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(ii) Elects under section 301 of Pub. L. 99–335 to become subject to chapter 84 of such title and begins service in a secondary position with no break in service is considered to have met the transfer and 3-year requirements of §§ 842.803(b)(1)(i) and (ii) for coverage in a secondary position upon the effective date of the election.

(2) An individual who—

(i) Is covered as a law enforcement officer or firefighter under 5 U.S.C. 8336(c) in a supervisory or administrative position, having already met the transfer requirement of subpart I of part 831 of this chapter; and

(ii) Automatically becomes subject to chapter 84 of title 5 of the United States Code (not by election under section 301 of Pub. L. 99–335) serving in a secondary position is considered to have met the 3-year requirement of § 842.803(b)(1)(ii) for coverage in a secondary position. The employee is not covered as a law enforcement officer or firefighter in a secondary position if he or she had a break in coverage as a law enforcement officer or firefighter (within the meaning of 5 U.S.C. 8331) exceeding 3 days immediately before becoming subject to chapter 84 of title 5 of United States Code. However, a break in coverage in supervisory or administrative positions occurring before the individual becomes subject to such chapter 84 that began with an involuntary separation (not for cause), within the meaning of 5 U.S.C. 8414(b)(1)(A), is not considered to be a break in service for this purpose.

(d) (1) The CSRS definitions of law enforcement officer under 5 U.S.C. 8331(20) and firefighter under 5 U.S.C. 8331(21) are applicable to service performed before an employee became subject to chapter 84 if the service was—

(i) Subject to CSRS deductions at the time it was performed (including service that becomes creditable under FERS annuity computation rules);

(ii) Performed before 1987 and not subject to retirement deductions; or

(iii) Performed after 1986 and not subject to retirement deductions but is creditable in a CSRS component as described in § 846.304(b).

(2) The determination of whether any service meets the CSRS definitions of law enforcement officer under 5 U.S.C. 8331 (20) or firefighter under 5 U.S.C. 8331(21) must be made in accordance with the provisions of subpart I of part 831 of this chapter.

[52 FR 2069, Jan. 16, 1987, as amended at 57 FR 32691, July 23, 1992]

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

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AUTHORITY: 5 U.S.C. 8461; §§ 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

SOURCE: 52 FR 2074, Jan. 16, 1987, unless otherwise noted.

Subpart A—General Provisions

§ 843.101 Purpose.

(a) This part regulates death benefits and employee refunds under FERS.

(b) This subpart contains definitions and regulations that have general application throughout this part.

§ 843.102 Definitions.

In this part—

Accrued benefit means the accrued, unpaid annuity payable after the death of a retiree.

Adult child means a child who has attained age 18.

Basic annuity means the recurring payments (after the death of an employee, separated employee, or retiree) made to a current or former spouse of a deceased retiree, employee, or separated employee under subsection (a), (b)(1)(B), or (c)(2) of section 8442 of title 5, United States Code.

Basic child's annuity rate means the total amount that all surviving children of an employee or retiree would receive under CSRS.

Basic employee death benefit means the payment to the current spouse of a deceased employee equal to $15,000 (indexed under section 8462 of title 5, United States Code), plus one-half of the employee's final salary (or average salary, if higher).

Child means a child as defined in section 8441(4) of title 5, United States Code.

Compensationer means a person receiving recurring benefits under chapter 81 of title 5, United States Code.

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, separated employee, or retiree at the time of the employee's, separated employee's or retiree's death. *Current spouse* includes a spouse who is legally separated but not divorced from the employee, separated employee, or retiree.

Current spouse annuity means the basic annuity (and supplementary annuity, if any) payable to a current spouse.

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.

Employee means an employee as defined in section 8401(11) of title 5, United States Code, and a Member as defined in section 8401(20) of title 5, United States Code. ''Employee'' includes a person who has applied for retirement under FERS but had not been separated from the service prior to his or her death, even if the person's retirement would have been retroactively effective upon separation.

FERS means chapter 84 of title 5, United States Code.

Final annual rate of basic pay means the basic pay that an employee or Member would receive in a year at the current rate of pay. A pay rate other than an annual salary is converted to an annual rate by multiplying the prescribed rate by the number of pay units in a 52-week work year.

(a) The annual pay of a part-time (regularly scheduled) employee is the product of the employee's final hourly rate of pay and the higher of—

(1) The number of hours that the employee was entitled to basic pay whether in a duty or paid leave status (not to exceed 2000 for Postal employees or 2080 for non-postal employees) in the 52-week work year immediately preceding the end of the last pay period in which the employee was in a pay status; or

(2) The number of hours in the employee's regularly scheduled tour of duty in a 52-week work year.

