount of the reduction.* The annuity reduction under this section is equal to the lesser of—

(1) The amount of the deposit under §831.631 or §831.632 divided by the present value factor for the retiree's

age on the commencing date of the reduction under paragraph (c) of this section (plus any previous reduction(s) in the retiree's annuity required under this section § 831.664); or

(2) Twenty-five percent of the rate of the retiree's self-only annuity on the commencing date of the reduction under paragraph (c) of this section.

(e) *Termination of the reduction.* (1) The reduction under this section terminates on the date that the retiree dies.

(2) If payment of a retiree's annuity is suspended or terminated and later reinstated, or if a new annuity becomes payable, OPM will increase the amount of the original reduction computed under paragraph (d) of this section by any cost-of-living adjustments under section 8340 of title 5, United States Code, occurring between the commencing date of the original reduction and the commencing date of the reinstated or new annuity (but the adjusted reduction may not exceed 25 percent of the rate of the reinstated or new self-only annuity).

[58 FR 52882, Oct. 13, 1993]

§ 831.664 Post-retirement survivor election deposits that were partially paid before October 1, 1993.

(a) *Applicability of this section.* This section applies to all retirees who are required to pay deposits under § 831.631, § 831.632, § 831.682, or § 831.684 and have paid some portion (but not all) of the deposit prior to October 1, 1993, or from annuity accruing before that date.

(b) *Other methods of payment not available.* Retirees described in paragraph (a) of this section must have a permanent annuity reduction computed under paragraph (d) of this section.

(c) *Commencing date of the reduction.* A reduction under this section commences on October 1, 1993.

(d) *Computing the amount of the reduction.* The annuity reduction under this section is equal to the lesser of—

(1) The amount of the principal balance remaining to be paid on October 1, 1993, divided by the present value factor for the retiree's age on October 1, 1993; or

(2) Twenty-five percent of the rate of the retiree's self-only annuity on October 1, 1993.

(e) *Termination of the reduction.* (1) The reduction under this section terminates on the date that the retiree dies.

(2) If payment of a retiree's annuity is suspended or terminated and later reinstated, or if a new annuity becomes payable, OPM will increase the amount of the original reduction computed under paragraph (d) of this section by any cost-of-living adjustments under section 8340 of title 5, United States Code, occurring between the commencing date of the original reduction and the commencing date of the reinstated or new annuity (but the adjustment reduction may not exceed 25 percent of the rate of the reinstated or new self-only annuity).

[58 FR 52883, Oct. 13, 1993]

§ 831.665 Payment of deposits under § 831.631, § 831.632, § 831.682, or § 831.684 under pre-October 1, 1993, law or when the retiree has died prior to October 1, 1993.

(a) If a retiree fails to make a deposit required under § 831.682 or § 831.684 within 60 days after the date of the notice required by § 831.682(e) or § 831.684(c), the deposit will be collected by offset from his or her annuity in installments equal to 25 percent of the retiree's net annuity (as defined in § 838.103 of this chapter).

(b) If a retiree fails to make a deposit required by § 831.631 or § 831.632 within 2 years after the date of the post-retirement marriage or divorce, the deposit will be collected by offset from his or her annuity in installments equal to 25 percent of the retiree's net annuity (as defined in § 838.103 of this chapter).

(c) If a retiree dies before a deposit required under §§ 831.631, 831.632, 831.682, or 831.684 is fully made, the deposit will be collected from the survivor annuity (for which the election required the deposit) before any payments of the survivor annuity are made.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31935, Sept. 8, 1986; 57 FR 33597, July 29, 1992; 58 FR 52881, Oct. 13, 1993. Redesignated and amended at 58 FR 52882, Oct. 13, 1993]

CHILDREN'S ANNUITIES

§ 831.671 Proof of eligibility for a child's annuity.

(a) *Proof of paternity.* (1) A judicial determination of parentage conclusively establishes the paternity of a child.

(2) Except as provided in paragraph (a)(1) of this section, a child born to the wife of a married person is presumed to be the child of the wife's husband. This presumption may be rebutted only by clear and convincing evidence that the husband is not the father of the child.

(3) When paternity is not established under paragraph (a)(1) or (a)(2) of this section, paternity is determined by a preponderance of the credible evidence as defined in § 1201.56(c)(2) of this title.

(b) *Proof of adoption.* (1) An adopted child is—

(i) A child adopted by the employee or retiree before the death of the employee or retiree; or

(ii) A child who lived with the employee or retiree and for whom a petition for adoption was filed by the employee or retiree and who is adopted by the current spouse of the employee or retiree after the death of the employee or retiree.

(2) The only acceptable evidence to prove status as an adopted child under paragraph (b)(1)(i) of this section is a copy of the judicial decree of adoption.

(3) The only acceptable evidence to prove status as an adopted child under paragraph (b)(1)(ii) of this section is copies of—

(i) The petition for adoption filed by the employee or retiree (clearly showing the date filed); and

(ii) The judicial decree of adoption.

(c) *Dependency.* To be eligible for survivor annuity benefits, a child must have been dependent on the employee or retiree at the time of the employee's or retiree's death.

(d) *Proof of dependency.* (1) A child is presumed to have been dependent on the deceased employee or retiree if he or she is—

(i) A legitimate child; or

(ii) An adopted child; or

(iii) A stepchild or recognized natural child who lived with the employee or retiree in a regular parent-child relationship at the time of the employee's or retiree's death; or

(iv) A recognized natural child for whom a judicial determination of support was obtained; or

(v) A recognized natural child to whose support the employee or retiree made regular and substantial contributions.

(2) The following are examples of proofs of regular and substantial support. More than one of the following proofs may be required to show support of a child who did not live with the employee or retiree in a regular parent-child relationship and for whom a judicial determination of support was not obtained.

(i) Evidence of eligibility as a dependent child for benefits under other State or Federal programs;

(ii) Proof of inclusion of the child as a dependent on the decedent's income tax returns for the years immediately before the employee's or retiree's death;

(iii) Cancelled checks, money orders, or receipts for periodic payments received from the employee or retiree for or on behalf of the child;

(iv) Evidence of goods or services that shows regular contributions of considerable value;

(v) Proof of coverage of the child as a family member under the employee's or retiree's Federal Employees Health Benefits enrollment; and

(vi) Other proof of a similar nature that OPM may find to be sufficient to demonstrate support or parentage.

(3) Survivor benefits may be denied—

(i) If evidence shows that the deceased employee or retiree did not recognize the claimant as his or her own despite a willingness to support the child; or

(ii) If evidence casts doubt upon the parentage of the claimant, despite the deceased employee's or retiree's recognition and support of the child.

[55 FR 9102, Mar. 12, 1990, as amended at 58 FR 43493, Aug. 17, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.672 Annuity for a child age 18 to 22 during full-time school attendance.

(a) *General requirements for an annuity.* (1) For a child age 18 to 22 to be eligible to receive an annuity as a full-time student, the child must also meet all other requirements applicable to qualify for an annuity by a child who has not attained age 18.

(2) In addition to the requirements of paragraph (a)(1) of this section, OPM must receive certification, in a form prescribed by OPM, that the child is regularly pursuing a full-time course of study in an accredited institution.

(b) *Full-time course of study.* (1) Generally, a full-time course of study is a noncorrespondence course which, if successfully completed, will lead to completion of the education within the period generally accepted as minimum for completion, by a full-time day student, of the academic or training program concerned.

(2) A certification by an accredited institution that the student's workload is sufficient to constitute a full-time course of study for the program in which the student is enrolled is prima facie evidence that the student is pursuing a full-time course of study.

(c) *Certification of school attendance.* (1) OPM may periodically request the recipient of a child's annuity payments to furnish certification of school attendance. The certification must be completed in the form prescribed by OPM.

(2) If OPM requests the recipient of a child's annuity payments to provide a self-certification of school attendance, the recipient must complete and sign the certification form.

(3) If OPM requests the recipient of a child's annuity payments to provide a certification by the school, the certification must be signed by an official who is either in charge of the school or in charge of the school's records. OPM will not accept certification forms signed by instructors, counselors, aides, roommates, or others not in charge of the school or the records.

(i) If the educational institution is above the high school level, the certification must be signed by the president or chancellor, vice president or vice chancellor, dean or assistant dean, registrar or administrator, assistant registrar or assistant administrator, or the equivalent.

(ii) If the educational institution is at the high school level, the certification must be signed by the superintendent of schools, assistant superintendent of schools, principal, vice principal, assistant principal, or the equivalent.

(iii) If the educational institution is a technical or trade school, the certification must be signed by the president, vice president, director, assistant director, or the equivalent.

(4) OPM will accept a facsimile signature of a school official only if it is accompanied by a raised seal of the institution or other evidence clearly demonstrating the authenticity of the certification and making unauthorized use of the signature stamp unlikely.

(d) *Continuation of annuity during interim breaks.* A child's annuity continues during interim breaks between school years if the following conditions are satisfied:

(1) The student must have been a full-time student at the end of the school term immediately before the break.

(2) The break between the end of the last term of full-time attendance and the return to full-time attendance must not exceed 5 months. (See § 831.107, concerning calculation of this time period.)

(3) The recipient of a child's annuity payments must show that the student has a bona fide intent to return to school as a full-time student immediately after the break. The full-time certification for the prior term and the certification (in a form prescribed by OPM) by the recipient of a child's annuity payments that the student intends to return to school (immediately after the break) as a full-time student constitute prima facie evidence of a bona fide intent to return to school.

(e) *Benefits after age 22.* (1) A student's eligibility for a child's annuity terminates based on reaching age 22 on—

(i) June 30 of the calendar year of the child's 22nd birthday if the child's birthday is before July 1; or

(ii) The last day of the month before the child's 22nd birthday if the child's

birthday occurs after June 30 but before September 1 of the calendar year; or

(iii) June 30 of the year after the one in which the child attains age 22 if the child's birthday is after August 31 of the calendar year.

(2)(i) An otherwise eligible child who becomes a full-time student after his or her 22nd birthday but before the date the annuity terminates under paragraph (e)(1) of this section is eligible for annuity while he or she is a full-time student until the termination date under paragraph (e)(1) of this section.

(ii) An otherwise eligible child who is a full-time student, and whose parent dies after the child's 22nd birthday but before the date the annuity terminates under paragraph (e)(1) of this section, is eligible for annuity while he or she is a full-time student after the death of the parent until the termination date under paragraph (e)(1) of this section.

[58 FR 32052, June 8, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.673 Rates of child annuities.

(a) (1) The rate of annuity payable to a child survivor whose annuity commenced before February 27, 1986, is computed in accordance with the law in effect on the date when the annuity began to accrue, unless the rate of annuity is recomputed under paragraph (e) of this section on or after February 27, 1986.

(2) The rate of annuity payable to a child survivor whose annuity commenced on or after February 27, 1986, or was recomputed under paragraph (e) of this section on or after February 27, 1986, is computed under paragraph (b), (c), or (d) of this section.

(b) Except as provided in paragraph (a) of this section, the rate of annuity of a child survivor is computed under section 8341(e)(2) (i) through (iii) of title 5, United States Code, with adjustments in accordance with section 8340 of title 5, United States Code, when the deceased employee, Member or annuitant was never married to a natural or adoptive parent of that surviving child of the former employee or Member.

(c) Except as provided in paragraphs (a) and (b) of this section, the rate of annuity payable to a child survivor is computed under section 8341(e)(2) (A) through (C) of title 5, United States Code, with adjustments in accordance with section 8340 of title 5, United States Code, whenever a deceased employee, Member, or retiree is survived by a natural or adoptive parent of that surviving child of the employee, Member, or retiree.

(d) Except as provided in paragraph (a) of this section, the rate of annuity payable to a child survivor is computed under section 8341(e)(2) (i) through (iii) of title 5, United States Code, with adjustments in accordance with section 8340 of title 5, United States Code, when the deceased employee, Member, or retiree is not survived by a natural or adoptive parent of that surviving child of the former employee or Member.

(e) On the death of a natural or adoptive parent or termination of the annuity of a child, the annuity of any other child or children is recomputed and paid as though the parent or child had not survived the former employee or Member.

[51 FR 31933, Sept. 8, 1986. Redesignated at 58 FR 52882, Oct. 13, 1993]

REGULATIONS PERTAINING TO NONCODIFIED STATUTES

§ 831.681 Annual notice required by Public Law 95-317.

At least once every 12 consecutive months, OPM will send a notice to all retirees to inform them about the survivor annuity elections available to them, under sections 8339(j), 8339(k)(2), and 8339(o) of title 5, United States Code.

[56 FR 16263, Apr. 22, 1991, as amended at 58 FR 43493, Aug. 17, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.682 Election by a retiree who retired before May 7, 1985, to provide a former spouse annuity.

(a) A retiree who retired before May 7, 1985, including a retiree receiving a fully reduced annuity to provide a current spouse annuity, may elect a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity.

(b) The election should be made by letter addressed to OPM. The election must—

(1) Be in writing; and

(2) Agree to pay any deposit due under paragraph (c) of this section; and

(3) Be signed by the retiree; and

(4) Be filed with OPM before September 8, 1987.

(c)(1)(i) If a retiree who is receiving an insurable interest annuity elects a fully reduced annuity or a partially reduced annuity under this section to benefit the same person, the insurable interest annuity terminates. A retiree who is receiving an insurable interest annuity at the time that an annuity is elected under this section does not owe any further deposit.

(ii) If a retiree who had been receiving an insurable interest annuity, which was terminated to elect a reduced annuity to provide a current spouse annuity for a spouse acquired after retirement, elects to provide a former spouse annuity for a former spouse who was the beneficiary of the insurable interest annuity, the retiree must deposit an amount equal to the sum of the monthly differences between the self-only annuity and a fully reduced annuity or partially reduced annuity (with the same base as elected to provide the former spouse annuity) from the date the insurable interest annuity terminated, plus 6 percent annual interest, computed under § 831.105, from the date to which each monthly difference is attributable.

(2) A retiree who elects a fully reduced annuity or a partialy reduced annuity under this section, to provide a former spouse annuity for a former spouse for whom the retiree had elected (during the marriage to that former spouse) a reduced annuity to provide a current spouse annuity, must deposit an amount equal to the sum of the monthly differences between the self-only annuity and the amount of annuity that would have been in effect had a fully reduced annuity or partially reduced annuity (with the same base as elected to provide the former spouse annuity) been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date to which each monthly difference is attributable, except that the retiree will not be charged for any period during which the survivor reduction was in effect for that former spouse.

(3) A retiree who elects a fully reduced annuity or a partially reduced annuity under this section, and is not covered under paragraph (c)(1) or (c)(2) of this section, must deposit an amount equal to the sum of the monthly difference between the self-only annuity and a fully reduced annuity or a partial!y reduced annuity (with the same base as elected to provide the former spouse annuity) since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date to which each monthly difference is attributable.

(d) If a retiree who is receiving a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity elects a fully reduced annuity or a partially reduced annuity under this section to provide a former spouse annuity, the annuity will be reduced separately to provide for the current and former spouse annuities. Each separate reduction will be computed based on the self-only annuity, and the separate reductions are cumulative.

(e)(1) In response to a retiree's inquiry about providing a former spouse annuity under this section, OPM will send an application form. The application form will include a notice to retirees that filing the application constitutes an official election which cannot be revoked after 30 days after the annuity check in which the annuity reduction first appears.

(2) If the retiree returns the application electing a fully reduced annuity or a partially reduced annuity under this section, OPM will notify the retiree of—

(i) The rate of the fully reduced annuity or partially reduced annuity; and

(ii) The rate of the potential former spouse annuity; and

(iii) The amount of the deposit, including interest, that is due as of the date that the annuity reduction is scheduled to begin; and

(iv) The amount and duration of installment payments if no deposit is made.

(3) The notice under paragraph (e)(2) of this section will advise the retiree

that the deposit will be collected in installments under § 831.665, unless lump-sum payment is made within 60 days from the date of the notice.

(4) OPM will reduce the annuity and begin collection of the deposit in installments effective with the first check payable more than 60 days after the date on the notice required under paragraph (e)(2) of this section.

(f)(1) A retiree who made an election under this section prior to September 9, 1986 may modify that election by designating a lesser portion of the retiree's annuity be used as the base for the annuity reduction and the former spouse annuity.

(2) Any modification under paragraph (f)(1) of this section must be in writing and received in OPM no later than the date provided for applications in paragraph (b)(4) of this section.

(g) The annuity reduction resulting in a fully reduced annuity or partially reduced annuity to provide a former spouse annuity under this section terminates on the first day of the month after the former spouse remarries before age 55 or dies.

(h) A former spouse is eligible to receive only one survivor annuity based on the service of one employee or Member.

(i) If a former spouse is entitled to a former spouse annuity based on an election under this section, but absent that election would have been entitled to a former spouse annuity under § 831.683 (i.e., filed a timely application as well as meeting all other requirements), the amount of the former spouse annuity payable will equal 55 percent of the annuity of the retiree on whose service the survivor annuity is based.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31934, Sept. 8, 1986; 55 FR 9102, Mar. 12, 1990; 56 FR 16263, Apr. 22, 1991; 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.683 Annuities for former spouses of employees or Members retired before May 7, 1985.

(a)(1) The former spouse of a retiree who retired before May 7, 1985 (or of an employee or Member who died before May 7, 1985, was employed in a position covered by CSRS at the time of death, and was eligible to retire at the time of death), is entitled, after the death of the retiree, employee, or Member, to a survivor annuity equal to 55 percent of the self-only annuity of the retiree on whose service the survivor annuity is based if the former spouse, at the time of application, meets all of the following requirements:

(i) The former spouse's marriage to the retiree, employee, or Member was dissolved after September 14, 1978, and before May 8, 1987. The date of dissolution of a marriage is the date when the marriage between the former spouse and the retiree, employee, or Member ended under the law of the jurisdiction that terminated the marriage, rather than the date when restrictions on remarriage ended. The date of entry of the decree terminating the marriage will be rebuttably presumed to be the date when the marriage was dissolved.

(ii) The former spouse was married to the retiree, employee, or Member for at least 10 years of the retiree's, employee's, or Member's creditable service. Creditability of service is determined in accordance with section 8332 of title 5, United States Code, and subpart C of this part.

(iii) The former spouse has not remarried before reaching age 55.

(iv) The former spouse applies to OPM for a survivor annuity, in accordance with paragraph (b) of this section and § 831.643(b), before May 8, 1989.

(v) The former spouse is at least 50 years old on May 7, 1987, and when filing the application.

(2) A former spouse who is not eligible for an annuity under paragraph (a)(1) of this section and who is the former spouse of a retiree who retired before May 7, 1985 (or of an employee or Member who died before May 7, 1985, was employed in a position covered by CSRS at the time of death, and was eligible to retire at the time of death), is entitled, after the death of the retiree, employee, or Member, to a survivor annuity equal to 55 percent of the self-only annuity of the retiree on whose service the survivor annuity is based if the former spouse, at the time of application, meets all of the following requirements:

(i) The former spouse was married to the retiree, employee, or Member for at

least 10 years of the retiree's, employee's, or Member's creditable service. Creditability of service is determined in accordance with section 8332 of title 5, United States Code, and subpart C of this part.

(ii) The former spouse has not remarried after September 14, 1978, before reaching age 55.

(iii) The former spouse applies to OPM for a survivor annuity, in accordance with paragraph (b) of this section and § 831.643(b), before May 8, 1989.

(iv) The former spouse is at least 50 years old on May 7, 1987, and when filing the application.

(v) No current spouse, other former spouse, or insurable interest designee is receiving or has been designated to receive a survivor annuity based on the service of the employee, Member, or retiree.

(3) If two or more eligible former spouses of a retiree, employee, or Member apply for annuities under paragraph (a)(2) of this section based on the service of the same retiree, employee, or Member, and neither meets the requirements of paragraph (a)(1) of this section, the former spouse whose application OPM receives first is entitled to the annuity.

(b)(1) Application must be filed on the form prescribed for that purpose by OPM. The application form will require the former spouse to certify under the penalty provided by section 1001 of title 18, United States Code, that he or she meets the requirements listed in paragraph (a) of this section.

(2) In addition to the application form required in paragraph (b)(1) of this section, the former spouse must submit proof of his or her age and the date when the marriage to the retiree commenced, and a certified copy of the divorce decree terminating the marriage to the retiree.

(3)(i) Former spouses applying for benefits under this section must meet the requirements of paragraph (a) of this section at the time of application.

(ii) An annuity under this section terminates on the last day of the month before the former spouse remarries before age 55 or dies, except that a remarriage before September 15, 1978, does not cause termination of a former spouse annuity under this section. A former spouse who is receiving a former spouse annuity under this section must notify OPM within 30 days after he or she remarries before age 55.

(c) Survivor annuities payable under this section commence on the later of the day after the date of death of the retiree or the first day of the second month after the application is filed under § 831.643(b).

(d) Cost-of-living adjustments under section 8340 of title 5, United States Code, are applicable to annuities payable under this section.

(e) If a former spouse is eligible for a former spouse annuity under this section and another current spouse annuity or former spouse annuity (under the Civil Service Retirement System or the Federal Employees Retirement System) resulting from the death of the same retiree, the annuity under this section will be paid instead of the other current spouse annuity or former spouse annuity.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31933, Sept. 8, 1986; 55 FR 9103, Mar. 12, 1990; 56 FR 16263, Apr. 22, 1991; 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.684 Second chance elections to provide survivor benefits.

