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(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 CSRS-Offset wages as a reemployed annuitant, and assuming the annuitant was fully insured (as defined by section 214(a) of the Social Security Act); 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 CSRS-Offset service as a reemployed annuitant, 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 supplemental 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 (1) of section 203 of the Social Security Act (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 215(d)(5)(ii) of the Social Security Act (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 beginning and ending dates thereof.

§ 837.702 Offset from supplemental survivor annuity.

(a) OPM will reduce a supplemental survivor annuity (an annuity under 5 U.S.C. 8341) based on the service of an individual who performed CSRS-Offset 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, widows', and widowers' benefits, respectively) of the Social Security Act.

(b) The reduction required under paragraph (a) of this section begins (or is reinstated) on the first day of the month during which the survivor annuitant—

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

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

(c) The reduction under paragraphs (a) of this section will be computed and adjusted in a manner consistent with the provisions of § 837.701 (c) through (e) of this part.

(d) A reduction under paragraph (a) 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 survivor annuitant who has not made proper application for the social security benefit, the reduction under paragraph (a) of this section stops on the date entitlement to such 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.

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

Subpart H—Alternative Entitlements and Canceled Retirements

§ 837.801 Unperfected entitlement to CSRS benefits based on a prior separation.

(a) An employee who meets the age and service requirements for title to a non-disability annuity under CSRS on the basis of a prior separation, but did not apply for that annuity before a subsequent separation from service to which a different annuity entitlement attaches, may elect, on application, to receive either—

(1) The annuity based on the later separation; or

(2) The annuity based on the prior separation, with payment of annuity suspended during the period(s) of employment subsequent to the commencing date of annuity, and such benefits as would be payable had the subsequent period(s) of employment been performed under the provisions of this part.

(b) When an individual who has applied for a deferred annuity under CSRS is reemployed under CSRS before the commencing date of that annuity, the application is deemed to have not been made.

§ 837.802 Benefits under another retirement system for Federal employees based on the most recent separation.

(a) *Generally.* An annuitant who has performed reemployment service after the commencing date of annuity under the provisions of another retirement system, and who is entitled to an annuity benefit from the other retirement system during a period in which he or she is also entitled to an annuity benefit under CSRS or FERS, may receive both benefits simultaneously, or for the same period, except that the annuitant may not receive both benefits simultaneously, or for the same period, if—

(1) The provisions of law or regulation governing the other retirement system do not permit the annuitant to receive both benefits simultaneously, or for the same period of time; or

(2) Entitlement to the annuity from the other retirement system is based on service credited in the computation of the CSRS or FERS annuity, or service credited in the computation of the annuity from the other retirement system was used in the computation of the CSRS or FERS annuity.

(b) *Election of alternative benefits.* (1) Where simultaneous receipt of, or entitlement to, both annuities is barred under the provisions of paragraph (a)(1) of this section, the annuitant must elect to receive either the annuity under the other retirement system, or the CSRS annuity.

(2) Where the annuitant, under the provisions of paragraph (b)(1) of this section, elects to receive annuity from the other retirement system in lieu of the CSRS or FERS annuity, the CSRS or FERS annuity terminates as of the commencing date of the other annuity, and any overpayment of CSRS annuity will be offset from the other annuity and paid to OPM.

(c) *Recomputation.* Where simultaneous receipt of annuities from more than one retirement system is barred by paragraph (a)(2), but not by paragraph (a)(1), of this section, the CSRS or FERS annuity may be recomputed to exclude credit for service credited in determining entitlement to, or the amount of, the annuity from the other retirement system, effective as of the commencing date of the annuity from the other retirement system for Federal employees, and the recomputed CSRS or FERS annuity may be paid simultaneous with, or for the same period as, the annuity from the other retirement system for Federal employees.

(d) *Forfeiture.* Where an annuitant's coverage as an employee under another retirement system, whether by election or by operation of law or regulation, results in forfeiture of annuity rights under CSRS or FERS, the CSRS or FERS annuity will terminate as of the effective date of coverage.

(e) *Survivors.* The rules detailed in this section in regard to dual entitlement to annuity benefits under CSRS or FERS and another retirement system also apply to dual entitlement to survivor benefits under CSRS or FERS and another retirement system, unless the particular circumstance is otherwise governed by specific provision of statute or regulation.

(f) *Agency responsibilities.* The agency responsible for administering another retirement system must—

(1) Promptly notify OPM of an election of coverage under that retirement system by a reemployed CSRS or FERS annuitant, or the coverage of a reemployed CSRS annuitant under that retirement system by election or operation of law or regulation, when such coverage affects the annuitant's entitlement to CSRS annuity;

(2) Promptly notify OPM when a reemployed annuitant separates with entitlement to an annuity under the other retirement system that cannot, under the provisions of paragraph (a) of

this section, be paid simultaneous with, or during the same period as, the CSRS annuity; and

(3) Reimburse OPM for overpayments of annuity resulting from a failure to comply with paragraphs (b) (1) and (2) of this section.

§ 837.803 Cancellation of retirement by judicial or administrative authority.

(a) *Cancellation of retirement action.* A separation from employment on which an application for retirement is based may only be canceled by the former employing agency in response to a direct and final order of a judicial or administrative body charged with the responsibility of reviewing the legality of the separation, and authorized to make such order, or by agreement between the annuitant and the former employing agency in resolution of a grievance, complaint, dispute, appeal or other action, involving an allegedly erroneous separation, before such authority.

(b) *Agency notification to OPM.* Upon receiving a final order requiring cancellation of the annuitant's separation or after the annuitant and the agency agree to cancel the separation, the employing agency must notify OPM and request the amount of the erroneous payment to be recovered under §550.805(e) of this chapter from any back pay adjustment to which the employee may be entitled.

(c) *Collection of erroneously paid retirement benefits.* (1) If OPM determines that an overpayment of annuity or lump-sum credit has occurred and the employee is entitled to receive back pay because of the canceled separation, the overpaid retirement benefits must be deducted to the extent they can be recovered from the back pay adjustment as required by §550,805(e) of this chapter.

(2) Amounts recovered from back pay will not be subject to waiver consideration under the provisions of 5 U.S.C. 8346(b) or 8470(b). If there is no back pay or the back pay is insufficient to recover the entire payment, the employee may request that OPM waive the uncollected portion of the overpayment. If waiver is not granted, the employee must repay the erroneous payment.

§ 837.804 Finality of elections under this subpart.

Except as otherwise provided by this subpart, an election of coverage under, or annuity from, another retirement system, in lieu of CSRS or FERS coverage or annuity, or the election between simultaneous entitlements under CSRS or FERS, is final and conclusive for the period of simultaneous entitlement to coverage or annuity.

PART 838—COURT ORDERS AFFECTING RETIREMENT BENEFITS

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