(a) A married retiree who retired before May 7, 1985, and is not currently receiving a fully or partially reduced annuity to provide a current spouse annuity may elect a fully or partially reduced annuity to provide a current spouse annuity for a spouse acquired after retirement if the following conditions are met:

(1) (i) The retiree was married at the time of retirement and did not elect a survivor annuity at that time; or

(ii) The retiree failed to elect a fully or partially reduced annuity within 1 year after a post-retirement marriage that occurred before November 8, 1984, and the retiree attempted to elect a fully or partially reduced annuity after the time limit expired and that request was disallowed as untimely.

(2) The retiree applies for a fully or partially reduced annuity under this section before November 9, 1985.

(3) The retiree agrees to pay the amount due under paragraph (d) of this section.

(b) Applications must be filed on the form prescribed by OPM, except filing the form is excused when the retiree dies before filing the required form if:

(1) The retiree made a written request, after November 8, 1984, to elect a fully or partially reduced annuity under this section, and

(2) The retiree was denied the opportunity to file the required form because the retiree, without fault, did not receive the form in sufficient time for the retiree to be reasonably expected to complete the form before death.

(c)(1) In response to a retiree's inquiry about providing a current spouse annuity under this section, OPM will send an application form. This application will include instructions to assist the retiree in estimating the amount of reduction in the annuity to provide the current spouse annuity and the amount of the required deposit. The application form will include a notice to retirees that filing the application constitutes an official election which cannot be revoked after 30 days after the annuity check in which the annuity reduction first appears.

(2) If the retiree returns the application electing a fully or partially reduced annuity under this section, OPM will notify the retiree of—

(i) The rate of the fully reduced annuity; and

(ii) The rate of the potential current spouse annuity; and

(iii) The amount of the deposit, including interest, that is due as of the date that the annuity reduction is scheduled to begin; and

(iv) The amount and duration of installment payments if no deposit is made.

(3) The notice under paragraph (c)(2) of this section will advise the retiree that the deposit will be collected in installments under §831.665, unless lump-sum payment is made within 60 days from the date of this notice.

(4) OPM will reduce the annuity and begin collection of the deposit in installments effective with the first check payable more than 60 days after the date on the notice required under paragraph (c)(2) of this section.

(d) The retiree must state on the application form whether the application is made under paragraph (a)(1)(i) of this section or paragraph (a)(1)(ii) of this section. If the application is made under paragraph (a)(1)(ii) of this section, the retiree must prove that he or she had attempted to elect a fully reduced annuity and that OPM rejected that application because it was filed too late. The proof must consist of a copy of OPM's letter rejecting the previous election as untimely filed or an affidavit swearing or affirming that he or she made an untimely application which OPM rejected. The affidavit is sufficient documentation to provide proof of the retiree's attempt to elect a reduced annuity, unless the record contains convincing evidence to rebut the certification.

(e) A retiree who elects to provide a current spouse annuity under this section must agree to pay a deposit equal to the difference between the amount of annuity actually paid to the retiree and the amount of annuity that would have been paid if a fully reduced annuity were being paid continuously since the time of retirement, plus 6 percent annual interest, computed under §831.105, from the date when each difference occurred.

(f) The rate of a survivor annuity under this section will be computed under the laws in effect at the time of the retiree's separation from the Federal service.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31935, Sept. 8, 1986; 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§831.685 Changes in elections to provide a current spouse annuity by a retiree who retired before May 28, 1986.

(a) Except as provided in §831.613 and paragraphs (b) and (c) of this section, a retiree who retired before May 28, 1986, was married at the time of retirement, and at the time of retirement did not elect a fully reduced annuity to provide a current spouse annuity may elect a fully reduced annuity or a greater partially reduced annuity to provide a current spouse annuity.

(b)(1) An election under paragraph (a) of this section may be made only by a retiree who is married to the same spouse to whom the retiree was married at the time of retirement.

(2) A current spouse annuity based on an election under paragraph (a) of this section cannot be paid if it will, when combined with any former spouse annuity or annuities that are required by court order, exceed the maximum survivor annuity permitted under § 831.641.

(3)(i) Except as provided in paragraph (b)(4) of this section, to make an election under paragraph (a) of this section, the retiree must pay the deposit computed under § 831.662, in full, no later than November 28, 1987.

(ii) Except as provided in paragraph (b)(4) of this section, failure to pay the deposit, in full, before November 29, 1987, voids an election made under paragraph (a) of this section.

(4) If a retiree makes an election under paragraph (a) of this section and is prevented from paying the deposit within the 18-month time limit because OPM did not send him or her a notice of the amount of the deposit at least 30 days before the time limit expires, the time limit for making the deposit will be extended to 30 days after OPM sends the notice of the amount of the deposit.

(5) For a retiree whose annuity commenced on or after May 7, 1985, an election under paragraph (a) of this section cancels any spouse consent under § 831.611 to the extent of the election.

(c) If a retiree who had elected a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity makes an election under paragraph (a) of this section that would cause the combined current spouse annuity and former spouse annuity (or annuities) to exceed the maximum allowed under § 831.641, the former spouse annuity (or annuities) must be reduced to conform with that allowed under § 831.641.

(d) An election under paragraph (a) of this section is void unless it is filed with OPM before the retiree dies.

[51 FR 31935, Sept. 8, 1986, as amended at 55 FR 9103, Mar. 12, 1990; 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

Subpart G—Computation of Annuities

§ 831.701 Effective dates of annuities.

(a) Except as provided in paragraphs (b) and (c) of this section, an annuity of an employee or Member commences on the first day of the month after—

(1) Separation from the service; or

(2) Pay ceases and the service and age requirements for title to annuity are met, if earlier than the date of separation.

(b) An annuity of—

(1) An employee involuntarily separated from service (except by removal for cause on charges of misconduct or delinquency) and eligible for an immediate annuity based on that involuntary separation;

(2) An employee or Member retiring due to a disability; and

(3) An employee or Member retiring after serving three days or less in the month of retirement—shall commence on the day after separation from the service or the day after pay ceases and the service and age or disability requirements for title to annuity are met.

(c) An annuity granted under section 8338, title 5, United States Code, commences on the appropriate birthday of the employee or Member.

(d) Survivor annuities commence as provided in § 831.651.

(e) Except as provided in § 831.502, annuity terminates on the date of death or on the date of any other terminating event in each case when OPM terminates the annuity.

(f) Annuity accrues on a daily basis, one-thirtieth of the monthly rate constituting the daily rate. Annuity does not accrue for the thirty-first day of any month, except in the initial month if the employee's annuity commences on the 31st of a 31-day month. For accrual purposes, the last day of a 28-day month constitutes 3 days and the last day of a 29-day month constitutes 2 days.

[48 FR 38786, Aug. 26, 1983, as amended at 51 FR 31936, Sept. 8, 1986; 58 FR 52881, Oct. 13, 1993]

§ 831.702 Adjustment of annuities.

(a)(1) An annuity which includes creditable National Guard technician service performed prior to January 1, 1969, shall be reduced by the portion of any benefits under any State retirement system to which an annuitant is entitled (or on proper application would be entitled) for any month in which the annuitant is eligible for State benefits based on the same pre-1969, service.

(2) Any cost-of-living increases in the State benefit shall require a corresponding deduction in the civil service annuity.

(3) Any cost-of-living increase to a civil service annuity shall apply to the gross annuity before deduction for benefits under any State retirement system.

(b) In the adjudication of claims arising under subchapter III of chapter 83 of title 5, United States Code, OPM shall take appropriate action to obtain the data that it considers necessary to assure the proper annuity deduction. Upon request by OPM, an annuitant shall promptly submit this data.

[48 FR 38786, Aug. 26, 1983]

§ 831.703 Computation of annuities for part-time service.

(a) *Purpose.* The computational method in this section shall be used to determine the annuity for an employee who has part-time service on or after April 7, 1986.

(b) *Definitions.* In this section—

Full-time service means any actual service in which the employee is schedule to work the number of hours and days required by the administrative workweek for his or her grade or class (normally 40 hours).

Intermittent service means any actual service performed with no prescheduled regular tour of duty.

Part-time service means any actual service performed on a less than full-time basis, by an individual whose appointment describes a regularly scheduled tour of duty, and any period of time credited as non pay status time under 5 U.S.C. 8332(f), which follows a period of part-time service without any intervening period of actual service other than part-time service. This definition is not limited to part-time career employment because it includes part-time temporary employment as well.

Post-April 6, 1986 average pay means the largest annual rate resulting from averaging, over any period of 3 consecutive years of creditable service, the annual rate of basic pay that would be payable for full-time service by an employee during that period, with each rate weighted by the time it was in effect, except that for periods of service before April 7, 1986, the actual rate of basic pay based on the employee's established tour of duty, if different, is used in the computation. The rates of pay included in the computation for intermittent service or temporary service performed on a full-time basis are the actual rates of basic pay during those periods of creditable service.

Pre-April 7, 1986, average pay means the largest annual rate resulting from averaging, over any period of 3 consecutive years of creditable service, an employee's actual rates of basic pay during that period, with each rate weighted by the time it was in effect.

Proration factor means a fraction expressed as a percentage rounded to the nearest percent. The numerator is the sum of the number of hours the employee actually worked during part-time service, and the denominator is the sum of the number of hours that a full-time employee would be schedule to work during the same period of service included in the numerator. If an employee has creditable service in addition to part-time service (full-time service, intermittent service, or temporary service performed on a full-time basis), such service must be included in the numerator and denominator of the fraction. In general, this is done by including the number of days of such intermittent service, multiplied by 8, and the number of weeks of such temporary service or full-time service, multiplied by 40 in both the numerator and the denominator. The additional credit for unused sick leave under 5 U.S.C. 8339(m) is not included in the fraction.

Temporary service means service under an appointment limited to one year or less, exclusive of intermittent service.

(c) *Pre-April 7, 1986, basic annuity.* The partial annuity for pre-April 7, 1986, service is computed in acordance with 5 U.S.C. 8339 using the pre-April 7, 1986, average pay and length of service (increased by the unused sick leave credit at time of retirement) prior to April 7, 1986.

(d) *Post-April 6, 1986, basic annuity.* The partial annuity for post-April 6, 1986, service is computed in accordance with 5 U.S.C. 8339 using the post-April 6, 1986, average pay and length of service after April 6, 1986. This amount is then multiplied by the proration factor.

(e) *Combined basic annuity.* The combined basic annuity is equal to the sum of the partial annuity amounts computed under paragraphs (c) and (d). This amount is the yearly rate of annuity (on which the monthly rate is based) before reductions for retirement before age 55; pre-October 1, 1982, nondeduction service and survivor benefits; or the reduction for an alternative annuity under section 204 of Pub. L 99–335.

(f) *Limitations.* The use of the post-April 6, 1986, average pay is limited to the purposes stated in this section. It may not be used as the basis for computing:

(1) The 80-percent limit on annuity under 5 U.S.C. 8339(f);

(2) The minimum annuity amount under 5 U.S.C. 8339(e) (concerning air traffic controller annuity) or 5 U.S.C. 8339(g) (concerning disability annuity); or

(3) A supplemental annuity under 5 U.S.C. 8344(a).

[52 FR 22434, June 12, 1987]

§ 831.704 Annuities including credit for service with a nonappropriated fund instrumentality.

An annuity that includes credit for service with a nonappropriated fund instrumentality performed after December 31, 1965, based on an election under subpart D of part 847 of this chapter is computed under part 847 of this chapter.

[61 FR 41720, Aug. 9, 1996]

Subpart H—[Reserved]

Subpart I—Law Enforcement Officers and Firefighters

SOURCE: 58 FR 64367, Dec. 7, 1993, unless otherwise noted.

§ 831.901 Applicability and purpose.

(a) This subpart contains regulations of the Office of Personnel Management (OPM) to supplement 5 U.S.C. 8336(c), which establishes special retirement eligibility for law enforcement officers and firefighters employed under the Civil Service Retirement System; 5 U.S.C. 8331(3) (C) and (D), pertaining to basic pay; 5 U.S.C. 8334(a) (1) and (c), pertaining to deductions, contributions, and deposits; 5 U.S.C. 8335(b), pertaining to mandatory retirement; and 5 U.S.C. 8339(d), pertaining to computation of annuity.

(b) The regulations in this subpart are issued pursuant to the authority given to OPM in 5 U.S.C. 8347 to prescribe regulations to carry out subchapter III of chapter 83 of title 5 of the United States Code, and in 5 U.S.C. 1104 to delegate authority for personnel management to the heads of agencies.

§ 831.902 Definitions.

In this subpart—

Agency head means, for the executive branch agencies, the head of an executive agency as defined in 5 U.S.C. 105; for the legislative branch, the Secretary of the Senate, the Clerk of the House of Representatives, or the head of any other legislative branch agency; for the judicial branch the Director of the Administrative Office of the U.S. Courts; for the Postal Service, the Postmaster General; and for any other independent establishment that is an entity of the Federal Government, the head of the establishment. For purposes of this subpart, *agency head* is also deemed to include the designated representative of the head of an executive department as defined in 5 U.S.C. 101, except that the designated representative must be a department headquarters-level official who reports directly to the executive department head, or to the deputy department

head, and who is the sole such representative for the entire department.

Detention duties means duties that require frequent direct contact in the detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation of individuals suspected or convicted of offenses against the criminal laws of the United States or the District of Columbia or offenses against the punitive articles of the Uniform Code of Military Justice (10 U.S.C. chapter 47). (See 5 U.S.C. 8331(20).)

Firefighter means an employee, whose duties are *primarily* to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment. Also included in this definition is an employee engaged in this activity who is transferred to a supervisory or administrative position. (See 5 U.S.C. 8331(21).) An employee whose primary duties are the performance of routine fire prevention inspection is excluded from this definition.

Frequent direct contact means personal, immediate, and regularly-assigned contact with detainees while performing detention duties, which is repeated and continual over a typical work cycle.

Law enforcement officer means an employee, the duties of whose position are *primarily* the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. (See 5 U.S.C. 8331(20).) The definition does not include an employee whose primary duties involve maintaining law and order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than persons who are suspected or convicted of offenses against the criminal laws of the United States.

Primary duties are those duties of a position that—

(1) (i) Are paramount in influence or weight; that is, constitute the basic reasons for the existence of the position;

(ii) Occupy a substantial portion of the individual's working time over a typical work cycle; and

(iii) Are assigned on a regular and recurring basis.

(2) Duties that are of an emergency, incidental, or temporary nature cannot be considered ''primary'' even if they meet the substantial portion of time criterion. In general, if an employee spends an average of at least 50 percent of his or her time performing a duty or group of duties, they are his or her primary duties.

Primary position means a position whose primary duties are:

(1) To perform work directly connected with controlling and extinguishing fires or maintaining and using firefighter apparatus and equipment; or

(2) Investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States.

Secondary position means a position that:

(1) Is clearly in the law enforcement or firefighting field;

(2) Is in an organization having a law enforcement or firefighting mission; and

(3) Is either—

(i) Supervisory; i.e., a position whose primary duties are as a first-level supervisor of law enforcement officers or firefighters in primary positions; or

(ii) Administrative; i.e., an executive, managerial, technical, semiprofessional, or professional position for which experience in a primary law enforcement or firefighting position, or equivalent experience outside the Federal government, is a prerequisite.

[58 FR 64367, Dec. 7, 1993, as amended at 60 FR 3339, Jan. 17, 1995]

§ 831.903 Conditions for coverage in primary positions.

(a) An employee's service in a position that has been determined by the employing agency head to be a primary law enforcement officer or firefighter position is covered under the provisions of 5 U.S.C. 8336(c).

(b) An employee who is not in a primary position, nor covered while in a secondary position, and who is detailed or temporarily promoted to a primary

position is not covered under the provisions of 5 U.S.C. 8336(C)

§ 831.904 Conditions for coverage in secondary positions.

(a) An employee's service in a position that has been determined by the employing agency head to be a secondary law enforcement officer or firefighter position is covered under the provisions of 5 U.S.C. 8336(c) if all of the following criteria are met:

(1) The employee is transferred directly (i.e., without a break in service exceeding 3 days) from a primary position to a secondary position; and

(2) If applicable, the employee has been continuously employed in secondary positions since transferring from a primary position without a break in service exceeding 3 days, except that a break in employment in secondary positions which begins with an involuntary separation (not for cause), within the meaning of 8336(d)(1) of title 5, United States Code, is not considered in determining whether the service in secondary positions is continuous for this purpose.

(b) This requirement for continuous employment in a secondary position applies only to voluntary breaks in service beginning after January 19, 1988.

(c) An employee who is not in a primary position, nor covered while in a secondary position, and who is detailed or temporarily promoted to a secondary position is not covered under the provisions of 5 U.S.C. 8336(c).

(d) The service of an employee who is in a position on January 19, 1988, that has been approved as a secondary position under this subpart will continue to be covered under the provisions of 5 U.S.C. 8336(c) as long as the employee remains in that position without a voluntary break in service, and coverage is not revoked by OPM under § 831.911, or by the agency head.

§ 831.905 Evidence.

(a) An agency head's determination that a position is a primary position must be based solely on the official position description of the position in question, and any other official description of duties and qualifications. The official documentation for the position must establish that it satisfies the requirements defined in § 831.902.

(b) A determination under § 831.904 must be based on the official position description and any other evidence deemed appropriate by the agency head for making the determination.

§ 831.906 Requests from individuals.

(a) An employee who requests credit for service under 5 U.S.C. 8336(c) bears the burden of proof with respect to that service, and must provide the employing agency with all pertinent information regarding duties performed, including—

(1) For law enforcement officers, a list of the provisions of Federal criminal law the incumbent is responsible for enforcing and arrests made; and

(2) For firefighters, number of fires fought, names of fires fought, dates of fires, and position occupied while on firefighting duty.

(b) An employee who is currently serving in a position that has not been approved as a primary or secondary position, but who believes that his or her service is creditable as service in a primary or secondary position may request the agency head to determine whether or not the employee's service should be credited and, if it qualifies, whether it should be a primary or secondary position.

(c) A current or former employee (or the survivor of a former employee) who believes that a period of past service in an unapproved position qualifies as service in a primary or secondary position and meets the conditions for credit must follow the procedure in paragraph (b) of this section. Except as provided in paragraph (d) of this section, the request must be made to the agency where the claimed service was performed.

(d) For a current or former employee seeking credit under 5 U.S.C. 8336(c) for service performed at an agency that is no longer in existence, and for which there is no successor agency, OPM will accept, directly from the current or former employee (or the survivor of a former employee), a request for a determination as to whether a period of past service qualifies as service in a primary or secondary position and meets the conditions for credit.

(e) Coverage in a position or credit for past service will not be granted for a period greater than 1 year prior to the date that the request from an individual is received under paragraphs (b), (c), or (d) of this section by the employing agency, the agency where past service was performed, or OPM.

(f) An agency head, in the case of a request filed under paragraph (b) or (c) of this section, or OPM, in the case of request filed under paragraph (d) of this section, may extend the time limit for filing when, in the judgment of such agency head or OPM, the individual shows that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

§ 831.907 Withholdings and contributions.

(a) During the service covered under the conditions established by § 831.903 and § 831.904, the employing agency will deduct and withhold from the employee's base pay the amount required under 5 U.S.C. 8334(a) for such positions and submit that amount, together with agency contributions required by 5 U.S.C. 8334(a), to OPM in accordance with payroll office instructions issued by OPM.

(b) If the correct withholdings and/or Government contributions are not submitted to OPM for any reason whatsoever, including cases in which it is finally determined that past service of a current or former employee was subject to the higher deduction and Government contribution rates, the employing agency must correct the error by submitting the correct amounts (including both employee and agency shares) to OPM as soon as possible. Even if the agency waives collection of the overpayment of pay under any waiver authority that may be available for this purpose, such as 5 U.S.C. 5584, or otherwise fails to collect the debt, the correct amount must still be submitted to OPM without delay as soon as possible.

(c) Upon proper application from an employee, former employee or eligible survivor of a former employee, an employing agency or former employing agency will pay a refund of erroneous additional withholdings for service that is found not to have been covered service. If an individual has paid to OPM a deposit or redeposit, including the additional amount required for covered service, and the deposit or redeposit is later determined to be erroneous because the service was not covered service, OPM will pay the refund, upon proper application, to the individual, without interest.

(d) The additional employee withholding and agency contribution for covered or creditable service properly made as required under 5 U.S.C. 8334(a)(1) or deposited under 5 U.S.C. 8334(c) are not separately refundable, even in the event that the employee or his or her survivor does not qualify for a special annuity computation under 5 U.S.C. 8339(d).

(e) While an employee who does not hold a primary or secondary position is detailed or temporarily promoted to a primary or secondary position, the additional withholdings and agency contributions will not be made. While an employee who does hold a primary or secondary position is detailed or temporarily promoted to a position which is not a primary or secondary position, the additional withholdings and agency contributions will continue to be made.

[58 FR 64367, Dec. 7, 1993, as amended at 60 FR 3339, Jan. 17, 1995]

§ 831.908 Mandatory separation.

(a) The mandatory separation provisions of 5 U.S.C. 8335(b) apply to all law enforcement officers and firefighters in primary and secondary positions. A mandatory separation under section 8335(b) is not an adverse action under part 752 of this chapter or a removal action under part 359 of this chapter. Section 831.503 provides the procedures for requesting an exemption from mandatory separation.

(b) In the event an employee is separated mandatorily under 5 U.S.C. 8335(b), or is separated for optional retirement under 5 U.S.C. 8336(c), and OPM finds that all or part of the minimum service required for entitlement to immediate annuity was in a position which did not meet the requirements of a primary or secondary position and the conditions set forth in this subpart, such separation will be considered erroneous.

§831.909 Reemployment.

An employee who has been mandatorily separated under 5 U.S.C. 8335(b) is not barred from reemployment in any position except a primary position after age 60. Service by a reemployed annuitant is not covered by the provisions of 5 U.S.C. 8336(c).

§831.910 Review of decisions.

The following decisions may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board:

(a) The final decision of an agency or OPM issued to an employee, former employee, or survivor as the result of a request for determination filed under §831.906; and

(b) The final decision of an agency that a break in service referred to in §831.904(a)(2) did not begin with an involuntary separation within the meaning of 5 U.S.C. §8336(d)(1).

[60 FR 3339, Jan. 17, 1995]

§831.911 Oversight of coverage determinations.

(a) Upon deciding that a position is a law enforcement officer or firefighter position, each agency head must notify OPM (Attention: Associate Director for Retirement and Insurance) stating the title of each position, the number of incumbents, and whether the position is primary or secondary. The Director of OPM retains the authority to revoke an agency head's determination that a position is a primary or secondary position, or that an individual's service in any other position is creditable under 5 U.S.C. 8336(c).

(b) Each agency must establish a file containing each coverage determination made by an agency head under §831.903 and §831.904, and all background material used in making the determination.

(c) Upon request by OPM, the agency will make available the entire coverage determination file for OPM to audit to ensure compliance with the provisions of this subpart.

(d) Upon request by OPM, an agency must submit to OPM a list of all covered positions and any other pertinent information requested.

(e) A coverage determination issued by OPM or its predecessor, the Civil Service Commission, will not be reopened by an employing agency, unless the agency head determines that new and material evidence is available that, despite due diligence, was not available before the decision was issued.

Subpart J—CSRS Offset

SOURCE: 57 FR 38743, Aug. 27, 1992, unless otherwise noted.

§831.1001 Purpose.

This subpart sets forth the provisions concerning employees and Members who are simultaneously covered by the Old Age, Survivors, and Disability Insurance (OASDI) tax and the Civil Service Retirement System (CSRS). Except as provided under this subpart, these employees and Members are treated the same as other covered employees and Members under the CSRS.

§831.1002 Definitions.

Contribution and benefit base means the contribution and benefit base in effect with respect to the tax year involved, as determined under section 230 of the Social Security Act (42 U.S.C. 430).

CSRS means the Civil Service Retirement System established under subchapter III of chapter 83 of title 5, United States Code.

Employee means an employee subject to CSRS.

Federal service means service covered under CSRS and subject to the OASDI tax by operation of section 101 of Public Law 98–21 (42 U.S.C. 410(a)). *Federal service* does not include—

(1) Service performed before January 1, 1984;

(2) Service subject to the OASDI tax only (that is, no simultaneous CSRS deductions), except in the case of an employee or Member who elected not to have any CSRS deductions withheld from salary pursuant to section 208(a)(1)(A) of Public Law 98–168, 97 Stat. 1111, or section 2206(b) of Public Law 98–369, 98 Stat. 1059, (relating to certain senior officials; and

(3) Service subject to the full rate of CSRS deductions (7, 7½, or 8 percent) and the OASDI tax, pursuant to an election under section 208(a)(1)(B) of Public Law 98–168, 97 Stat. 1111, except in the case of an employee or Member who elects to become subject to this subpart under section 301(b) of Public Law 99–335, 100 Stat. 599.

Federal wages means basic pay, as defined under 5 U.S.C. 8331(4), of an employee or Member performing Federal service.

Member means a Member of Congress as defined by 5 U.S.C. 8331(2).

OASDI tax means, with respect to Federal wages, the Old Age, Survivors, and Disability Insurance tax imposed under section 3101(a) of the Internal Revenue Code of 1986 (31 U.S.C. 3101(a)).

§ 831.1003 Deductions from pay.

(a) Except as otherwise provided in this section, the employing agency, the Secretary of the Senate, or the Clerk of the House of Representatives must withhold 7 percent of an employee's Federal wages to cover both the OASDI tax and the CSRS deduction. The difference between the OASDI tax and the full amount withheld under this paragraph is the CSRS deduction.

(b) For a Congressional employee as defined by 5 U.S.C. 2107 and a law enforcement officer or firefighter as defined by 5 U.S.C. 8331, the appropriate percentage under paragraph (a) of this section is 7½ percent.

(c) For a Member, a judge of the United States Court of Military Appeals, a United States magistrate, and a bankruptcy judge as defined by 5 U.S.C. 8331(22), the appropriate percentage under paragraph (a) of this section is 8 percent.

(d) For any amount of Federal wages paid after reaching the contribution and benefit base calculated including all wages, but before reaching the contribution and benefit base calculated using only Federal wages, the amount withheld under this section is the difference between 7, 7½, or 8 percent, as appropriate, and the OASDI tax rate, even though the Federal wages in question are not subject to the OASDI tax.

(e) For any amount of Federal wages paid after reaching the contribution and benefit base calculated on the basis of Federal wages only, the full percentage required under paragraph (a), (b), or (c) of this section (7, 7½, or 8 percent) must be withheld from Federal wages.

§ 831.1004 Agency contributions.

The employing agency, the Secretary of the Senate, and the Clerk of the House of Representatives must submit to OPM, in accordance with instructions issued by OPM, a contribution to the CSRS equal to the amount required to be contributed for the employee or Member under 5 U.S.C. 8334(a)(1) as if the employee or Member were not subject to the OASDI tax.

§ 831.1005 Offset from nondisability annuity.

(a) OPM will reduce the annuity of an individual who has performed Federal service, if the individual is entitled, or on proper application would be entitled, to old-age benefits under title II of the Social Security Act.

(b) The reduction required under paragraph (a) of this section is effective on the 1st day of the month during which the employee—

(1) Is entitled to an annuity under CSRS; and

(2) Is entitled, or on proper application would be entitled, to old-age benefits under title II of the Social Security Act.

(c) Subject to paragraphs (d) and (e) of this section, the amount of the reduction required under paragraph (a) of this section is the lesser of—

(1) The difference between—

(i) The Social Security old-age benefit for the month referred to in paragraph (b) of this section; and

(ii) The old-age benefit that would be payable to the individual for the month referred to in paragraph (b) of this section, excluding all wages from Federal service, and assuming the annuitant was fully insured (as defined by section 215(a) of the Social Security Act (42 U.S.C. 414(a)); or

(2) The product of—

(i) The old-age benefit to which the individual is entitled or would, on proper application, be entitled; and

(ii) A fraction—

(A) The numerator of which is the annuitant's total Federal service,

rounded to the nearest whole number of years not exceeding 40 years; and

(B) The denominator of which is 40.

(d) Cost-of-living adjustments under 5 U.S.C. 8340 occurring after the effective date of the reduction required under paragraph (a) of this section will be based on only the annuity remaining after reduction under this subpart.

(e) The amounts for paragraphs (c)(1)(i), (c)(1)(ii), and (c)(2)(i) of this section are computed without regard to subsections (b) through (l) of section 203 of the Social Security Act (42 U.S.C. 403) (relating to reductions in Social Security benefits), and without applying the provisions of the second sentence of section 215(a)(7)(B)(i) or section 214(d)(5)(ii) of the Social Security Act (42 U.S.C. 415(a)(7)(B)(i) or 415(d)(5)(ii) (relating to part of the computation of the Social Security windfall elimination provisions).

(f) OPM will accept the determination of the Social Security Administration, submitted in a form prescribed by OPM, concerning entitlement to Social Security benefits and the date thereof.

§831.1006 Offset from disability or survivor annuity.

(a) OPM will reduce the disability annuity (an annuity under 5 U.S.C. 8337) of an individual who performed Federal service, if the individual is (or would on proper application be) entitled to disability payments under section 223 of the Social Security Act (42 U.S.C. 423).

(b)(1) Before an application for disability retirement under 5 U.S.C. 8337 can be finally approved in the case of an employee who has Federal service, the applicant must provide OPM with—

(i) Satisfactory evidence that the applicant has filed an application for disability insurance benefits under section 223 of the Social Security Act; or

(ii) An official statement from the Social Security Administration that the individual is not insured for disability insurance benefits as defined in section 223(c)(1) of the Social Security Act.

(2) A disability retirement application under 5 U.S.C. 8337 will be dismissed when OPM is notified by the Social Security Administration that the application referred to in paragraph (b)(1)(i) of this section has been withdrawn unless the evidence described in paragraph (b)(1)(ii) of this section has been provided.

(c) OPM will reduce a survivor annuity (an annuity under 5 U.S.C. 8341) based on the service of an individual who performed Federal service, if the survivor annuitant is entitled, or on proper application would be entitled, to survivor benefits under section 202 (d), (e), or (f) (relating to children's, widow's, and widowers' benefits, respectively) of the Social Security Act (42 U.S.C. 202 (d), (e), or (f)).

(d) The reduction required under paragraphs (a) and (c) of this section begins (or is reinstated) on the 1st day of the month during which the disability or survivor annuitant—

(1) Is entitled to disability or survivor annuity under CSRS; and

(2) Is entitled, or on proper application would be entitled, to disability or survivor benefits under the Social Security Act provisions mentioned in paragraphs (a) and (c) of this section, respectively.

(e) The reduction under paragraphs (a) and (c) of this section will be computed and adjusted in a manner consistent with the provisions of §831.1005(c) through (e).

(f) A reduction under paragraph (a) or (c) of this section stops on the date entitlement to the disability or survivor benefits under title II of the Social Security Act terminates. In the case of a disability or survivor annuitant who has not made proper application for the Social Security benefit, the reduction under paragraph (a) or (c) of this section stops on the date entitlement to such disability or survivor benefits would otherwise terminate. If a Social Security benefit is reduced under any provision of the Social Security Act, even if reduced to zero, entitlement to that benefit is not considered to have terminated.

(g) OPM will accept the determination or certification of the Social Security Administration, submitted in a form prescribed by OPM, concerning entitlement to Social Security disability or survivor benefits and the beginning and ending dates thereof.

(h) If a disability annuitant who is not entitled to disability benefits

under title II of the Social Security Act subsequently becomes entitled to old-age benefits under the Social Security Act, a reduction under §831.1005 will begin on the 1st day of the month during which the annuitant becomes entitled, or on proper application would be entitled, to Social Security old-age insurance benefits.

Subpart K—Prohibition on Payments of Annuities

§831.1101 Scope.

This subpart prescribes the procedures to be followed in determining whether payment of an annuity under subchapter III of chapter 83 of title 5, United States Code, is prohibited by subchapter II of that chapter.

§831.1102 Definitions.

As used in this subpart, ''annuitant'' means an individual who, on the basis of his service, or as a survivor annuitant, has met all the requirements of subchapter III of chapter 83 of title 5, United States Code, for title to an annuity and has filed claim therefor.

§831.1104 Notice.

When the Associate Director determines that subchapter II of chapter 83 of title 5, United States Code, appears to prohibit payment of annuity, he shall notify the annuitant in writing of his intention to withhold payment of the annuity. The notice shall set forth the reasons for this determination. The notice may be served by registered or certified mail and shall inform the annuitant that he is entitled to submit an answer and request a hearing.

[34 FR 17618, Oct. 31, 1969]

§831.1105 Answer; request for hearing.

(a) The annuitant has 30 calendar days from the day he receives the notice within which to submit an answer and to request a hearing. The Associate Director may extend this time limit for good cause shown. If the annuitant answers, he shall specifically admit, deny, or explain each fact alleged in the notice, unless he states that he is without knowledge. If a hearing is desired, the annuitant must file a specific request therefor with or as a part of his answer.

(b) An annuitant who fails to answer or to request a hearing within the time permitted under paragraph (a) of this section is considered to have waived his right to answer or to a hearing. If an annuitant neither answers nor requests a hearing within the time permitted, or answers but fails to request a hearing, the Associate Director shall decide the case on the basis of the administrative record, including the notice and any documents, affidavits, or other relevant evidence. The decision of the Associate Director shall (1) be served on the annuitant or his counsel by certified or registered mail; (2) include a statement of findings and conclusions with the reasons therefor; and (3) become the final decision of OPM unless the case is appealed or reviewed pursuant to §831.1111.

[34 FR 17618, Oct. 31, 1969]

§831.1106 Hearing.

(a) OPM's hearing examiner shall preside at any hearing held pursuant to this subpart, unless OPM designates another presiding officer. The presiding officer shall fix the time and place of the hearing after giving due consideration to the convenience of the annuitant. The hearing is open to the public unless otherwise ordered by OPM or the presiding officer.

(b) The hearing shall be recorded by an official reporter designated by OPM. OPM shall furnish to the annuitant, without charge, a copy of the transcript of the hearing.

§831.1107 Powers of presiding officers.

The presiding officer may:

(a) Administer oaths and affirmations;

(b) Rule upon offers of proof and receive relevant evidence;

(c) Fix the time and place of hearing;

(d) Regulate the course of the hearing;

(e) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing;

(f) Hold conferences for simplification of the issues, or for any other purpose;

(g) Dispose of procedural requests or similar matters;

(h) Authorize the filing of briefs and set the time for filing;

(i) Make initial decisions; and

(j) Take any other action in the course of the proceeding consistent with the purposes of this subpart.

§831.1108 Witnesses.

(a) Witnesses shall testify under oath or affirmation and shall be subject to cross-examination.

(b) Each party is responsible for securing the attendance of his witnesses. OPM has no power of subpena in these cases.

§831.1109 Evidence.

(a) Rules of evidence are not strictly applied, but the presiding officer shall exclude irrelevant or unduly repetitious evidence.

(b) Each exhibit of a documentary character shall be submitted to the presiding officer, duly marked, and made a part of the record. An exhibit does not become evidence unless received in evidence by the presiding officer.

§831.1110 Initial decision.

(a) Upon completion of a hearing pursuant to §831.1106, the presiding officer shall make and file an initial decision, a copy of which shall be served on each party or counsel by certified or registered mail.

(b) The initial decision shall include a statement of findings and conclusions, with the reasons therefor, and shall be based upon a consideration of the entire record.

(c) The initial decision shall become the final decision of OPM unless the case is appealed or reviewed pursuant to §831.1111.

§831.1111 Appeal and review.

(a) An appeal from an initial decision, or a decision of the Associate Director under §831.1105(b), may be made to OPM, with service on the other party, within 30 calendar days from the date of the decision. An appeal shall be in writing and shall state plainly and concisely the grounds for the appeal, with a specific reference to the record when issues of fact are raised. The other party may file an opposition to the appeal within 15 days after service on him. On notice to the parties, OPM may extend the time limits prescribed in this paragraph.

(b) Within 30 calendar days from the date of an initial decision or a decision of the Associate Director, OPM, on its own motion, may direct that the record be certified to it for review.

[34 FR 17618, Oct. 31, 1969]

§831.1112 Final decision.

(a) On appeal from or review of an initial decision or a decision of the Associate Director, OPM shall decide the case on the record. The record shall include the notice, answer, transcript of testimony and exhibits, briefs, the initial decision or the decision of the Associate Director, the papers filed in connection with the appeal and opposition to the appeal and all other papers, requests and exceptions filed in the proceeding.

(b) OPM may adopt, modify, or set aside the findings, conclusions, or order of the presiding officer or the Associate Director.

(c) The final decision of OPM shall be in writing and include a statement of findings and conclusions, the reasons or basis therefor, and an appropriate order, and shall be served on the parties.

[33 FR 12498, Sept. 4, 1968, as amended at 34 FR 17618, Oct. 31, 1969]

Subpart L—Disability Retirement

SOURCE: 58 FR 49179, Sept. 22, 1993, unless otherwise noted.

§831.1201 Introduction.

This subpart sets out the requirements an employee must meet to qualify for disability retirement, how an employee applies for disability retirement, how an agency applies for disability retirement for an employee, when a disability annuity ends, an individual's retirement rights after the disability annuity ends, and the effect of reemployment in the Federal service on a disability annuitant.

§831.1202 Definitions.

As used in this subpart—

Accommodation means an adjustment made to an employee's job or work environment that enables the employee to perform the duties of the position. Reasonable accommodation may include modifying the worksite; adjusting the work schedule; restructuring the job; obtaining or modifying equipment or devices; providing interpreters, readers, or personal assistants; and reassigning or retraining the employee.

Basic pay means the pay an employee receives that is subject to civil service retirement deductions. The definition is the same as the definition of ''basic pay'' under 5 U.S.C. 8331(3).

Commuting area means the geographic area that usually constitutes one area for employment purposes. It includes a population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily from home to work in their usual employment.

Disabled and *disability* mean unable or inability, because of disease or injury, to render useful and efficient service in the employee's current position, or in a vacant position in the same agency at the same grade or pay level for which the individual is qualified for reassignment.

Examination and *reexamination* mean an evaluation of evidentiary material related to the question of disability. Unless OPM exercises its choice of a physician, the cost of providing medical documentation rests with the employee or disability annuitant, who must provide any information OPM needs to make an evaluation.

Medical condition means a health impairment resulting from a disease or injury, including a psychiatric disease. This is the same definition of ''medical condition'' as in § 339.104 of this chapter.

Medical documentation and *documentation of a medical condition* mean a statement from a licensed physician or other appropriate practitioner that provides information OPM considers necessary to determine an individual's entitlement to benefits under this subpart. Such a statement must meet the criteria set forth in § 339.104 of this chapter.

Permanent position means an appointment without time limitation.

Physician and *practitioner* have the same meanings given in § 339.104 of this chapter.

Qualified for reassignment means able to meet the minimum requirements for the grade and series of the vacant position in question.

Same grade or pay level means, in regard to a vacant position within the same pay system as the employee currently occupies, the same grade and an equivalent amount of basic pay. A position under a different pay system or schedule is at the ''same pay level'' if the representative rate, as defined in § 532.401 of this chapter, equals the representative rate of the employee's current position.

Useful and efficient service means (1) acceptable performance of the critical or essential elements of the position; and (2) satisfactory conduct and attendance.

Vacant position means an unoccupied position of the same grade or pay level and tenure for which the employee is qualified for reassignment that is located in the same commuting area and is serviced by the same appointing authority of the employing agency. The vacant position must be full time, unless the employee's current position is less than full time, in which case the vacant position must have a work schedule of no less time than that of the current position. In the case of an employee of the United States Postal Service, a vacant position does not include a position in a different craft or a position to which reassignment would be inconsistent with the terms of a collective bargaining agreement covering the employee.

§ 831.1203 Basic requirements for disability retirement.

(a) Except as provided in paragraph (b) of this section, the following conditions must be met for an individual to be eligible for disability retirement:

(1) The individual must have completed at least 5 years of civilian service that is creditable under the Civil Service Retirement System.

(2) The individual must, while employed in a position subject to the Civil

Service Retirement System, have become disabled because of a medical condition, resulting in a service deficiency in performance, conduct, or attendance, or if there is no actual service deficiency, the disabling medical condition must be incompatible with either useful and efficient service or retention in the position.

(3) The disabling medical condition must be expected to continue for at least 1 year from the date the application for disability retirement is filed.

(4) The employing agency must be unable to accommodate the disabling medical condition in the position held or in an existing vacant position.

(5) An application for disability retirement must be filed with the Office of Personnel Management (OPM) before the employee separates from service, or within 1 year thereafter. This time limit can be waived only in certain instances explained in §831.1204.

(b) A National Guard technician who is retiring under the special provisions of 5 U.S.C. 8337(h) is not required to meet the conditions given in paragraphs (a) (2), (3), and (4) of this section. Instead, the individual must be disabled for membership in the National Guard or for the military grade required to hold his or her position and meet the other eligibility requirements under 5 U.S.C. 8337(h)(2).

§831.1204 Filing disability retirement applications: General.

(a) An employee or Member who is retiring on account of disability must file an application for annuity with OPM before separation from the service or within 1 year thereafter. OPM may waive this time limit if the employee or Member was mentally incompetent on the date of separation or within 1 year thereafter; in this case the individual or his or her representative may file the application with OPM within 1 year after the date the individual regains competency or a court appoints a fiduciary, whichever is earlier.

(b) An application for annuity which is on an inappropriate form, or on an appropriate form inadequately or incompletely executed, and which is received by OPM within 1 year of separation may be accepted as an informal claim for purposes of meeting the timeliness requirement.

(c) An employee's application for disability retirement will not preclude or delay any other appropriate personnel action by the employing agency. However, an agency may properly consider the existence of a pending disability retirement application when deciding whether and when to take other personnel actions.

§831.1205 Agency-filed disability retirement applications.

(a) *Basis for filing an application for an employee.* An agency must file an application for disability retirement of an employee who has 5 years of civilian Federal service when all of the following conditions are met:

(1) The agency has issued a decision to remove the employee;

(2) The agency concludes, after its review of medical documentation, that the cause for unacceptable performance, attendance, or conduct is disease or injury;

(3) The employee is institutionalized, or the agency concludes , based on a review of medical and other information, that the employee is incapable of making a decision to file an application for disability retirement;

(4) The employee has no personal representative or guardian; and

(5) The employee has no immediate family member who is willing to file an application on his or her behalf.

(b) *Agency procedures.* (1) When an agency issues a decision to remove an employee and not all of the conditions described in paragraph (a) of this section have been satisfied, but the removal is based on reasons apparently caused by a medical condition, the agency must advise the employee in writing of his or her possible eligibility for disability retirement.

(2) If the agency is filing a disability retirement application on the employee's behalf, the agency must inform the employee in writing at the same time it informs the employee of its removal decision, or at any time before the separation is effected, that—

(i) The agency is submitting a disability retirement application on the employee's behalf to OPM;

(ii) The employee may review any medical information in accordance with the criteria in §294.106(d) of this chapter; and

(iii) The action does not affect the employee's right to submit a voluntary application for retirement under this part.

(3) When an agency submits an application for disability retirement to OPM on behalf of an employee, it must provide OPM with copies of the decision to remove, the medical documentation, and any other documents needed to show that the cause for removal is due to a medical condition. Following separation, the agency must provide OPM with a copy of the documentation of the separation.

(c) *OPM procedures.* (1) OPM will not act on any application for disability retirement filed by an agency on behalf on an employee until it receives the appropriate documentation of the separation. When OPM receives a complete application for disability retirement under this section, it will notify the former employee that it has received the application, and that he or she may submit medical documentation. OPM will determine entitlement to disability benefits under §831.1206.

(2) OPM will cancel any disability retirement when a final decision of an administrative authority or court reverses the removal action and orders the reinstatement of an employee to the agency rolls.

§831.1206 Evidence supporting entitlement to disability benefits.

(a) *Evidence to support disability retirement application.* (1) Before OPM determines whether an individual meets the basic requirements for disability retirement under §831.1203, an applicant for disability retirement or the employing agency must submit to OPM the following forms included in Standard Form 2824, ''Documentation in Support of Disability Retirement Application:''

(i) Standard Form 2824A—''Applicant's Statement;''

(ii) Standard Form 2824B—''Supervisor's Statement;''

(iii) Standard Form 2824D—''Agency Certification or Reassignment and Accommodation Efforts;'' and

(iv) Standard Form 2824E—''Disability Retirement Application Checklist.''

(2) Standard Form 2824C—''Physician's Statement'' and the supporting medical documentation may be submitted directly to OPM.

(3) The applicant, or the employing agency, must also obtain and submit additional documentation as may be required by OPM to determine entitlement to the disability retirement benefit.

(4) Refusal by the applicant, physician, or employing agency to submit the documentation OPM has determined is necessary to decide eligibility for disability retirement is grounds for disallowance of the application.

(b) *OPM procedures for processing a disability retirement application.* (1) OPM will review the documentation submitted under paragraph (a) of this section in support of an application for disability retirement to determine whether the applicant has met the conditions stated in §831.1203 of this part. OPM will issue its decision in writing to the applicant and to the employing agency. The decision will include a statement of the findings and conclusions, and an explanation of the right to request consideration under §831.109 of this part.

(2) OPM may rescind a decision to allow an application for disability retirement at any time if there is an indication of error in the original decision, such as fraud or misstatement of fact, or if additional medical documentation is needed. The written notification will include a statement of the findings and conclusions, and an explanation of the right to request reconsideration under §831.109 of this part.

(c) *Medical examination.* OPM may offer the applicant a medical examination when it determines that additional medical evidence is necessary to make a decision on an application. The medical evaluation will be conducted by a medical officer of the United States or a qualified physician or board of physicians designated by OPM. The applicant's refusal to submit to an examination is grounds for disallowance of the application.

(d) *Responsibility for providing evidence.* It is the responsibility of the applicant to obtain and submit documentation that is sufficient for OPM to

determine whether there is a service deficiency, caused by disease or injury, of sufficient degree to preclude useful and efficient service, or a medical condition that warrants restriction from the critical task or duties of the position held. It is also the responsibility of the disability annuitant to obtain and submit evidence OPM requires to show continuing entitlement to disability benefits.

§831.1207 Withdrawal of disability retirement applications.

(a) OPM will honor, without question, an applicant's request to withdraw an employee-filed disability retirement application if it receives the withdrawal request before the employing agency has separated the current employee, or, if the employee has already separated from the service, the withdrawal request is received before the official notice of approval has been issued by OPM. Similarly, OPM will honor, without question, an agency's request to withdraw an agency-filed disability retirement application if it receives the withdrawal request before the employee has separated from the service. Once the request to withdraw the application is accepted, an applicant must reapply to receive any further consideration.

(b) Withdrawal of a disability retirement application does not ensure the individual's continued employment. It is the employing agency's responsibility to determine whether it is appropriate to continue to employ the individual.

(c) OPM considers voluntary acceptance of a permanent position in which the employee has civil service retirement coverage, including a position at a lower grade or pay level, to be a withdrawal of the employee's disability retirement application. The employing agency must notify OPM immediately when an applicant for disability retirement accepts a position of this type.

(d) OPM also considers a disability retirement application to be withdrawn when the agency reports to OPM that it has reassigned an applicant or an employee has refused a reassignment to a vacant position, or the agency reports to OPM that it has successfully accommodated the medical condition in the employee's current position. Placement consideration is limited only by agency authority and can occur after OPM's allowance of the application up to the date of separation for disability retirement. The employing agency must notify OPM immediately if any of these events occur.

(e) After OPM allows a disability retirement application and the employee is separated, the application cannot be withdrawn. However, an individual entitled to a disability annuity may decline to accept all or any part of the annuity under the waiver provisions of 5 U.S.C. 8345(d) or request to be found medically recovered under §831.1208(e) of this part.

§831.1208 Termination of disability annuity because of recovery.

(a) Each annuitant receiving disability annuity from the Fund shall be examined under the direction of OPM at the end of 1 year from the date of disability retirement and annually thereafter until the annuitant becomes 60 years of age unless the disability is found by OPM to be permanent in character. OPM may order a medical or other examination at any time to determine the facts relative to the nature and degree of disability of the annuitant. Failure to submit to reexamination shall result in suspension of annuity.

(b) A disability annuitant may request medical reevaluation under the provisions of this section at any time. OPM will reevaluate the medical condition of disability annuitants age 60 or over only on their own request.

(c) Recovery based on medical documentation. When an examination or reevaluation shows that a disability annuitant has medically recovered from the disability, OPM will terminate the annuity effective on the first day of the month beginning 1 year after the date of the medical examination showing recovery.

(d) Recovery based on reemployment by the Federal Government. Reemployment by an agency at any time before age 60 is evidence of recovery if the reemployment is in a permanent position at the same or higher grade or pay level as the position from which the

disability annuitant retired. The permanent position must be full-time unless the position the disability annuitant occupied immediately before retirement was less than full-time, in which case the permanent position must have a work schedule of no less time than that of the position from which the disability annuitant retired. In this instance, OPM needs no medical documentation to find the annuitant recovered. Disability annuity payments will terminate effective on the first day of the month following the month in which the recovery finding is made under this paragraph.

(e) Recovery based on a voluntary request. OPM will honor a written and signed statement of medical recovery voluntarily filed by a disability annuitant when the medical documentation on file does not demonstrate that the annuitant is mentally incompetent. OPM needs no other documentation to find the annuitant recovered. Disability annuity payments will terminate effective on the first day of the month beginning 1 year after the date of the statement. A disability annuitant can withdraw the statement only if the withdrawal is received by OPM before annuity payments terminate.

(f) When an agency reemploys a recovered disability annuitant at any grade or rate of pay within the 1-year period pending termination of the disability retirement benefit under paragraph (c), (d), or (e) of this section, OPM will terminate the annuity effective on the date of reemployment.

§ 831.1209 Termination of disability annuity because of restoration to earning capacity.

(a) *Restoration to earning capacity*. If a disability annuitant is under age 60 on December 31 of any calendar year and his or her income from wages or self-employment or both during that calendar year equal at least 80 percent of the current rate of basic pay of the position occupied immediately before retirement, the annuitant's earning capacity is considered to be restored. The disability annuity will terminate on the June 30 after the end of the calendar year in which earning capacity is restored. When an agency reemploys a restored disability annuitant at any grade or rate of pay within the 180-day waiting period pending termination of the disability retirement benefit, OPM will terminate the annuity effective on the date of reemployment.

(b) *Current rate of basic pay for the position occupied immediately before retirement.* (1) A disability annuitant's income for a calendar year is compared to the gross annual rate of basic pay in effect on December 31 of that year for the position occupied immediately before retirement. The income for most disability annuitants is based on the rate for the grade and step which reflects the total amount of basic pay (both the grade and step and any additional basic pay) in effect on the date of separation from the agency for disability retirement. Additional basic pay is included subject to the premium pay restrictions of 5 U.S.C. 5545 (c)(1) and (c)(2). A higher grade and step will be established if it results from using either the date of application for disability retirement or the date of reasonable accommodation, as adjusted by any increases in basic pay that would have been effected between each respective date and the date of final separation. Use of these two alternative pay setting methods is subject to paragraph (b)(1) (i) and (ii) of this section. The highest grade and step established as a result of setting pay under the normal method and the two alternative methods is designated as the rate of basic pay for the position occupied immediately before retirement and applies only to restoration to earning capacity decisions. In cases involving use of either of the two alternative pay setting methods, the determination of the rate of basic pay for the position occupied immediately before retirement is made by the employing agency at the time the disability retirement is allowed. OPM must review the rate so determined to establish whether the correct rate has been established, and will inform the employee of the proper rate at the time the disability annuity is awarded. This rate of basic pay becomes the basis for all future earning capacity determinations.

(i) The ''date of application for disability retirement'' is the date the application is signed by the authorized

official of the employing agency immediately before forwarding the application to OPM.

(ii) The ''date of reasonable accommodation'' is the date of the employing agency's notice of reasonable accommodation to an employee's medical condition (as a result of its review of medical documentation) which results in a reduction in the rate of basic pay. The use of the date of reasonable accommodation to establish the rate of basic pay for the position held at retirement is subject to the following conditions:

(A) The date of the employing agency's notice to provide accommodation is no more than 1 year before the date the disability retirement application is signed by the authorized official in the employing agency immediately before forwarding it to OPM; and

(B) A complete record of the date of the personnel decision, the medical documentation substantiating the existence of the medical condition, and the justification for the accommodation is established in writing and included at the time the agency submits the application for disability retirement. OPM will review the record to determine whether the medical documentation demonstrates that the medical condition existed at the time of the accommodation and warranted the accommodation made.

(2) In the case of an annuitant whose basic pay rate on the date determined under paragraph (b)(1) of this section did not match a specific grade and step in a pay schedule:

(i) For those retiring from a merit pay position, a position for which a special pay rate is authorized (except as provided in paragraph (b)(2)(ii) of this section), or any other position in which the rate of basic pay is not equal to a grade and step in a pay schedule, the grade and step will be established for this purpose at the lowest step in the pay schedule grade that is equal to or greater than the actual rate of basic pay payable. This rule will not be applied when the rate exceeds that of the schedule applicable to the organization from which the individual retired, when there is no existing apposite schedule with grades and steps, or in other organizations which are excluded from coverage of schedules with grades and steps, as in the case of pay systems using pay bands.

(ii) For those retiring with a retained rate of basic pay or from a position for which a special pay rate is in effect but whose rate of basic pay exceeds the highest rate payable in the pay schedule grade applicable to the position held, the grade and step is established for this purpose in the grade in the schedule that is closest to the grade of the position held and within which the amount of the retained pay falls. The step is established for this purpose at the lowest step in that grade which equals or exceeds the actual rate of pay payable.

(iii) When the pay system under which an annuitant retired has been either modified or eliminated since the individual retired, the individual will be treated as if he or she had been employed at their retirement grade and step at the time of the system change, and will be deemed to have been placed under the new system using whatever rules would have been applicable at that time. This will only apply when a pay system has been abolished or modified, and not when the grade and step of a position has been modified subsequent to retirement by reclassification or other action, in which case the grade and step in effect at the time of retirement will control.

(iv) If using the above rules it is not possible to set a grade and step for computing the current rate of pay, then if possible the current rate of pay will be set using the relative position in the range of pay applicable to the position from which the individual retired. For example, if at the time of retirement the rate of pay was $75,000 in a range from $70,000 to $90,000, for all future determinations, the current rate of pay would be 25% up the new pay range from the bottom. If the new range was $96,000 to $120,000, then the new current rate of pay would be $102,000 ($96,000 plus 0.25 times $24,000 ($120,000 minus $96,000)).

(v) In those cases, such as of some former Congressional staff employees and others whose pay is not set under a formal system, where none of the above guidelines will yield a current rate of pay, OPM will ascertain the

current rate of pay after consultation with the former employing organization, or successor organization.

(3) For annuitants retiring from the United States Postal Service, only cost-of-living allowances subject to civil service retirement deductions are included in determining the current rate of basic pay of the position held at retirement.

(c) *Income.* Earning capacity for the purposes of this section is demonstrated by an annuitant's ability to earn post-retirement income in a calendar year through personal work efforts or services. The total amount of income from all sources is used to determine earning capacity. This includes income received as gross wages from one or more employers, net earnings from one or more self-employment endeavors, and deferred income that is earned in a calendar year. In determining an annuitant's income for a calendar year, the following considerations apply:

(1) There are two sources of income: wages and self-employment income. All income which is subject to Federal employment taxes (i.e., social security or Medicare taxes) or self-employment taxes constitutes earned income. In addition, any other income as described in this section also constitutes earned income. The determination of whether a disability annuitant earns wages as an employee of an organization or earns income as a self-employed person is based on the usual common law rules applicable in determining the existence of an employer-employee relationship. Whether the relationship exists under the usual common law rules will be determined by OPM after the examination of the particular facts of each case.

(2) Income earned from one source is not offset by losses from another source. Income earned as wages is not reduced by a net loss from self-employment. The net income from each self-employment endeavor is calculated separately, and the income earned as net earnings from one self-employment endeavor is not reduced by a net loss from another self-employment endeavor. The net incomes from each separate self-employment endeavor are added together to determine the total amount of income from self-employment for a calendar year.

(3) Only income earned from personal work efforts or services is considered in determining earning capacity. All forms of non-work-related unearned income are excluded. Paragraph (f) of this section includes a representative list of the types of unearned income that are not considered.

(4) Income earned in a calendar year may only be reduced by certain self-employment business expenses, as provided in paragraph (e) of this section; job-connected expenses incurred because of the disabling condition, as provided in paragraph (g) of this section; and the return from investment allowance, as provided in paragraph (h) of this section. Once earned, income cannot be reduced by any other means. Thus, income cannot be lowered by such means as leave buy-back provisions, conversion of wages for paid time to leave without pay or a similar non-paid status, reductions in wages attributable to cash shortages or product losses, etc.

(5) For determining annual income from wages or self-employment or both, income is earned in the calendar year the annuitant actually renders the personal work effort or service and either actually or constructively receives the remuneration, except as provided under paragraph (c)(7) of this section. For this purpose, income paid on a regular basis (i.e., on a weekly, biweekly, monthly or similar pay period basis) will be deemed earned in the year in which payment is made in the regular course of business.

(6) Deferred income is included as income in the calendar year in which it is constructively received. Income is constructively received when it is credited, set apart, or otherwise made available so that the annuitant may draw upon it at any time, or could draw upon it during the calendar year if the annuitant had given notice of the intent to do so. Deferred income includes all earnings, whether in the form of cash or property or applied to provide a benefit for the employee, which are subject to the disability annuitant's designation or assignment. Usually, the earnings are set aside by a salary-reduction agreement, a deferred

compensation arrangement, or the designation of specific earnings amounts towards the purchase of non-taxable employee fringe benefits. Thus, any earnings for which the individual has the opportunity to adjust the amount of income received in a calendar year by controlling the remuneration of voluntarily giving up the right to control the remuneration, regardless of whether a written instrument exists, are income for earning capacity purposes.

(7) The Internal Revenue Code provides exceptions to the general rule on constructive receipt for certain deferred compensation plans which, by their design, defer receipt of income for Federal employment tax purposes as of the later of when services are performed or when there is no substantial risk of forfeiture of the rights to such amount. Even though these special deferred compensation plans defer the constructive receipt of the income for tax purposes to future years beyond the year in which the income is actually earned, the income reflects earning capacity. Therefore, employer contributions and employee payments to these special deferred compensation plans are considered income in the calendar year in which the services are performed, even though the Internal Revenue Code may exclude these contributions and payments from income for tax purposes.

(d) *Wages.* For purposes of earning capacity determinations, the term ''wages'' means the gross amount of all remuneration for services performed by an employee for his or her employer, unless specifically excluded herein, before any deductions or withholdings.

(1) The name by which the remuneration for services is designated is immaterial. Remuneration includes but is not limited to one-time or recurring—

(i) Base salary or pay; tips; commissions; professional fees; honoraria; bonuses and gift certificates of any type; golden parachute payments; payments for any non-work periods, such as vacation, holiday, or sick pay; pay advances; overtime pay; severance pay; dismissal pay; termination pay; and back pay;

(ii) Deferred income, within the meaning of paragraphs (c) (6) and (7) of this section, or other employer contributions or payments in an arrangement in which the employee has the opportunity (whether exercised or not) to adjust income by recovering the contributions or payments during the calendar year in which earned, for general discretionary income purposes;

(iii) Non-cash wages or payment of in-kind benefits, such as shares of stock in the business, real or personal property, stock in trade, inventory items, goods, lodging, food, and clothing. The valuation for all non-cash wages or other in-kind benefits is determined in a manner consistent with the fair value standards that appear in the Social Security Administration's regulations at 20 CFR 404.1041(d).

(2) Any amount offset or deducted under 5 U.S.C. 8344 is treated as wages if the annuity continues while the annuitant is reemployed by the Federal Government.

(3) As a general rule, remuneration as wages does not include any contribution, payment, benefits furnished, or service provided by an employer in any of the following areas:

(i) The general retirement system established by the employer for its employees, usually either a qualified pension, profit-sharing, stock bonus plan, or a qualified annuity contract plan;

(ii) Medical or hospitalization health benefit plans;

(iii) Life insurance plans;

(iv) Sickness or accident disability pay beyond 6 months of illness, or workers' compensation payments;

(v) The value of meals and lodgings provided at the convenience of the employer;

(vi) Moving expenses;

(vii) Educational assistance programs;

(viii) Dependent care assistance programs;

(ix) Scholarships and fellowship grants;

(x) De minimis fringe benefits, such as items of merchandise given by the employer at holidays which are not readily convertible into cash and courtesy discounts on company products offered not as remuneration for services performed but as a means of promoting good will;

(xi) Qualified group legal services plans;

(xii) Uniforms and tools supplied by the employer, including employer-provided allowances for such items, for the exclusive use by the employee on the job; and

(xiii) Amounts that an employer pays the individual specifically, either as advances or reimbursements, for traveling or other ordinary and necessary expenses incurred, or reasonably expected to be incurred in the employer's business.

(4) However, there are two exceptions to this general rule:

(i) When it is provided under circumstances in which either a salary reduction or deferral agreement is used (whether evidenced by a written instrument or otherwise); or

(ii) When the employee had the opportunity (whether exercised or not) to elect to receive the cash value, whether in the form of money or personal or real property, of the employer-provided amount or service.

(e) *Self-employment income.* (1) Self-employment income is the remuneration that is received as an independent contractor, either as

(i) A sole proprietor of a business or farm;

(ii) A professional in one's own practice; or

(iii) A member of a partnership or corporation, as these terms are defined by the Internal Revenue Code, and regardless of whether the business entity is operated for profit.

(2) The term ''net earnings'' from self-employment in a business enterprise means the gross revenue to the business endeavor from all sources before any other deductions or withholdings, minus

(i) Allowable business expenses, as provided in paragraph (e)(3) of this section;

(ii) Any job-connected disability expenses, as provided in paragraph (g) of this section; and

(iii) Any return from investment allowance, as provided in paragraph (h) of this section.

(3) Certain expenses of a self-employed business entity may be offset from the gross revenue from all sources of that self-employed business in determining the amount of net earnings for a particular calendar year. Expenses which may be deducted are only those items and costs which are permitted by the Internal Revenue Code for income tax purposes as ordinary and necessary to the operation of the business. However, expenses incurred on behalf of the disability annuitant may not be deducted, regardless of whether they are permitted by the Internal Revenue Code. These expenses that are incurred but cannot be deducted include the costs for wages paid to the individual, interest earnings, guaranteed payments, dividends, employee benefits, pension plans, and salary reduction or deferral plans. Also, self-employed disability annuitants may not deduct the costs of other withdrawals or expenses which are not used solely for business purposes. Examples of items that cannot be deducted if used at all for personal use by the self-employed disability annuitant include personal property items, such as automobiles and boats; real property, such as vacation property or residences; and memberships, dues, or fees for professional associations or public or private organizations or clubs.

(4) Fees paid to an annuitant as a director of a corporation are a part of net earnings from self-employment.

(f) *Income not included.* Other types of income not considered in determining earning capacity include—

(1) Investment income, such as interest or dividends from savings accounts, stocks, personal loans or home mortgages held, unless the disability annuitant receives the return from capital investment in the course of his or her trade or business;

(2) Capital gains from sales of real or personal property that the disability annuitant owns, unless received in the course of his or her trade or business:

(3) Rents or royalties, unless received in the course of his or her trade or business;

(4) Distributions from pension plans, annuity plans, Individual Retirement Accounts (IRA's), Simplified Employee Benefit-IRA's (SEP–IRA's), Keogh Accounts, employee stock ownership plans, profit sharing plans, or deferred income payments that are received by the annuitant in any year after the calendar year in which the funds were contributed to the plan;

(5) Income earned before the commencing date of civil service retirement annuity payments;

(6) Scholarships or fellowships;

(7) Proceeds from life insurance, inheritances, estates, trusts, endowments, gifts, prizes, awards, gambling or lottery winnings, and amounts received in court actions whether by verdict or settlement, unless received in the course of their trade or business;

(8) Unemployment compensation under State or Federal law, supplemental unemployment benefits, or workers' compensation:

(9) Alimony, child support, or separate maintenance payments received;

(10) Pay for jury duty; and

(11) Entitlement payments from other Federal agencies, such as benefits from the Social Security Administration or the Veterans Administration, Railroad Retirement System retirement pay, or military retirement pay.

(g) *Job-connected expenses incurred because of the disabling condition may be deducted from income.* (1) Job-connected expenses deductible from income for purposes of determining earning capacity are those expenses that are primarily for and essential to the annuitant's occupation or business and are directly connected with or result from the disability for which the disability annuity was allowed.

(2) The determination of whether a job-connected expense may be deducted from income is governed by the following considerations:

(i) The expense must be directly attributable to the disability and must be one which would not have been incurred in the absence of the annuitant working in his or her business or occupation. Expenses incurred for the preservation of the annuitant's health, alleviation of his or her physical or mental discomfort, or other expenses of an employed person cannot be deducted.

(ii) The disability must be of such severity that it requires the annuitant to use special means of transportation, services, or equipment to perform the duties of the occupation or business. Examples of such disabilities include blindness, paraplegia, multiple sclerosis, and cerebral hemorrhage. Claims involving transportation or equipment may be deducted only in the amount normally allowed for business expenses or as depreciation by the Internal Revenue Service for Federal income tax purposes.

(iii) Claims involving services performed by a family member or other individual directly employed by the annuitant may be deducted only if a true employer-employee relationship exists between the annuitant and the employed individual, and the amount claimed as an expense does not exceed the local market rate of payment to individuals who provide similar services. It is the responsibility of the annuitant to provide evidence demonstrating that an employer-employee relationship exists, and what the local market rate is for such services. For the purpose of this paragraph, to establish that a true employer-employee relationship exists, the annuitant must provide evidence that all statutorily mandated employment requirements are met, including (but not limited to) income tax withholdings, FICA tax deductions and payments, and unemployment insurance. If the annuitant fails to provide evidence of the local market rate for such services, payments may be deducted only if the amount claimed does not exceed the Federal minimum hourly rate in effect on December 31 of the calendar year in which claimed. Absent evidence that it is customary and regular practice in the local labor market to work more hours per week, payment may not be deducted for services provided by an individual in excess of 40 hours a week.

(3) A job-connected expense can be deducted only in the calendar year in which paid.

(4) Claims for items used for both personal and job-related purposes may be deducted only by the prorated amount attributable to the job-related use.

(5) A job-connected expense may not be deducted from income from self-employment if the expense has already been deducted as a business expense.

(6) It is the responsibility of the annuitant claiming job-connected expense to provide adequate documentation to substantiate the amount claimed. Adequate documentation will

generally include the following information:

(i) Written recommendation of a physician, vocational rehabilitation specialist, occupational health resource specialist, or other similar professional specialist that the retiree should use the transportation, services, or equipment;

(ii) A description of the item and an explanation of its use by the annuitant in the performance of his or her occupation or business;

(iii) A copy of the receipt of purchase, bill of sale, or leasing agreement for the item claimed with the date, duration of the agreement, and agreed upon price clearly specified;

(iv) A complete supporting explanation of how the amount claimed for the job-connected expense has been calculated; and

(v) An explanation of the circumstances and calculation of the prorated cost of the item if used for both personal and business use.

(h) *Return from investment allowance.* A disability annuitant may reduce the net earnings from a self-employed business endeavor (adjusted for any interest paid on borrowed capital) by 6 percent of his or her capital investment in that business, owned or borrowed. The capital investment's value is its fair-market value as of December 31 of the year for which the income is being reported.

(i) *Requirement to report income.* All disability annuitants who, on December 31 of any calendar year, are under age 60 must report to OPM their income from wages or self-employment or both for that calendar year. Each year as early as possible, OPM will send a form to annuitants to use in reporting their income from the previous calendar year. The form specifies the date by which OPM must receive the report. OPM will determine entitlement to continued annuity on the basis of the report. If an annuitant fails to submit the report, OPM may stop annuity payments until it receives the report.

§ 831.1210 Annuity rights after a disability annuity terminates.

(a) An individual is entitled to an immediate annuity when the disability annuity stops because of recovery or restoration to earning capacity if the individual is not reemployed in a position subject to civil service retirement coverage and—

(1) Is at least age 50 when the disability annuity stops and had 20 or more years of service at the time of retirement for disability; or

(2) Had 25 or more years of service at the time of retirement for disability regardless of age.

(b) An individual whose annuity stops because of recovery or restoration to earning capacity and who is not eligible for an immediate annuity under paragraph (a) of this section, is eligible for a deferred annuity upon reaching age 62.

(c) The disability annuity of an individual whose annuity stopped because of recovery or restoration to earning capacity may be reinstated under § 831.1212 of this part.

§ 831.1211 Reinstatement of disability annuity.

(a) When a disability annuity stops, the individual must again prove that he or she meets the eligibility requirements in order to have the annuity reinstated.

(b) When a recovered disability annuitant under age 62 whose annuity was terminated because he or she was found recovered on the basis of medical evidence (§ 831.1208(b)), is not reemployed in a position subject to civil service retirement coverage, and, based on the results of a current medical examination, OPM finds that the individual's medical condition has worsened since the finding of recovery and that the original disability on which retirement was based has recurred, OPM will reinstate the disability annuity. The right to the reinstated annuity begins with the date of the medical examination showing that the disability recurred.

(c) OPM will reinstate the disability annuity of a recovered disability annuitant under age 62 whose annuity was terminated because he or she was found recovered on the basis of Federal reemployment (§ 831.1208(c)) when—

(1) The results of a current medical examination show that the disabling medical condition that was the basis of

the disability retirement continues to exist; and

(2) Within 1 year after the date of reemployment, this medical condition has again caused the individual to be unable to provide useful and efficient service, and the employee has been—

(i) Separated and not reemployed in a position subject to civil service retirement coverage; or

(ii) Placed in a position that results in a reduction in grade or pay below the grade from which the individual retired, or in a change to a non-permanent position. The right to the reinstated annuity begins with the date of the medical examination showing that the disabling medical condition continues to exist, but not earlier than the first day after separation, or the effective date of the placement in the position which results in a reduction in grade or pay or change to a non-permanent position.

(d) When a recovered disability annuitant under age 62 whose annuity was terminated because he or she was found recovered on the basis of a voluntary request (§831.1208(e)), is not reemployed in a position subject to civil service retirement coverage, and, based on the results of a current medical examination, OPM finds that the disability has recurred, OPM will reinstate the disability annuity. The right to the reinstated annuity begins with the date of the medical examination showing that the disability recurred, but not earlier than 1 year before the date the request for reinstatement is received by OPM.

(e) When a disability annuitant whose earning capacity has been restored but who is not reemployed in a position in which he or she is subject to civil service retirement coverage, and who (except in the case of a National Guard technician whose annuity was awarded under 5 U.S.C. 8337(h)), has not recovered from the disability for which retired, loses his or her earning capacity, as determined by OPM, before reaching age 62, OPM will reinstate the disability annuity. The reinstated annuity is payable from January 1 of the year following the calendar year in which earning capacity was lost. Earning capacity is lost if, during any calendar year, the individual's income from wages or self-employment or both is less than 80 percent of the current rate of basic pay of the position held at retirement.

(f) A reinstated annuity is the same type as the original annuity and is paid at the rate of annuity to which the annuitant was entitled on the date his or her disability annuity was last discontinued.

(g) Reinstatement of the disability annuity ends the right to any other annuity based on the same service, unless the annuitant makes a written election to receive the other annuity instead of the disability annuity.

(h) When OPM reinstates an employee's disability annuity, the agency must offset the employee's pay by the amount of annuity allocable to the period of employment, unless the annuitant is exempted from this requirement under the provisions of 5 U.S.C. 8344(i). The offset begins on the date of OPM's determination of eligibility for reinstatement. OPM must reduce any retroactive payment of annuity for a period of employment with an agency before that date by the amount of pay earned during that period.

(i) When an individual's annuity is terminated upon reemployment (subject to subchapter III of chapter 83, title 5, United States Code), OPM must determine the individual's future annuity rights under the law in effect at the date of his or her subsequent separation. If, upon separation from such reemployment, the individual does not meet the eligibility requirements under subchapter III of chapter 83, title 5, United States Code, for title to annuity based on such separation, OPM will resume payment of the terminated annuity at the rate last payable, unless payment is otherwise barred.

[58 FR 12498, Sept. 4, 1968. Redesignated at 59 FR 27214, May 26, 1994]

§831.1212 Administrative review of OPM decisions.

The right to administrative review of an initial decision of OPM is set forth in §831.109 of this part. The right to appeal a final decision of OPM to the Merit Systems Protection Board is set forth in §831.110 of this part.

[58 FR 12498, Sept. 4, 1968. Redesignated at 59 FR 27214, May 26, 1994]

Subpart M—Collection of Debts

SOURCE: 50 FR 34664, Aug. 27, 1985, unless otherwise noted.

§ 831.1301 Purpose.

This subpart prescribes procedures to be followed by the Office of Personnel Management (OPM) , which are consistent with the Federal Claims Collection Standards (FCCS) (Chapter II of title 4, Code of Federal Regulations), in the collection of debts owed to the Civil Service Retirement and Disability Fund.

§ 831.1302 Scope.

This subpart covers the collection of debts due the Civil Service Retirement and Disability Fund, with the exception of the collection of court-imposed judgments, amounts referred to the Department of Justice because of fraud, and amounts collected from back pay awards in accordance with § 550.805(e)(2) of this chapter.

§ 831.1303 Definitions.

In this subpart—

Additional charges means interest, penalties, and/or administrative costs owed on a debt.

Annuitant means a retired employee or Member of Congress, spouse, widower, or child receiving recurring benefits under the provisions of subchapter III, chapter 83, of title 5, United States Code.

Compromise is an adjustment of the total amount of the debt to be collected based upon the considerations established by the FCCS (4 CFR part 103).

Consumer reporting agency has the same meaning provided in 31 U.S.C. 3701(a)(3).

Debt means a payment of benefits to an individual in the absence of entitlement or in excess of the amount to which an individual is properly entitled.

Delinquent has the same meaning provided in 4 CFR 101.2(b).

FCCS means the Federal Claims Collection Standards (Chapter II of title 4, Code of Federal Regulations).

Offset means to withhold the amount of a debt, or a portion of that amount, from one or more payments due the debtor. Offset also means the amount withheld in this manner.

Reconsideration means the process of reexamining an individual's liability for a debt based on—

(1) Proper application of law and regulation; and

(2) Correctness of the mathematical computation.

Repayment schedule means the amount of each payment and number of payments to be made to liquidate the debt as determined by OPM.

Retirement fund means the Civil Service Retirement and Disability Fund.

Voluntary repayment agreement means an alternative to offset that is agreed to by OPM and includes a repayment schedule.

Waiver is a decision not to recover a debt under authority of 5 U.S.C. 8346(b).

§ 831.1304 Processing.

(a) *Notice.* Except as provided in § 831.1305, OPM will, before starting collection, tell the debtor in writing—

(1) The reason for and the amount of the debt;

(2) The date on which the full payment is due;

(3) OPM's policy on interest, penalties, and administrative charges;

(4) If payment in full would create financial hardship to the debtor and offset is available, the types of payment(s) to be offset, the repayment schedule, the right to request an adjustment in the repayment schedule and the right to request a voluntary repayment agreement in lieu of offset;

(5) The individual's right to inspect and/or receive a copy of the Government's records relating to the debt;

(6) The method and time period (30 calendar days) for requesting reconsideration, waiver, and/or compromise and, in the case of offset, an adjustment to the repayment schedule;

(7) The standards used by OPM for determining entitlement to waiver and compromise;

(8) The right to a hearing by the Merit Systems Protection Board on a waiver request (if OPM's waiver decision finds the individual liable) in accordance with paragraph (c)(2) of this section; and

(9) The fact that a timely filing of a request for reconsideration, waiver

and/or compromise, or a later timely appeal of a waiver denial to the Merit Systems Protection Board, will stop collection proceedings, unless (i) failure to take the offset would substantially prejudice the Government's ability to collect the debt; and (ii) the time before the payment is to be made does not reasonably permit the completion of these procedures.

(b) *Requests for reconsideration, waiver, and/or compromise.* (1) If a request for reconsideration, waiver and/or compromise is returned to us by mail, it must be postmarked within 30 calendar days of the date of the notice detailed in paragraph (a) of this section. If a request for reconsideration, waiver, and/or compromise is hand delivered, it must be received within 30 calendar days of the date of the notice detailed in paragraph (a) of this section. OPM may extend the 30 day time limit for filing when individuals can prove that they: (i) Were not notified of the time limit and were not otherwise aware of it; or (ii) were prevented by circumstances beyond their control from making the request within the time limit.

(2) When a request for reconsideration, waiver, and/or compromise covered by this paragarph is properly filed before the death of the debtor, it will be processed to completion unless the relief sought is nullified by the debtor's death.

(3) Individuals requesting reconsideration, waiver, and/or compromise will be given a full opportunity to present any pertinent information and documentation supporting their position.

(4) An individual's request for waiver will be evaluated on the basis of the standards set forth in subpart N of this part. An individual's request for compromise will be evaluated on the basis of standards set forth in the FCCS (4 CFR part 103).

(c) *Reconsideration, waiver, and/or compromise decisions.* (1) OPM's decision will be based upon the individual's written submissions, evidence of record, and other pertinent available information.

(2) After consideration of all pertinent information, a written decision will be issued. The decision will state the extent of the individual's liability, and, for waiver and compromise requests, whether the debt will be waived or compromised. If the individual is determined to be liable for all or a portion of the debt, the decision will reaffirm or modify the conditions for the collection previously proposed under paragraph (a) of this section. The decision will state the individual's right to appeal to the Merit Systems Protection Board as provided by §1201.3 of this title, and, in the case of a denial of waiver, that a timely appeal will stop collection of the debt.

§831.1305 Collection of debts.

(a) *Means of collection.* Collection of a debt may be made by means of offset under §831.1306, or under any statutory provision providing for offset of money due the debtor from the Federal Government, or by referral to the Justice Department for litigation, as provided in §831.1306. Referral may also be made to a collection agency under the provisions of the FCCS.

(b) *Additional charges.* Interest, penalties, and administrative costs will be assessed on the debt in accordance with standards established in the FCCS at 4 CFR 102.13. Additional charges will be waived when required by the FCCS. In addition, such charges may be waived when OPM determines—

(1) Collection would be against equity and good conscience under the standards prescribed in §§831.1403 through 831.1405 of this part; or

(2) Waiver would be in the best interest of the United States.

(c) *Collection in installments.* Whenever feasible, debts will be collected in one lump sum. However, when the debtor is financially unable to pay in one lump sum of fails to respond to a demand for full payment and off-set is available, installment payments may be effected. The amount of the installment payments will be set in accordance with the criteria in 4 CFR 102.11.

(d) *Commencement of collection.* (1) Except as provided in paragraph (d)(2) of this section, collection will begin after the time limits for requesting further rights stated in §831.1304(a)(6) expire or OPM has issued decisions on all timely requests for those rights and the Merit Systems Protection Board has acted on any timely appeal of a waiver denial,

unless: (i) Failure to make an offset would substantially prejudice the Government's ability to collect the debt; and (ii) the time before the payment is to be made does not reasonably permit the completion of the proceedings in § 831.1304 or litigation. When offset begins without completion of the administrative review process, these procedures will be completed promptly, and amounts recovered by offset but later found not owed will be refunded promptly.

(2) The procedures identified in § 831.1304 will not be applied when the debt is caused by (i) a retroactive adjustment in the periodic rate of annuity or any deduction taken from annuity when the adjustment is a result of the annuitant's election of different entitlements under law, if the adjustment is made within 120 days of the effective date of the election; or (ii) interim, estimated payments made before the formal determination of entitlement to annuity, if the amount is recouped from the total annuity payable on the first day of the month following the last advance payment or the date the formal determination is made, whichever is later.

§ 831.1306 Collection by administrative offset.

(a) *Offset from retirement payments.* A debt may be collected in whole or in part from lump-sum retirement payment or recurring annuity payments.

(b) *Offset from other payments*—(1) *Administrative offset.* (i) A debt may be offset from other payments due the debtor or from other agencies in accordance with 4 CFR 102.3, except that offset from back pay awarded under the provisions of 5 U.S.C. 5596 (and 5 CFR 550.801 *et seq.*) will be made in accordance with § 550.805(e)(2) of this chapter.

(ii) In determining whether to collect claims by means of administrative offset after the expiration of the six year limitation provided in 5 U.S.C. 2415, the Director or his designee will determine the cost effectiveness of leaving a claim unresolved for more than 6 years. This decision will be based on such factors as the amount of the debt; the cost of collection; and the likelihood of recovering the debt.

(2) *Salary offset.* When the debtor is an employee, or a member of the Armed Forces or a reserve component of the Armed Forces, OPM may effect collection action by offset of the debtor's pay in accordance with 5 U.S.C. 5514 and 5 CFR 550.1101 *et seq.* Due process described in § 831.1304 will apply. The questions of fact and liability, and entitlements to waiver or compromise determined through that process are deemed correct and will not be amended under salary offset procedures. When the debtor did not receive a hearing on the amount of the offset under § 831.1304 and requests such hearing, one will be conducted in accordance with subpart K of part 550 of this chapter.

§ 831.1307 Use of consumer reporting agencies.

(a) *Notice.* If a debtor's response to the notice described in § 831.1304(a) does not result in payment in full, payment by offset, or payment in accordance with a voluntary repayment agreement or other repayment schedule acceptable to OPM, and the debtor's rights under § 831.1304 have been exhausted, OPM may report the debtor to a consumer reporting agency. In addition, a debtor's failure to make subsequent payments in accordance with a repayment schedule may result in a report to a consumer reporting agency. Before making a report to a consumer reporting agency, OPM will notify the debtor in writing that—

(1) The payment is overdue;

(2) OPM intends, after 60 days, to make a report as described in paragraph (b) of this section to a consumer reporting agency;

(3) The debtor's right to dispute the liability has been exhausted under § 831.1304; and

(4) The debtor may suspend OPM action on referral by paying the debt in one lump sum or making payments current under a repayment schedule.

(b) *Report.* When a debtor's response to the notice described in paragraph (a) of this section fails to comply with paragraph (a)(4) of this section and 60 days have elapsed since the notice was mailed, OPM may report to a consumer reporting agency that an individual is responsible for an unpaid debt and provide the following information:

(1) The individual's name, address, taxpayer identification number, and any other information necessary to establish the identity of the individual;

(2) The amount, status, and history of the debt; and

(3) The fact that the debt arose in connection with the administration of the Civil Service Retirement System.

(c) *Subsequent reports.* OPM will update its report to the consumer reporting agency whenever it has knowledge of events that substantially change the status or the amount of the liability.

§831.1308 Referral to a collection agency.

(a) OPM may refer certain debts to commercial collection agencies under the following conditions:

(1) All processing required by §831.1304 has been completed before the debt is released.

(2) A contract for collection services has been negotiated.

(3) OPM retains the responsibility for resolving disputes, compromising claims, referring the debt for litigation, or suspending or terminating collection action.

§831.1309 Referral for litigation.

From time to time and in a manner consistent with the General Accounting Office's and the Justice Department's instructions, OPM will refer certain overpayments to the Justice Department for litigation. Referral for litigation will suspend processing under this subpart.

Subpart N—Standards for Waiver of Overpayments

SOURCE: 45 FR 23635, Apr. 8, 1980, unless otherwise noted.

§831.1401 Conditions for waiver.

Recovery of an overpayment from the Civil Service Retirement and Disability Fund may be waived pursuant to section 8346(b), of title 5, United States Code, when the annuitant (a) is without fault and (b) recovery would be against equity and good conscience. Where it has been determined that the recipient of an overpayment is ineligible for waiver, the individual is nevertheless entitled to an adjustment in the recovery schedule if he/she shows that it would cause him/her financial hardship to make payment at the rate scheduled.

§831.1402 Fault.

A recipient of an overpayment is without fault if he/she performed no act of commission or omission which resulted in the overpayment. The fact that the Office of Personnel Management may have been at fault in initiating an overpayment will not necessarily relieve the individual from liability.

(a) *Considerations.* Pertinent considerations in finding fault are—

(1) Whether payment resulted from the individual's incorrect but not necessarily fraudulent statement, which he/she should have known to be incorrect;

(2) Whether payment resulted from the individual's failure to disclose material facts in his/her possession which he/she should have known to be material; or

(3) Whether he/she accepted a payment which he/she knew or should have known to be erroneous.

(b) *Mitigation factors.* The individual's age, physical and mental condition or the nature of the information supplied to him/her by OPM or a Federal agency may mitigate against finding fault if one or more contributed to his/her submission of an incorrect statement, a statement which did not disclose material facts in his/her possession, or his/her acceptance of an erroneous overpayment.

§831.1403 Equity and good conscience.

(a) *Defined.* Recovery is against equity and good conscience when—

(1) It would cause financial hardship to the person from whom it is sought;

(2) The recipient of the overpayment can show (regardless of his or her financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment either he/she has relinquished a valuable right or changed positions for the worse; or

(3) Recovery could be unconscionable under the circumstances.

§ 831.1404 Financial hardship.

Financial hardship may be deemed to exist in—but not limited to—those situations where the annuitant from whom collection is sought needs substantially all of his/her current income and liquid assets to meet current ordinary and necessary living expenses and liabilities.

(a) *Considerations.* Some pertinent considerations in determining whether recovery would cause financial hardship are as follows:

(1) The individual's financial ability to pay *at the time collection is scheduled to be made.*

(2) Income to other family member(s), if such member's ordinary and necessary living expenses are included in expenses reported by the annuitant.

(b) *Exemptions.* Assets exempt from execution under State law should not be considered in determining an individual's ability to repay the indebtedness, rather primary emphasis shall be placed upon the annuitant's liquid assets and current income in making such determinations.

§ 831.1405 Ordinary and necessary living expenses.

An individual's ordinary and necessary living expenses include rent, mortgage payments, utilities, maintenance, food, clothing, insurance (life, health and accident), taxes, installment payments, medical expenses, support expenses when the annuitant is legally responsible, and other miscellaneous expenses which the individual can establish as being ordinary and necessary.

§ 831.1406 Waiver precluded.

(a) *When not granted.* Waiver of an overpayment cannot be granted when—

(1) The overpayment was obtained by fraud; or

(2) The overpayment was made to an estate.

§ 831.1407 Burdens of proof.

(a) *Burden of OPM.* The Associate Director for Compensation must establish by the preponderance of the evidence that an overpayment occurred.

(b) *Burden of annuitant.* The recipient of an overpayment must establish by substantial evidence that he/she is eligible for waiver or an adjustment.

Subpart O—Allotments From Civil Service Annuities

SOURCE: 42 FR 52373, Sept. 30, 1977; 42 FR 61240, Dec. 2, 1977, unless otherwise noted.

§ 831.1501 Definitions.

(a) *Allotment* means a specified deduction from the annuity payments due an annuitant voluntarily authorized by the annuitant to be paid to an allottee.

(b) *Allottee* means the institution or organization to which the allotment is paid.

(c) *Allotter* means the annuitant from whose annuity payments an allotment is deducted.

(d) *Annuity Payments* means the net monthly annuity payment due an annuitant after all authorized deductions (such as those for health benefits, Federal income tax, overpayment of annuity, payment of a government claim, etc. have been made.

§ 831.1511 Authorized allottees.

(a) An annuitant may make an allotment to the national office or headquarters of any of the following organizations:

(1) A labor organization recognized under Executive Order 11491, as amended;

(2) An employee organization recognized under 5 U.S.C. 8901(8);

(3) Other lawful organizations which:

(i) Are national in scope,

(ii) Are nonprofit and noncommercial, existing primarily for the purpose of representing employee or annuitant interests in their dealings with employing agencies or OPM,

(iii) Consist primarily of Federal employees and/or annuitants, and

(iv) Existed as of December 23, 1975.

(b) OPM, in its sole discretion, may approve the individual organizations which may receive allotments only after the organization has collected, in accordance with procedures prescribed by OPM, a minimum of two thousand (2,000) allotment authorizations from civil service annuitants.

(c) OPM shall permit an annuitant to make an allotment to an organization only when:

(1) The organization has been approved as an allottee by OPM, and

(2) The organization has agreed in writing to solicit and process allotments in accordance with requirements prescribed by OPM.

§831.1521 Limitations.

(a) The amount of any allotment may not be less than one dollar ($1) and, in the absence of compelling circumstances, shall be in whole dollars.

(b) The total amount of any allotment(s) may not exceed the net monthly annuity due the allotter.

(c) An annuitant may make only one allotment payable to the same allottee at the same time and may make no more than a total of two allotments.

(d) Payment of an allotment shall be discontinued when the allotter's annuity payments are terminated or suspended by OPM.

(e) Allotments shall be disbursed on one of the regularly designated paydays of the allotter in accordance with OPM's agreement with the allottee.

(f) Allotters shall agree that OPM shall be held harmless for any authorized allotment request made by an allottee in accordance with the allottee's agreement with OPM.

(g) Allotters shall agree that disputes regarding any authorized allotment shall be a matter between the allotter and the allottee.

(h) The total number of allottees shall be limited to twenty (20), with first preference given to those organizations participating in the Federal Employees Health Benefits Program. Thereafter, preference shall be based on the date of application and the number of annuitants who have completed allotment authorizations.

(i) OPM, in its discretion, shall recover from the allottee, the incremental costs of making allotments.

(j) OPM, in its sole discretion, may terminate an allottee's participation in the allotment program described by this subpart at any time in accordance with its agreement with the allottee.

Subparts P–Q—[Reserved]

Subpart R—Agency Requests to OPM for Recovery of a Debt from the Civil Service Retirement and Disability Fund

SOURCE: 51 FR 45443, Dec. 19, 1986, unless otherwise noted.

§831.1801 Purpose.

This subpart prescribes the procedures to be followed by a Federal agency when it requests the Office of Personnel Management (OPM) to recover a debt owed to the United States by administrative offset against money due and payable to the debtor from the Civil Service Retirement and Disability Fund (the Fund). This subpart also prescribes the procedures that OPM must follow to make these administrative offsets.

§831.1802 Scope.

This subpart applies to agencies, employees, and Members, as defined by §831.1803.

§831.1803 Definitions.

For purposes of this subpart, terms are defined as follows—

Act means the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 and implemented by 4 CFR 101.1 *et seq.*, the Federal Claims Collection Standards (FCCS).

Administrative offset means withholding money payable from the Fund to satisfy a debt to the United States under 31 U.S.C. 3716.

Agency means (a) an Executive agency as defined in section 105 of title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission; (b) a military department, as defined in section 102 of title 5, United States Code; (c) an agency or court in the judicial branch, including a court as defined in section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation; (d) an agency of the legislative branch, including the

U.S. Senate and the U.S. House of Representatives; and (e) other independent establishments that are entities of the Federal Government.

Annuitant has the same meaning as in section 8331(9) of title 5, United States Code.

Annuity means the monthly benefit payable to an annuitant or survivor annuitant.

Compromise has the same meaning as in 4 CFR part 103.

Consent means the debtor has agreed in writing to administrative offset after receiving notice of all rights under 31 U.S.C. 3716 and this subpart.

Creditor agency means the agency to which the debt is owed.

Debt means an amount owed to the United States on account of loans insured or guaranteed by the United States, and other amounts due the United States from fees, duties, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interests, taxes, forfeitures, etc.

Debt claim means an agency request for recovery of a debt in a form approved by OPM.

Debtor means a person who owes a debt, including an employee, former employee, Member, former Member, or the survivor of one of these individuals.

Employee has the same meaning as in section 8331(1) of title 5, United States Code, and includes reemployed annuitants and employees of the U.S. Postal Service.

Fraud claim means any debt designated by the Attorney General (or designee) as involving an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim.

Fund means the Civil Service Retirement and Disability Fund established under 5 U.S.C. 8348.

Lump-sum credit has the same meaning as in section 8331(8) of title 5, United States Code.

Member has the same meaning as in section 8331(2) of title 5, United States Code.

Net annuity means annuity after excluding amounts requried by law to be deducted. For example, Federal income tax is excluded up to the maximum amount that the individual is entitled to for all dependents. Other examples of exclusions are group health insurance premiums (including amounts deducted for Medicare) and group life insurance premiums.

Paying agency means the agency that employs the debtor and authorizes the disbursement of his or her current pay account.

Refund means the payment of a lump-sum credit to an individual who meets all requirements for payment and files application for it.

§ 831.1804 Conditions for requesting an offset.

An agency may request that money payable from the Fund be offset to recover any valid debt due the United States when all of the following conditions are met:

(a) The debtor failed to pay all of the debt on demand, or the creditor agency has collected as much as possible from payments due the debtor from the paying agency; and

(b) The creditor agency sends a debt claim to OPM (under § 831.1805(b) (1), (2), (3), or (4), as appropriate) after doing one of the following:

(1) Obtaining a court judgment for the amount of the debt;

(2) Following the procedures required by 31 U.S.C. 3716 and 4 CFR 102.4;

(3) Following the procedures required by 5 U.S.C. 5514 and § 550.1107 of this title; or

(4) Following the procedures agreed upon by the creditor agency and OPM, if it is excepted by § 831.1805(b)(4) from the completion of procedures prescribed by § 831.1805(b)(3).

§ 831.1805 Creditor agency processing for non-fraud claims.

(a) *Where to submit the debt claim, judgment or notice of debt*—(1) *Creditor agencies that are not the debtor's paying agency.* (i) If the creditor agency knows that the debtor is employed by the Federal Government, it should send the debt claim to the debtor's paying agency for collection.

(ii) If some of the debt is unpaid after the debtor separates from the paying agency, the creditor agency should send the debt claim to OPM as described in paragraph (b) of this section.

(2) *Creditor agencies that are the debtor's paying agency.* Ordinarily, debts owed the paying agency should be offset under 31 U.S.C. 3716 from any final payments (salary, accrued annual leave, etc.) due the debtor. If a balance is due after offsetting the final payments or the debt is discovered after the debtor has been paid, the paying agency may send the debt claim to OPM as described in paragraph (b) of this section.

(b) *Procedures for submitting a debt claim, judgment or notice of debt to OPM*—(1) *Debt claims for which the agency has a court judgment.* If the creditor agency has a court judgment against the debtor specifying the amount of the debt to be recovered, the agency should send the debt claim and two certified copies of the judgment to OPM.

(2) *Debt claims previously processed under 5 U.S.C. 5514.* If the creditor agency previously processed the debt claim under section 5514, it should—

(i) Notify the debtor that the claim is being sent to OPM to complete collection from the Fund; and

(ii) Send the debt claim (on SF 2805) to OPM with two copies of the paying agency's certification of the amount collected and one copy of the notice to the debtor that the claim was sent to OPM.

(3) *Debt claims not processed under 5 U.S.C. 5514, reduced to court judgment, or excepted by paragraph (b)(4) of this section.* (i) If the debt claim was not processed under §5514, reduced to court judgment or excepted by paragraph (b)(4) of this section, the creditor agency must—

(A) Comply with the procedures required by 4 CFR 102.4—issuing written notice to the debtor of the nature and amount of the debt, the agency's intention to collect by offset, the opportunity to inspect and copy agency records pertaining to the debt, the opportunity to obtain review within the agency of the determination of indebtedness, and the opportunity to enter into a written agreement with the agency to repay the debt; and

(B) Complete the appropriate debt claim.

(ii) If the debtor does not respond to the creditor agency's notice within the allotted time and there is no reason to believe that he or she did not receive the notice, the creditor agency may submit the debt claim to OPM after certifying that notice was issued and the debtor failed to reply.

(iii) If the debtor responds to the notice by requesting a review (or hearing if one is available), the review (or hearing) must be completed before the creditor agency submits the debt claim.

(iv) If the debtor receives the notice and responds by consenting to the collection, the creditor agency must send a copy of the debtor's consent along with the debt claim.

(4) *Debt claims excepted from procedures described in paragraph (b)(3) of this section.* Creditor agencies follow specific procedures approved by OPM, rather than those described in paragraph (b)(3) of this section, for the collection of—

(i) Debts due because of the individual's failure to pay health benefits premiums while he or she was in nonpay status or while his or her salary was not sufficient to cover the cost of premiums;

(ii) Unpaid Federal taxes to be collected by Internal Revenue Service levy;

(iii) Premiums due because of the annuitant's election of Part B, Medicare coverage (retroactive collection limited to 6 months of premiums); or

(iv) Overpaid military retired pay an annuitant elects in writing to have withheld from his or her annuity.

(5) *General certification requirements for debt claims.* Creditor agencies submitting debt claims must certify—

(i) That the debt is owed to the United States;

(ii) The amount and reason for the debt and whether additional interest accrues;

(iii) The date the Government's right to collect the debt first accrued;

(iv) The agency has complied with the applicable statutes, regulations, and OPM procedures;

(v) That if a competent administrative or judicial authority issues an order directing OPM to pay a debtor an amount previously paid to the agency (regardless of the reasons behind the order), the agency will reimburse OPM or pay the debtor directly within 15 days of the date of the order (NOTE:

OPM may, at its discretion, decline to collect other debt claims sent by an agency that does not abide by this certification.);

(vi) If the collection will be in installments, the amount or percentage of net annuity in each installment; and,

(vii) If the debtor does not (in writing) consent to the offset, or does not (in writing) acknowledge receipt of the required notices and procedures, or the creditor agency does not document a judgment offset or a previous salary offset, the action(s) taken to comply with 4 CFR 102.3, including any required hearing or review, and the date(s) the action(s) was taken.

(6) *Notice of debt.* When a creditor agency cannot send a complete debt claim, it should notify OPM of the existence of the debt so the lump-sum will not be paid before the debt claim arrives.

(i) The notice to OPM must include a statement that the debt is owed to the United States, the date the debt first accrued, and the basis for and amount of the debt, if known. If the amount of the debt is not known, the agency must establish the amount and notify OPM in writing as soon as possible after submitting the notice.

(ii) The creditor agency may either notify OPM by making a notation in column 8 [Remarks] under ''Fiscal Record'' on the Standard Form 2806 (Individual Retirement Record), if the SF 2806 is in its possession, or if not, by submitting a separate document identifying the debtor by name, giving his or her date of birth, social security number, and date of separation, if known.

(c) *Time limits for sending records and debt claims to OPM*—(1) *Time limits for submitting debt claims.* Unless there is an application for refund pending, there is no specific time for submitting a debt claim or notice of debt to OPM. Generally, however, agencies must file a debt claim before the statute of limitations expires (4 CFR 102.4(c)) or before a refund is paid. Time limits are imposed (see §831.1806(a)) when the debtor is eligible for a refund and OPM receives his or her application requesting payment. In the latter situation, creditor agencies must file a complete debt claim within 120 days (or 180 days if the agency requests an extension of time before the refund is paid) of the date OPM requests a complete debt claim.

(2) *Time limit for submitting retirement records to OPM.* A paying agency must send an individual's SF 2806 to OPM no later than 60 days after the separation, termination, or entrance on duty in a position in which the employee is not covered by the Civil Service Retirement System.

§ 831.1806 OPM processing for nonfraud claims.

(a) *Refunds—incomplete debt claims.* (1) If a creditor agency sends OPM a notice of debt or an incomplete debt claim against a refund OPM is processing for payment, OPM will withhold the amount of the debt but will not make any payment to the creditor agency. OPM will notify the creditor agency that the procedures in this subpart and 4 CFR 102.4 must be completed; and a debt claim must be completed and returned to OPM within 120 days of the date of OPM's notice to the creditor agency. Upon request, OPM will grant the creditor agency one extension of up to 60 days if the request for extension is received before the lump-sum payment has been made. The extension will commence on the day after the 120-day period expires so that the total time OPM holds payment of the refund will not exceed 180 days.

(2) During the period allotted the creditor agency for sending OPM a complete debt claim, OPM will handle the debtor's application for refund under section 8342(a) of title 5, United States Code, in one of two ways:

(i) If the amount of the debt is known, OPM will notify the debtor of the debt claim against his or her lump-sum credit, withhold the amount of the debt, and pay the balance to the debtor, if any.

(ii) If the amount of the debt is not known, OPM will not pay any amount to the debtor until the creditor agency certifies the amount of the debt, submits a complete debt claim, or the time limit for submission of the debt claim expires, whichever comes first.

(b) *Refunds—complete debt claims*—(1) *If OPM receives an application from the*

debtor prior to or at the same time as the agency's debt claim. (i) If a refund has been paid, we will notify the creditor agency there are no funds available for offset. Except in the case of debts due because of the employee's failure to pay health benefits premiums while he or she is in nonpay status or while his or her salary was not sufficient to cover the cost of premiums, creditor agencies should refer to the instructions in the FCCS for other measures to recover the outstanding debt; however, OPM will retain the SF 2805 on file in the event the debtor is once again employed in a position subject to retirement deductions.

(ii) If a refund is payable, and the creditor agency submits a complete debt claim in accordance with § 831.1805(b) (1), (2), (3), or (4), the debt will be collected from the refund and any balance paid to the debtor. OPM will send the debtor a copy of the debt claim, judgment, consent, or other document, and notify him or her that the creditor agency was paid.

(2) *If OPM has not received an application from the debtor when the agency's debt claim is received.* If a debtor has not filed application for a refund, OPM will retain the debt claim for future recovery. OPM will make the collection whenever an application is received, provided the creditor agency *initiated* the administrative offset before the statute of limitations expired. (See 4 CFR 102.3(b)(3) and 102.4(c).) OPM will notify the creditor agency that it does not have an application from the debtor so that the agency may take other action to recover the debt. (Note: If the recovery action is successful, the creditor agency must notify OPM so it can void the debt claim).

(3) *Future recovery.* (i) If OPM receives an application for refund within 1 year of the date the agency's debt claim was received *and* the creditor agency does not indicate that interest is accruing on the debt, the debt will be processed as stated in paragraph (b)(1)(ii) of this section.

(ii) If OPM receives an application for refund within 1 year of the date the agency's debt claim was received and the creditor agency indicates that interest accrues on the debt, when necessary, OPM will contact the creditor agency to confirm that the debt is outstanding and request submission in writing, of the total additional accrued interest. OPM will not make interest computations for creditor agencies.

(iii) When OPM receives an application for refund more than 1 year after the creditor agency's debt claim was received, whether interest accrues or not, OPM will contact the creditor agency to see if the debt is still outstanding and, when necessary, request an update of the interest charges. If the debt is still due, the creditor agency must give the debtor an opportunity to establish that his or her changed financial circumstances, if any, would make the offset unjust. (See 4 CFR 102.4(c).) If the creditor agency determines that offset as requested in the debt claim would be unjust because of the debtor's changed financial circumstances, the agency should permit the debtor to offer a satisfactory repayment plan in lieu of offset. If the agency decides to pursue the offset, it must submit to OPM the requested information and any new instructions within 60 days of the date of OPM's request or the claim may be voided and the balance paid to the individual.

(c) *Annuities—incomplete debt claims.* If a creditor agency sends OPM notice of a debt or an incomplete debt claim against a debtor who is receiving an annuity, OPM will not offset the annuity. OPM will notify the creditor agency that the procedures in this subpart and 4 CFR 102.4 must be completed; and a debt claim must be completed and sent to OPM. No time limit will be given for the submission of a debt claim against an annuity; however, a complete debt claim must be received within 10 years of the date the Government's right to collect first accrued (4 CFR 102.3(b)(3)).

(d) *Annuities—complete debt claims*—(1) *General*—(i) *Notice.* When OPM receives a complete debt claim and an application for annuity, OPM will offset the annuity, pay the creditor agency, and mail the debtor a copy of the debt claim along with notice of the payment to the creditor agency.

(ii) *Beginning deductions.* If OPM has already established the debtor's annuity payment, deductions will begin

with the next available annuity payment. If OPM is in the process of establishing the annuity payments, deductions will not be taken from advance annuity payments, but will begin with the annuity payable on the first day of the month following the last advance payment.

(iii) *Updating accrued interest.* Once OPM has completed a collection, if there are additional accrued interest charges, the creditor agency must contact OPM regarding any additional amount due within 90 days of the date of the final payment.

(2) *Claims held for future recovery.* (i) If OPM receives an application for annuity within 1 year of the date the agency's debt claim was received, the debt will be processed as stated in paragraph (d)(1) of this section.

(ii) If OPM receives an application for annuity more than 1 year after the agency's debt claim was submitted, OPM will contact the creditor agency to see if the debt is still outstanding. If the debt is still due, the creditor agency should permit the debtor to offer a satisfactory repayment plan in lieu of offset if the debtor establishes that his or her changed financial circumstances would make the offset unjust. (See 4 CFR 102.4(c).) If the agency decides to pursue the offset, it must submit the requested information and any new instructions about the collection to OPM.

(3) *Limitations on OPM review.* In no case will OPM review—

(1) The merits of a creditor agency's decision with regard to reconsideration, compromise, or waiver; or

(2) The creditor agency's decision that a hearing was not required in any particular proceeding.

§ 831.1807 Installment withholdings.

(a) When possible, OPM will collect a creditor agency's full claim in one payment from the debtor's refund or annuity.

(b) If collection must be made from an annuity and the debt is large, the creditor agency must generally accept payment in installments. The responsibility for establishing and notifying the debtor of the amount of the installments belongs to the creditor agency (see § 831.1805(b)(5)). However, OPM will not make an installment deduction for more than 50 percent of net annuity, unless a higher percentage is needed to satisfy a judgment against a debtor within 3 years or the annuitant has consented to the higher amount in writing. All correspondence concerning installment deductions received by OPM will be referred to the creditor agency for consideration.

§ 831.1808 Special processing for fraud claims.

When an agency sends a claim indicating fraud, presentation of a false claim, misrepresentation by the debtor or any other party interested in the claim, or any claim based in whole or part on conduct violating the antitrust laws, to the Department of Justice (Justice) for possible treatment as a fraud claim (4 CFR 101.3), the following special procedures apply.

(a) *Agency processing.* If the debtor is separated or separates while Justice is reviewing the claim, the paying agency must send the SF 2806 to OPM, as required by § 831.1805(c)(2). The agency where the claim arose must send OPM notice that a claim is pending with Justice. (See § 831.1805(b)(6) for instructions on giving OPM a notice of debt.)

(b) *Department of Justice processing.* (1) The Attorney General or a designee will decide whether a debt claim sent in by an agency will be reserved for collection by Justice as a fraud claim. Upon receiving a possible fraud claim to be collected by offset from the Fund, the Attorney General or a designee must notify OPM. The notice to OPM must contain the following:

(i) The name, date of birth, and social security number of the debtor;

(ii) The amount of the possible fraud claim, if known;

(iii) The basis of the possible fraud claim; and

(iv) A statement that the claim is being considered as a possible fraud claim, the collection of which is reserved to Justice.

(2) When there is a pending refund application, the Attorney General or designee must file a complaint seeking a judgment on the claim and send a copy of the complaint to OPM; or as provided in 4 CFR 101.3, refer the claim to the agency where the claim arose and

submit a copy of the referral to OPM within 180 days of the date of either notice from the agency that a claim is pending with Justice (paragraph (a) of this section) or notice from Justice that it has received a possible fraud claim (paragraph (b)(1) of this section) whichever is earlier. When the claim is referred to the agency where it arose, the agency must begin administrative collection action under 4 CFR 102.4 and send a complete debt claim to OPM as required in §831.1805.

(c) *OPM processing against refunds.* (1) Upon receipt of a notice under paragraph (a) or (b)(1) of this section, whichever is earlier, OPM will withhold the amount of the debt claim, if known; notify the debtor that the amount of the debt will be withheld from the refund for at least 180 days from the date of the notice that initiated OPM processing; and pay the balance to the debtor. If the amount of the debt claim is not known, OPM will notify the debtor that a debt claim may be offset against his or her refund and that OPM will not pay any amount until either the amount of the debt claim is established, or the time limit for filing a complaint in court or submitting the debt claim expires, whichever comes first.

(2) If the Attorney General files a complaint and notifies OPM within the applicable 180-day period, OPM will continue to withhold payment of the lump-sum credit until there is a final judgment.

(3) If the Attorney General refers the claim to the agency where the claim arose (creditor agency) and notifies OPM within the applicable 180-day period, OPM will notify the creditor agency that the procedures in this subpart and 4 CFR 102.4 must be completed; and a debt claim must be sent to OPM within 120 days of the date of OPM's notice to the creditor agency. At the request of the creditor agency, one extension of time of not more than 60 days will be granted, as provided by §831.1806(a).

(4) If OPM is not notified that a complaint has been filed or that the claim has been referred to the creditor agency within the applicable 180-day period, OPM will pay the balance of the refund to the debtor.

(d) *OPM processing against annuities.* If the debtor has filed an annuity claim, OPM will not take action against the annuity. OPM will continue to pay the annuity unless and until there is a final judgment for the United States or submission of a complete debt claim.

(e) *OPM collection and payment of the debt.* (1) If the United States obtains a judgment against the debtor for the amount of the debt or the creditor agency submits a complete debt claim, OPM will collect and pay the debt to the creditor agency as provided in §§831.1806 and 831.1807.

(2) If the suit or the administrative proceeding results in a judgment for the debtor without establishing a debt to the United States, OPM will pay the balance of the refund to the debtor upon receipt of a certified copy of the judgment or administrative decision.

Subpart S—State Income Tax Withholding

SOURCE: 47 FR 50679, Nov. 9, 1982, unless otherwise noted.

§831.1901 Definitions.

For the purpose of this subpart:

Agreement means the Federal-State agreement contained in this subpart.

Annuitant means an employee or Member retired, or a spouse, widow, or widower receiving survivor benefits, under the provisions of subchapter III, chapter 83 of title 5, United States Code.

Effective date means, with respect to a request or revocation, that the request or revocation will be reflected in payments authorized after that date, and before the next request or revocation is implemented.

Fund means the Civil Service Retirement and Disability Fund as established and described in section 8348 of title 5, United States Code.

Income tax and *State income tax* mean any form of tax for which, under a State statute, (a) collection is provided, either in imposing on employers generally the duty of withholding sums from the compensation of employees and making returns of such sums to the State or by granting to employers generally the authority to withhold

sums from the compensation of employees, if any employee voluntarily elects to make such sums withheld; and (b) the duty to withhold generally is imposed, or the authority to withhold generally is granted, with respect to the compensation of employees who are residents of the State.

Net recurring payment means the amount of annuity or survivor benefits (not recurring interim payments made while a claim is pending adjudication) payable to the annuitant on a monthly basis less the amounts currently being deducted for health benefits, Medicare, life insurance, Federal income tax, overpayment of annuity, indebtedness to the Government, voluntary allotments, waivers, or being paid to a third party or a court officer in compliance with a court order or decree.

Net withholding means the amount of State income tax deductions withheld during the previous calendar quarter as a result of requests which designated the State as payee, less similar deductions taken from prior payments which were cancelled in the previous calendar quarter. *Proper State official* means a State officer authorized to bind the State contractually in matters relating to tax administration.

Received means, in respect to the magnetic tape containing requests and revocations, received at the special mailing address established by OPM for income tax requests, or, for those items not so received, received at the OPM data processing center charged with processing requests.

Request means, in regard to a request for tax withholding, a change in the amount withheld, or revocation of a prior request, a written submission from an annuitant in a format acceptable to the State which provides the annuitant's name, Civil Service Retirement Claim number, Social Security identification number, address, the amount to be withheld and the State to which payment is to be made, which is signed by the annuitant or, in the case of incompetence, his or her representative payee.

State means a State, the District of Columbia, or any territory or possession of the United States.

§ 831.1902 Federal-State agreements.

OPM will enter into an agreement with any State within 120 days of an application for agreement from the proper State official. The terms of the standard agreement will be §§ 831.1903 through 831.1906 of this subpart. OPM and the State may agree to additional terms and provisions, insofar as those additional terms and provisions do not contradict or otherwise limit the terms of the standard agreement.

§ 831.1903 OPM responsibilities.

OPM will, in performance of this agreement:

(a) Process the magnetic tape containing State tax transactions against the annuity roll once a month at the time monthly recurring payments are prepared for the United States Treasury Department. Errors that are identified will not be processed into the file, and will be identified and returned to the State for resolution via the monthly error report. Collections of State income tax will continue in effect until the State requesting the initial action supplies either a valid revocation or change. The magnetic tape must be received 35 days prior to the date of the check in which the transactions are to be effective. For example, withholding transactions for the July 1 check must be received 5 days prior to June 1. If the magnetic tape submitted by the State cannot be read, OPM will notify the State of this fact, and if a satisfactory replacement can be supplied in time for monthly processing, it will be processed.

(b) Deduct from the regular, recurring annuity payments of an annuitant the amount he or she has so requested to be withheld, provided that:

(1) The amount of the request is an even dollar amount, not less than Five Dollars nor more than the net recurring amount. The State may set any even dollar amount above Five Dollars as a minimum withholding amount.

(2) The annuitant has not designated more than one other State for withholding purposes within the calendar year. The State can set any limit on the number of changes an annuitant may make in the amount to be withheld.

(c) Retain the amounts withheld in the Fund until payment is due.

(d) Pay the net withholding to the State on the last day of the first month following each calendar quarter.

(e) Make the following reports:

(1) A monthly report which will include all the State tax withholdings, cancellations and adjustments for the month, and also each request OPM was not able to process, with an explanation, in coded format, of the reason for rejection.

(2) A quarterly report which will include State, State address, quarterly withholdings, quarterly cancellations and adjustments, quarterly net withholdings and year-to-date amounts. Where cancelled or adjusted payments were made in a previous year, OPM shall append a listing of the cancelled or adjusted payments which shows the date and amount of each cancelled or adjusted tax withholding, and the name and Social Security identification number of the annuitant from whom it was withheld. If either party terminates the agreement and the amount of cancelled or adjusted deductions exceeds the amount withheld for the final quarter, then the quarterly report shall show the amount to be refunded to OPM and the address to which payment should be made.

(3) An annual summary report which contains the name, Social Security identification number, and total amount withheld from non-cancelled payments during the previous calendar year, for each annuitant who requested tax withholding payable to the State. In the event the annuitant had State income tax withholding in effect for more than one State in that calendar year, the report will show only the amount withheld for the State receiving the report.

(4) An annual report to each annuitant for whom State income taxes were withheld giving the amount of withholding paid to the State during the calendar year.

§ 831.1904 State responsibilities.

The State will, in performance of this agreement:

(a) Accept requests and revocations from annuitants who have designated that State income tax deductions will go to the State.

(b) Convert these requests on a monthly basis to a machine-readable magnetic tape using specifications received from OPM, and forward that tape to OPM for processing.

(c) Inform annuitants whose tax requests are rejected by OPM that the request was so rejected and of the reason why it was so rejected.

(d) Recognize that, to the extent not prohibited by State laws, records maintained by the State relating to this program are considered jointly maintained by OPM and are subject to the Privacy Act of 1974 (5 U.S.C. 552a). Accordingly, the States will maintain such records in accordance with that statute and OPM's implementing regulations at 5 CFR part 297.

(e) Respond to requests of annuitants for information and advice in regard to State income tax withholding.

(f) Credit the amounts withheld from civil service annuities to the State tax liability of the respective annuitants, and, subject to applicable provisions of State law to the contrary, refund any balance over and above that liability to the annuitant, unless he or she should request otherwise.

(g) Surrender all tax withholding requests to OPM when this agreement is terminated or when the documents are not otherwise needed for this State tax withholding program.

(h) Allow OPM, the Comptroller General or any of their duly authorized representatives access to, and the right to examine, all records, books, papers or documents related to the processing of requests for State income tax withholding from civil service annuities.

§ 831.1905 Additional provisions.

These additional provisions are also binding on the State and OPM:

(a) A request or revocation is effective when processed by OPM. OPM will process each request by the first day of the second month following the month in which it is received, but incurs no liability or indebtedness by its failure to do so.

(b) Any amount deducted from an annuity payment and paid to the State as a result of a request is deemed properly

paid, unless the annuity payment itself is cancelled.

(c) OPM will provide the State with the information necessary to properly process a request for State income tax withholding.

(d) If the State is paid withholding which is contrary to the terms of the annuitant's request, the State is liable to the annuitant for the amount improperly withheld, and subject to account verification from OPM, agrees to pay that amount to the annuitant on demand.

(e) In the case of a disputed amount in any of the reports described and authorized by this agreement, the Associate Director for Compensation of OPM will issue an accounting. If the State finds this accounting unacceptable, it may then and only then pursue such remedies as are otherwise available.

(f) If a State receives an overpayment of monies properly belonging to the Fund, OPM will offset the overpayment from a future payment due the State. If there are no further payments due the State, OPM will inform the State in writing of the amount due. Within 60 days of the date of receipt of that communication the State will make payment of the amount due.

§ 831.1906 Agreement modification and termination.

This agreement may be modified or terminated in the following manner:

(a) Either party may suggest a modification of non-regulatory provisions of the agreement in writing to the other party. The other party must accept or reject the modification within 60 calendar days of the date of the suggestion.

(b) The agreement may be terminated by either party on 60 calendar days written notice.

(c) OPM may modify this agreement unilaterally through the rule making process described in sections 553, 1103, 1105 of title 5, United States Code.

§ 831.1907 Authority to use the Federal Personnel Manual System.

OPM may provide such further rules, procedural instructions, and operational guidance as may be necessary and proper under this subpart and not inconsistent therewith, in the Federal Personnel Manual System.

Subpart T—Payment of Lump Sums

SOURCE: 50 FR 20081, May 13, 1985, unless otherwise noted.

§ 831.2001 Definitions.

Court order or decree means the order or decree of any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands or any Indian court, as defined section 8331(24) of title 5, United States Code.

Current spouse means a person who is married to the employee or Member at the time the application for refund is filed.

Duly appointed representative of the deceased employee's, separated employee's, retiree's, survivor's or Member's estate means an individual named in an order of a court having jurisdiction over the estate of the deceased which grants the individual the authority to receive, or the right to possess, the property of the deceased; and also means, where the law of the domicile of the deceased has provided for the administration of estates through alternative procedures which dispense with the need for a court order, an individual who demonstrates that he or she is entitled to receive, or possess, the property of the deceased under the terms of those alternative procedures.

Former spouse means a living person who was married for at least 9 months to an employee or Member who had performed at least 18 months of creditable service in a position covered by the retirement system.

Retirement system means the civil service retirement system as described in subchapter III of chapter 83 of title 5, United States Code.

[50 FR 20081, May 13, 1985, as amended at 57 FR 29784, July 7, 1992]

§ 831.2002 Eligibility for lump-sum payment upon filing an Application for Refund of Retirement Deductions (SF 2802).

Except as provided in §§ 831.2007 through 2009 or in section 3716 of title

31, United States Code, on administrative offset for government claims, a former employee or Member who has been separated from a covered position for at least 31 days at the time of filing an application for refund and who is ineligible for an annuity commencing within 31 days after the date of filing an application for refund is eligible for a refund for the total lump-sum credit to his or her credit in the Retirement Fund.

§831.2003 Eligibility for lump-sum payment upon death or retirement.

(a) If there is no survivor who is entitled to monthly survivor annuity benefits on the death of a former employee, Member, annuitant, or survivor annuitant, the total lump-sum credit to the former employee's or Member's credit in the Retirement Fund is payable, except as provided in section 3716 of title 31, United States Code, on administrative offset for government claims, to the person(s) entitled in the normal order of precedence described in section 8342(c) of title 5, United States Code. If a deceased employee, separated employee, retiree or Member provided in a valid designation of beneficiary that the lump sum proceeds shall be payable to the deceased's estate, or to the Executor, Administrator, or other representative of the deceased's estate, or if the proceeds would otherwise be properly payable to the duly appointed representative of the deceased's estate under the order of precedence specified in 5 U.S.C. 8342(c), payment of the proceeds to the duly appointed representative of the deceased's estate will bar recovery by any other person.

(b) If an annuity is payable, the former employee, Member or the person entitled in the order of precedence described in section 8342(c) of title 5, United States Code, may be paid, except as provided in section 3716 of title 31, United States Code, administrative offset for government claims, lump-sum payment of—

(1) Retirement deductions withheld from the employee's or Member's pay after he or she became eligible for the maximum annuity, if the employee or Member does not elect to treat those deductions as voluntary contributions toward the purchase of an additional annuity; and

(2) Retirement deductions withheld from the employee's or Member's pay during his or her final period of service if the employee or Member was not subject to the retirement system for at least one of the last 2 years before final separation from service and if the service covered by the deductions is not used for title to annuity; and

(3) Except as provided in paragraph (d) of this section, partial redeposits of refunds previously paid; and

(4) Partial deposits for civilian service performed on and after October 1, 1982; and

(5) Partial deposits for post-1956 military service; and

(6) Annuity accrued and unpaid.

(c) A former employee, Member, or survivor who is eligible for an annuity may not be paid a lump-sum payment of—

(1) Partial or completed deposits for nondeduction civilian service performed before October 1, 1982, unless the service covered by the deposit is not creditable under the retirement system; or

(2) Completed deposits for nondeduction civilian service performed on and after October 1, 1982, unless the service covered by the deposit is not creditable under the retirement system; or

(3) Completed deposits for post-1956 military services, unless the service covered by the deposit is not creditable under the retirement system.

Payments of the partial or completed deposits mentioned in this paragraph are subject to 31 U.S.C. 3716 (administrative offset for government claims).

(d) A former employee or Member who is eligible for a nondisability annuity may not be paid a lump-sum payment of a partial redeposit for refunded deductions relating to a period of service that ended before October 1, 1990.

[50 FR 20081, May 13, 1985, as amended at 56 FR 6550, Feb. 19, 1991; 57 FR 29784, July 7, 1992]

§831.2004 Amount of lump-sums.

If applicable, the amount of a refund will include interest computed as described in §831.105(b).

§ 831.2005 Designation of beneficiary for lump-sum payment.

(a) The Designation of Beneficiary must be in writing, signed, and witnessed,and received in OPM before the death of the designator.

(b) No change or cancellation of beneficiary in a last will or testament, or in any other document not witnessed and filed as required by this section, has any force or effect.

(c) A witness to a Designation of Beneficiary is ineligible to receive payment as a beneficiary.

(d) Any person, firm, corporation, or legal entity may be named as beneficiary.

(e) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary, and this right cannot be waived or restricted.

§ 831.2006 Designation of agent by next of kin.

When a deceased employee, Member, or annuitant has not named a beneficiary and one of the next of kin entitled makes a claim for lump-sum benefit, other next of kin entitled to share in the lump-sum benefit may designate the one who made the claim to act as their agent to receive their distributive shares.

§ 831.2007 Notification of current and/or former spouse before payment of lump sum.

(a) Payment of the lump-sum credit based on a refund application filed on or after May 7, 1985, may be made only if any current spouse and any former spouse (from whom the employee or Member was divorced after May 6, 1985) are notified of the former employee's or Member's application.

(b)(1) Notification of the former spouse will not be required if the marriage to the former spouse was of less than 9 months duration or if the employee has not completed a total of 18 months of creditable service covered under the retirement system.

(2) Applicants for payment of the lump-sum credit must certify on a form prescribed by OPM whether the applicant has a current or former spouse subject to the notification requirement.

(c) Proof of notification will consist of a signed and witnessed Statement by the current and/or former spouse on a form provided by OPM acknowledging that he or she has been informed of the former employee's or Member's application for refund and the consequences of the refund on the current or former spouse's possible annuity entitlement. This Statement must be presented to the employing agency or OPM when filing the Application for Refund of Retirement Deductions.

(d) If the current and/or former spouse refuses to acknowledge the notification or the employee or Member is otherwise unable to obtain the acknowledgement, the employee or Member must submit—

(1) Affidavits signed by two individuals who witnessed the employee's or Member's attempt to personally notify the current or former spouse. The witnesses must attest that they were in the presence of the employee or Member and the current or former spouse when the employee or Member gave or attempted to give the notification form to the current or former spouse and that the employee's or Member's purpose should have been clear to the current or former spouse; or

(2) The current mailing address of the current or former spouse. OPM will attempt to notify (by certified mail—return receipt requested) the current or former spouse at the address provided by the employee or Member. Except as provided in paragraph (e) of this section, the lump-sum credit will not be paid until at least 20 days after OPM receives the signed return receipt.

(e) If an OPM notice sent under paragraph (d)(2) of this section is returned and OPM has no reason to believe that the current or former spouse does not live at the address to which the notice was sent, OPM will re-mail the notice by first class mail and wait at least 20 days after the notice has been re-mailed before paying the refund.

[50 FR 20081, May 13, 1985, as amended at 51 FR 31936, Sept. 8, 1986; 55 FR 9106, Mar. 12, 1990; 55 FR 29340, July 19, 1990]

§831.2008 Waiver of spouse and/or former spouse notification requirement.

The current and/or former spouse notification requirement will be waived upon a showing that the current and/or former spouse's whereabouts cannot be determined. A request for waiver on this basis must be accompanied by—

(a) A judicial or administrative determination that the current and/or former spouse's whereabouts cannot be determined; or

(b) Affidavits by the former employee or Member and two other persons at least one of whom is not related to the former employee or Member attesting to the inability to locate the current and/or former spouse and stating the efforts made to locate the current and/or former spouse.

§831.2009 Lump sum payments which include contributions made to a retirement system for employees of a nonappropriated fund instrumentality.

A lump sum payment will include employee contributions and interest as provided under subpart G of part 847 of this chapter.

[61 FR 41720, Aug. 9, 1996]

§831.2010 Transfers between retirement systems.

Transfers of employees' contributions between the Civil Service Retirement and Disability Fund and other retirement systems for Federal or District of Columbia employees when made in accordance with Federal statute for the purpose of transferring retirement service credit to the other retirement system are not subject to the notice requirements or court order provisions of this subpart.

[51 FR 31937, Sept. 8, 1986]

§831.2011 Effect of part 772 of this chapter on CSRS lump-sum payments.

(a) An interim appointment under §772.102 of this chapter does not affect the lump-sum payment of retirement contributions made to a separated employee unless it becomes effective within 31 days of the employee's separation from the service. An interim appointment effective within 31 days of the employee's separation makes the employee ineligible for the lump-sum payment. Payments made in error will be collected under subpart M of part 831 of this chapter.

(b) When an employee's separation is cancelled after the MSPB initial decision becomes final, when the Board issues a final order cancelling the employee's separation, or when the agency and the employee agree to cancel the separation, the agency must notify OPM and request the amount of the erroneous lump-sum payment.

(c) At the time the employee's separation is cancelled, the agency must deduct the amount of the lump-sum payment from any back pay to which the employee is entitled as required by 5 CFR 550.805(e).

(d) Amounts recovered from back pay will not be subject to waiver consideration under 5 U.S.C. 8346(b). If there is no back pay or the back pay is insufficient to recover the erroneous payment, the employee may request that OPM waive the recovery of the uncollected portion of the overpayment. If waiver is not granted, the employee must repay the erroneous payment.

[57 FR 3713, Jan. 31, 1992]

Subpart U—Deposits for Military Service

SOURCE: 48 FR 38788, Aug. 26, 1983, unless otherwise noted.

§831.2101 Purpose.

This subpart prescribes the procedures to be followed when an employee or Member (or survivor of an employee or Member) wishes to make a deposit for service, and when a former employee or Member who retires or separates from civilian service with title to annuity after September 8, 1982, but before October 1, 1983 (or survivor of such employee or Member), wishes to make a deposit for service.

§831.2102 Scope.

This subpart applies to all agencies with employees occupying positions subject to subchapter III of chapter 83 of title 5, United States Code, the United States Senate, and the United States House of Representatives.

§ 831.2103 Definitions.

Employee shall have the same meaning as in 5 U.S.C. 8331(1).

Estimated earnings is an estimate of basic pay for a period of military service, as determined by an authorized official of the Department of Defense the Department of Transportation, the Department of Commerce, or the Department of Health and Human Services.

Fund is the Civil Service Retirement and Disability Fund.

Member shall have the same meaning as in 5 U.S.C. 8331(2).

OPM is the Office of Personnel Management.

Period of service is the total years, months, and days from date of initial entry on active duty (or January 1, 1957, if that is later) to date of final discharge for enlisted military personnel, and to date of final release from active duty for officers and reservists. ''Period of service'' includes consecutive periods of service where there is no break in service, but does not include any lost time.

Service is active honorable military service performed after December 31, 1956.

Sufficient evidence of basic pay for service exists when the employee, Member, or survivor eligible to make a deposit for service provides copies of all official military pay documents, as identified in Federal Personnel Manual instructions published by OPM, which show the exact basic pay he or she received for a full period of service. If an employee, Member, or survivor does not have sufficient evidence of basic pay, he or she shall obtain a statement of estimated earnings from the appropriate branch of the military service.

Survivor shall have the same meaning as in 5 U.S.C. 8331(10).

§ 831.2104 Eligibility to make deposit.

The following individuals may make deposit for any full period of service performed before the separation on which title to civil service annuity is based:

(a) An employee or Member currently occupying a position subject to subchapter III of chapter 83 of title 5, United States Code, and the survivor(s) of such an employee or Member who dies in service (including a person who was eligible to make a deposit under this paragraph but who failed to make the deposit before separation from service due to administrative error); and

(b) A former employee or Member who was separated with title to an annuity or who retired from a position subject to subchapter III of chapter 83 of title 5, United States Code, after September 8, 1982, and before October 1, 1983, and the survivor(s) of such an employee or Member.

[48 FR 38788, Aug. 26, 1983, as amended at 49 FR 20631, May 16, 1984]

§ 831.2105 Filing an application to make deposit.

(a) An individual described in § 831.2104(a) of this subpart shall file an application for deposit with the appropriate office in the employing agency, or, for Members and Congressional employees, with the Secretary of the Senate or the Clerk of the House of Representatives, as appropriate.

(b) An individual described in § 831.2104(b) of this subpart may, at the time of filing an application for retirement or death benefits, file an application for deposit or complete a deposit with OPM.

§ 831.2106 Processing applications for deposit for service.

(a) The agency, Clerk of the House of Representatives, or Secretary of the Senate shall have the employee or Member:

(1) Complete an application to make deposit;

(2) Provide a copy of his or her DD 214 or its equivalent to verify the period(s) of service; and

(3) Provide sufficient evidence of basic pay, if available, or a statement of estimated earnings.

(b) Upon receipt of the application, the DD 214(s), and either sufficient evidence of basic pay, if available, or a statement of estimated earnings, the agency, Clerk of the House of Representatives, or Secretary of the Senate shall multiply the amount of basic pay by 7 percent to compute the exact deposit owed, exclusive of any interest.

(c) If interest is applicable, it shall be computed in accordance with instructions published by OPM in the Federal Personnel Manual.

(d) The agency, Clerk of the House of Representatives, or Secretary of the Senate shall establish a deposit account showing the total amount due, and a payment schedule (unless deposit is made in a lump sum), and record the date and amount of each payment.

(e) An individual who is eligible to make deposit to OPM shall submit an application to make deposit, accompanied by a copy of his or her DD 214(s) or its (their) equivalent(s), as well as sufficient evidence of basic pay, if available, or a statement of estimated earnings, to OPM.

§831.2107 Payments on deposits.

(a) Deposits made to agencies, the Clerk of the House of Representatives or the Secretary of the Senate.

(1) Deposits made to agencies, the Clerk of the House of Representatives or the Secretary of the Senate shall be collected in full in one lump sum whenever this is possible. Notwithstanding the provisions of paragraph (a)(2) of this section, a separated employee who, through administrative error, did not make or complete the deposit prior to his or her separation must complete the deposit in a lump sum within the time limit set by OPM when it rules that an administrative error has been made.

(2) If the employee or Member cannot make payment in a lump sum, the agency, the Clerk of the House of Representatives, or the Secretary of the Senate shall accept installment payments (by allotments or otherwise). However, agencies, the Clerk of the House of Representatives, and the Secretary of the Senate will not be required to accept individual checks in amounts of less than $50.

(3) If the employee or Member dies, the employing agency, the Clerk of the House of Representatives or the Secretary of the Senate shall advise the survivor of the right to make or complete a deposit. If the survivor decides to make or complete the payment, the agency, the Clerk of the House of Representatives, or the Secretary of the Senate shall collect the amount due in one lump sum.

(4) Payments received by the employing agency, the Clerk of the House of Representatives, or the Secretary of the Senate shall be remitted immediately to OPM for deposit to the Fund.

(5) Once the employee's, Member's, or survivor's deposit has been paid in full or closed out, the employing agency, the Clerk of the House of Representatives, or the Secretary of the Senate shall submit documentation pertaining to the deposit to OPM, in accordance with instructions published in the Federal Personnel Manual.

(6) Deposits must be made for full periods of service.

(b) Deposits made to OPM.

(1) Deposits made to OPM shall be made in a lump sum prior to final adjudication of the application for retirement or survivor benefits.

(2) Deposits must be made for full periods of service.

[48 FR 38788, Aug. 26, 1983, as amended at 49 FR 20631, May 16, 1984]

Subpart V—Alternative Forms of Annuities

SOURCE: 51 FR 42989, Nov. 28, 1986, unless otherwise noted.

§831.2201 Purpose.

This subpart explains the benefits available to employees and Members who elect an alternative form of annuity under section 8343a of title 5, United States Code.

§831.2202 Definitions.

In this subpart—

Alternative form of annuity means the benefit elected under §831.2204.

Current spouse annuity has the same meaning as in §831.603.

Date of final adjudication means the date 30 days after the date of the first regular monthly payment as defined in §831.603.

Former spouse annuity has the same meaning as in §831.603.

Lump-sum credit has the same meaning as in 5 U.S.C. 8331(8).

Present value factor represents the amount of money (earning interest at an assumed rate) required at the time of retirement to fund an annuity that:

(a) Starts out at the rate of $1 a month and is payable in monthly installments for the annuitant's lifetime based on mortality rates for non-disability annuitants under the Civil Service Retirement System; and (b) increases each year at an assumed rate of inflation. Interest, mortality, and inflation rates used in computing the present value are those used by the Board of Actuaries of the Civil Service Retirement System for valuation of the System, based on dynamic assumptions. The present value factors are unisex factors obtained by averaging sex-distinct present value factors, weighted by the total dollar value of annuities typically paid to new retirees at each age.

Time of retirement has the same meaning as in § 831.603.

[51 FR 42989, Nov. 28, 1986, as amended at 54 FR 10136, Mar. 10, 1989]

§ 831.2203 Eligibility.

(a) Except as provided in paragraphs (b), (c), and (h) of this section, an employee or Member whose annuity entitlement commences after June 5, 1986, under any provision of subchapter III of chapter 83 of title 5, United States Code (other than section 8337 of that title), may elect an alternative form of annuity instead of any other benefits under the subchapter.

(b) An employee or Member who, at the time of retirement has a former spouse who is entitled to a portion of the employee's or Member's retirement benefits or a former spouse annuity under a court order acceptable for processing as defined by § 838.103 of this chapter or under a qualifying court order as defined in § 838.1003 of this chapter may not elect an alternative form of annuity.

(c) An employee or Member who is married at the time of retirement may not elect an alternative form of annuity unless the employee's or Member's spouse specifically consents to the election before the date of final adjudication. OPM may waive spousal consent only under the conditions prescribed by § 831.618.

(d) The election of an alternative form of annuity and evidence of spousal consent must be filed on a form prescribed by OPM. The form will require that a notary public or other official authorized to administer oaths certify that the current spouse presented identification, gave consent to the specific election as executed by the retiree, signed or marked the form, and acknowledged that the consent was given freely in the notary's or official's presence.

(e) An election of the alternative form of annuity must be in writing and received by OPM on or before the date of final adjudication. After the date of final adjudication, an election of the alternative form of annuity is irrevocable.

(f) Except as provided in paragraph (g), an annuitant who dies before the date of final adjudication is deemed to have made an affirmative election under paragraph (a) with a fully reduced annuity to provide a current spouse annuity, regardless of any election completed under § 831.614, and the lump-sum credit will be paid in accordance with the order of precedence established under 5 U.S.C. 8342(c).

(g) If an annuitant described in paragraph (f) has completed an election under § 831.611(a) or (b)—

(1) The lump-sum credit will be paid in accordance with the order of precedence established under 5 U.S.C. 8342(c); and

(2) The election under § 831.611(a) or (b) will be honored.

(h)(1)(i) An individual whose annuity commences after December 1, 1990, and before October 1, 1994, may elect an alternative form of annuity only if that individual is—

(A) An employee or Member who meets the conditions and fulfills the requirements described in § 831.2207(c) (2) and (3); or

(B) An employee who is separated involuntarily other than for cause on charges of misconduct or delinquency;

(ii) An individual whose annuity commences on or after October 1, 1994, may elect an alternative form of annuity only if that individual is an employee or Member who meets the conditions and fulfills the requirements described in § 831.2207(c) (2) and (3).

(2) For the purpose of paragraph (h)(1)(i)(B) of this section, the term ''employee'' does not include—

(i) Members of Congress;

(ii) Individuals in positions in the Executive Schedule under sections 5312 through 5317 of title 5, United States Code;

(iii) Presidential appointees under section 105(a)(1), 106(a)(1), or 107 (a)(1) or (b)(1) of title 3, United States Code, if the maximum basic pay for such positions is at or above the rate for Executive Schedule, level V;

(iv) Noncareer appointees in the Senior Executive Service or noncareer members of the Senior Foreign Service; and

(v) Any individual in a position that is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character.

(3) Notwithstanding paragraph (h)(1) of this section, an employee whose annuity commences after December 1, 1990, and before December 2, 1991, may elect an alternative form of annuity if that individual—

(i)(A) Was ordered to active military duty (other than for training) before December 1, 1990, in connection with Operation Desert Shield; or

(B) Is an employee of the Department of Defense who is certified by the Secretary of Defense to have performed, after November 30, 1990, duties essential to support Operation Desert Shield, and the certification is submitted to OPM in a form prescribed by OPM; and

(ii) Would have been eligible, as of November 30, 1990, to elect an alternative form of annuity under paragraph (a) of this section.

[51 FR 42989, Nov. 28, 1986, as amended at 53 FR 11634, Apr. 8, 1988; 56 FR 6551, Feb. 19, 1991; 57 FR 33598, July 29, 1992; 58 FR 52882, Oct. 13, 1993; 60 FR 54586, 54587, Oct. 25, 1995]

§831.2204 Alternative forms of annuities available.

(a) An employee or Member who is eligible to make an election under §831.2203 may elect to receive his or her lump-sum credit plus an annuity computed in accordance with section 8339 of title 5, United States Code, for which they qualify (including any reduction for survivor benefits) and reduced under §831.2205.

(b) A retired employee or Member who elected an alternative form of annuity is subject to all provisions of subchapter III of chapter 83 of title 5, United States Code, as would otherwise apply to a retired employee or Member who did not elect an alternative form of annuity, except that an individual who elected an alternative form of annuity is not eligible to apply for disability annuity under section 8337 of such subchapter.

[51 FR 42989, Nov. 28, 1986, as amended at 53 FR 11634, Apr. 8, 1988; 54 FR 10136, Mar. 10, 1989]

§831.2205 Computation of alternative form of annuity.

(a) To compute the beginning rate of annuity payable to a retiree who elects an alternative form of annuity, OPM will first compute the monthly rate of annuity otherwise payable under subchapter III of chapter 83 of title 5, United States Code, including all reductions provided under the subchapter other than those in §8343a. That monthly rate is then reduced by an amount equal to the retiree's lump-sum credit divided by the present value factor for the retiree's attained age (in full years) at the time of retirement. The reduced monthly rate is then rounded to the next lowest dollar and becomes the rate of annuity payable.

(b) OPM will publish a notice in the FEDERAL REGISTER announcing any proposed ajustments in present value factors at least 30 days before the effective date of the adjustments.

§831.2206 Election to pay deposit or redeposit for civilian service.

(a) If an employee or Member who elects an alternative form of annuity owes a deposit or redeposit for civilian service, and elects to pay that deposit or redeposit before the date of final adjudication, OPM will compute the annuity as if the deposit or redeposit had been made and will deem that deposit or redeposit to be included in the lump-sum credit for the purpose of computing the reduction in annuity under §831.2205.

(b) The amount of a deposit or redeposit deemed paid under paragraph (a) of this section will include any interest owed by the employee or Member under 5 U.S.C. 8334.

(c) For the purpose of paragraph (a) of this section, ''redeposit'' does not include a redeposit owed for service for which credit is allowed pursuant to § 831.303(c)(1).

[54 FR 10136, Mar. 10, 1989, as amended at 56 FR 43865, Sept. 5, 1991]

§ 831.2207 Partial deferred payment of the lump-sum credit if annuity commences after January 3, 1988, and before October 1, 1989.

(a) Except as provided in paragraph (c) of this section, if the annuity of an employee or Member commences after January 3, 1988, and before October 1, 1989, the lump-sum credit payable under § 831.2204 is payable to the individual, or his or her survivors, according to the following schedule:

(1) Sixty percent of the lump-sum credit is payable at the time of retirement, and

(2) Forty percent is payable, with interest determined under section 8334(e)(3) of title 5, United States Code, one year after the time of retirement.

(b) If an employee or Member whose annuity commences after January 3, 1988, and before October 1, 1989, dies before the date of final adjudication, that individual is subject to § 831.2203 (f) or (g), but the lump-sum credit will be paid in accordance with the schedule in paragraph (a) of this section.

(c) An annuitant is exempt from the deferred payment schedule under paragraph (a) of this section if the individual—

(1) Separates involuntarily, other than for cause on charges of delinquency or misconduct, or

(2) Has, at the time of retirement, a life-threatening affliction or other critical medical condition.

(3)(i) For the purpose of this section, *life-threatening affliction or other critical medical condition* means a medical condition so severe as to reasonably limit an individual's probable life expectancy to less than 2 years.

(ii) The existence of one of the following medical conditions is *prima facie* evidence of a life threatening affliction or other critical medical condition:

(A) Metastatic and/or inoperable neoplasms.

(B) Aortic stenosis (severe).

(C) Class IV cardiac disease with congestive heart failure.

(D) Respiratory failure.

(E) Cor pulmonale with respiratory failure.

(F) Emphysema with respiratory failure.

(G) [Reserved].

(H) Severe cardiomyopathy—Class IV.

(I) Aplastic anemia.

(J) Uncontrolled hypertension with hypertensive encephalopathy.

(K) Cardiac aneurysm not amenable to surgical treatment.

(L) Agranulocytosis.

(M) Severe hepatic failure.

(N) Severe Hypoxic brain damage.

(O) Severe portal hypertension with esophageal varices.

(P) AIDS (Active—Not AIDS Related Complex or only seropositivity).

(Q) Life threatening infections (encephalitis, meningitis, rabies, etc.).

(R) Scleroderma with severe esophageal involvement.

(S) Amyotrophic lateral sclerosis (rapidly progressive).

(T) Hemiplegia with life threatening complications.

(U) Quadriplegia with life threatening complications.

(iii) Evidence of the existence of a life-threatening affliction or other critical medical condition must be certified by a physician and sent to OPM on or before the date the annuitant elects to receive an alternative form of annuity. For the purpose of this section, ''physician'' has the same meaning given that term in § 339.102 of this chapter.

(iv) If a medical condition other than those listed in paragraph (c)(3)(ii) of this section is claimed as a basis for exemption from the deferred payment schedule, OPM will review the physician's certification to determine whether the cited condition is life-threatening or critical.

(v) The cost of providing medical documentation under this paragraph rests with the employee or Member, unless OPM exercises its choice of physician.

[53 FR 11634, Apr. 8, 1988, as amended at 60 FR 54586, Oct. 25, 1995]

§831.2208 Partial deferred payment of the lump-sum credit if annuity commences after December 2, 1989, and before October 1, 1995.

(a) Except as provided in paragraph (c) of this section, if the annuity of a retiree commences after December 2, 1989, and before October 1, 1994, the lump-sum credit payable under §831.2204 is payable to the individual, or his or her survivors, according to the following schedule:

(1) Fifty percent of the lump-sum credit is payable at the time of retirement, and

(2) Fifty percent is payable, with interest determined under section 8334(e)(3) of title 5, United States Code, 1 year after the time of retirement, except if the payment date of the amount specified in paragraph (a)(1) of this section was after December 4, 1989, payment with interest will be made in the calendar year following the calendar year in which the payment specified in paragraph (a)(1) of this section was made.

(b) If a retiree whose annuity commences after December 2, 1989, and before October 1, 1994, and who is otherwise entitled to a computation under this subpart, dies before the date of final adjudication, that individual is subject to §831.2203 (f) or (g), but the lump-sum credit will be paid in accordance with the schedule in paragraph (a) of this section.

(c)(1) A retiree is exempt from the deferred payment schedule under paragraph (a) of this section if the individual meets the conditions, and fulfills the requirements, described in §831.2207(c).

(2)(i) A retiree who is exempt from the deferred payment schedule may waive that exemption by notifying OPM, in writing, on or before the date he or she elects to receive the alternative form of annuity.

(ii) Paragraph (c)(2)(i) of this section does not apply to an individual whose annuity commences after December 1, 1990, if that individual's eligibility to elect an alternative form of annuity is pursuant to §831.2203(h)(1)(i)(A).

(iii) A waiver under paragraph (c)(2)(i) of this section cannot be revoked.

[56 FR 6551, Feb. 19, 1991, as amended at 56 FR 43865, Sept. 5, 1991; 60 FR 54587, Oct. 25, 1995]

§831.2209 Redetermined annuity after reemployment.

(a) For purposes of this section, ''lump-sum credit'' does not include—

(1) The amount by which the lump-sum credit attributable to service performed before the annuitant's first retirement was reduced by annuity payments that were not reimbursed by the employing agency under section 8344(a) of title 5, United States Code, or

(2) Any part of the lump-sum credit attributable to service performed before the annuitant's first retirement that has already been paid to the annuitant pursuant to an election or an alternative form of annuity.

(b) An annuitant who meets the requirements for a redetermined annuity under subpart H, and who meets all requirements of §831.2203, may elect an alternative form of annuity.

(c) To compute the beginning rate of the redetermined annuity payable to an annuitant who elects an alternative form of annuity, OPM will first compute the monthly rate payable under subchapter III of chapter 83 of title 5, United States Code, including all reductions provided under the subchapter other than those in section 8343a. That monthly rate is then reduced by the sum of—

(1)(i) Any reduction that was computed under §831.2205 at the time of the annuitant's prior retirement, increased by—

(ii) All cost-of-living adjustments under section 8340 of title 5, United States Code that applied to the annuitant before the commencing date of the redetermined annuity, and

(2) An amount equal to the annuitant's lump-sum credit, divided by the present value factor for the annuitant's attained age on the date the redetermined annuity commences.

(d) The beginning rate of a redetermined annuity payable to an annuitant who does not elect, or is not eligible to elect, an alternative form of annuity

will be reduced in accordance with paragraph (c)(1) of this section.

[54 FR 10136, Mar. 10, 1989. Redesignated at 55 FR 4597, Feb. 9, 1990]

PART 835—DEBT COLLECTION

Subparts A–E—[Reserved]

Subpart F—Collection of Debts by Federal Tax Refund Offset

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835.601 Purpose.
835.602 Past-due legally enforceable debt.
835.603 Notification of intent to collect.
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835.606 Change in notification to Internal Revenue Service.
835.607 Administrative charges.

AUTHORITY 5 U.S.C. 8347(a) and 8461(g). Subpart F also issued under 31 U.S.C. 3720A.

SOURCE: 57 FR 61771, Dec. 29, 1992, unless otherwise noted.

Subparts A–E—[Reserved]

Subpart F—Collection of Debts by Federal Tax Refund Offset

§ 835.601 Purpose.

This subpart establishes procedures for OPM to refer past-due legally enforceable debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of persons owing debts to OPM. It specifies the agency procedures and the rights of the debtor applicable to claims referred under the Federal Tax Refund Offset Program for the collection of debts owed to OPM.

§ 835.602 Past-due legally enforceable debt.

A past-due legally enforceable debt for referral to the IRS is a debt that—

(a) Resulted from—

(1) Erroneous payments made under the Civil Service Retirement or the Federal Employees' Retirement Systems; or

(2) Unpaid health or life insurance premiums due under the Federal Employees' Health Benefits or Federal Employees' Group Life Insurance Programs; or

(3) Any other statute administered by OPM;

(b) Is an obligation of a debtor who is a natural person;

(c) Except in the case of a judgment debt, has been delinquent at least 3 months but not more than 10 years at the time the offset is made;

(d) Is at least $25.00;

(e) With respect to which the individual's rights described in 5 CFR 831.1301 through 831.1309 have been exhausted;

(f) With respect to which either:

(1) OPM's records do not contain evidence that the person owing the debt (or his or her spouse) has filed for bankruptcy under title 11 of the United States Code; or

(2) OPM can clearly establish at the time of the referral that the automatic stay under 11 U.S.C. 362 has been lifted or is no longer in effect with respect to the person owing the debt or his or her spouse, and the debt was not discharged in the bankruptcy proceeding;

(g) Cannot currently be collected under the salary offset provisions of 5 U.S.C. 5514(a)(1);

(h) Is not eligible for administrative offset under 31 U.S.C. 3716(a) because of 31 U.S.C. 3716(c)(2), or cannot currently be collected as an administrative offset by OPM under 31 U.S.C. 3716(a) against amounts payable to the debtor by OPM; and

(i) Has been disclosed by OPM to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless the consumer reporting agency would be prohibited from reporting information concerning the debt by reason of 15 U.S.C. 1681c, or unless the amount of the debt does not exceed $100.

§ 835.603 Notification of intent to collect.

(a) *Notification before submission to the IRS.* A request for reduction of an IRS income tax refund will be made only after OPM makes a determination that an amount is owed and past-due and gives or makes a reasonable attempt to give the debtor 60 days written notice of the intent to collect by IRS tax refund offset.

(b) *Contents of notice.* OPM's notice of intention to collect by IRS tax refund offset (Notice of Intent) will state:

(1) The amount of the debt;