(b) The annual pay of an intermittent (not regularly scheduled) employee is the product of the employee's final hourly rate of pay and the number of hours that the employee was entitled to basic pay whether in a duty or paid leave status (not to exceed 2000 for Postal employees or 2080 for non-Postal employees) in the 52-week work year immediately preceding the end of the last pay period in which the employee was in a pay status.

(c) If the part-time or intermittent employee's current appointment began less than 52 weeks prior to the end of the last pay period in which the employee was in a pay status, the number of hours that the employee was entitled to basic pay is computed by multiplying the number of hours that the employee was paid basic pay by a fraction whose numerator is 52 and whose denominator is the number of weeks between the date of appointment and the end of the last pay period in which the employee was in a pay status.

(d) The annual pay for customs officers is the sum of the employee's general schedule pay, locality pay, and the lesser of—

(1) Two times the employee's final hourly rate of pay times the number of hours for which the employee was paid two times salary as compensation for overtime inspectional service under section 5(a) of the Act of February 11, 1911 (19 U.S.C. 261 and 267) plus three times the employee's final hourly rate of pay times the number of hours for which the employee was paid three times salary as compensation for overtime inspectional service under section 5(a) in the 52-week work year immediately preceding the end of the last pay period in which the employee was in pay status; or

(2) $12,500.

Former spouse means a living person who was married for at least 9 months to an employee, separated employee, or retiree who performed at least 18 months of service creditable under FERS and whose marriage to the employee, separated employee, or retiree was terminated before the death of the employee, separated employee, or retiree.

Former spouse annuity means the basic annuity (and supplementary annuity, if any) payable to a former spouse.

Insurable interest beneficiary means a person designated to receive a survivor annuity under § 842.605 of this chapter.

Insurable interest reduction means the reduction in a retiree's annuity because the retiree elected to provide a survivor annuity to an insurable interest beneficiary.

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. 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.

Minimum retirement age means the minimum retirement age as defined in § 842.202 of this chapter.[1]

Year of birth:	Minimum retirement age
Before 1948	55 years.
1948	55 years and 2 months.
1949	55 years and 4 months.
1950	55 years and 6 months.
1951	55 years and 8 months.
1952	55 years and 10 months.
1953–1964	56 years.
1965	56 years and 2 months.
1966	56 years and 4 months.
1967	56 years and 6 months.
1968	56 years and 8 months.
1969	56 years and 10 months.
1970 and after	57 years.

Qualifying court order means a court order that awards a former spouse annuity and that satisfies the requirements of section 8445 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 FERS 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. *Retiree* for purposes of determining a person's status at the time of death means that the person had been separated from the service and had met all the requirements to receive an annuity including having filed an application for the annuity prior to his or her death.

Separated employee means a former employee who has been separated from the service but who has not met all the requirements for retirement under FERS or who has not filed an application for retirement under FERS.

Step-child means a child who is the issue of a current or former spouse of the employee or retiree but is not the issue of the employee or retiree. A child is not a step-child unless the relationship between the employee or retiree and the child's parent is a marriage.

Supplementary annuity means the recurring payment under section 8442(f) of title 5, United States Code.

Unexpended balance means the unrefunded amount consisting of—

(a) Retirement deductions made from the basic pay of an employee under subpart E of part 841 of this chapter;

(b) Amount deposited by an employee for periods of service (including military service) for which—

(1) No retirement deductions were made; or

(2) Deductions were refunded to the employee; and

(c) Interest compounded annually on the deductions and deposits at a rate which, for any calendar year, will be equal to the overall average yield to the Civil Service Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during that fiscal year under section 8348 (c), (d), and (e) of title 5, United States Code, as determined by the Secretary of the Treasury. Interest on deductions and deposits does not include interest—

(1) If the service covered by the contributions totals 1 year or less; or

(2) For a fractional part of a month in the total service.

[52 FR 2074, Jan. 16, 1987; 52 FR 2352, Jan. 21, 1987, and 52 FR 23014, June 17, 1987; 53 FR 16536, May 10, 1988; 57 FR 29784, July 7, 1992; 57 FR 33599, July 29, 1992; 60 FR 13035, Mar. 10, 1995]

§ 843.103 Application required.

(a) No person is entitled to benefits under this part unless an application on behalf of that person is filed with OPM no later than 30 years after the death of the employee, separated employee, or retiree on whose service the benefit is based.

(b) Applications for benefits under this part must be filed on the form provided by OPM for that purpose.

Subpart B—One-time Payments

§ 843.201 Purpose.

This subpart explains the requirements under FERS—

(a) For payment of employee contributions to the Civil Service Retirement Fund—

[1] The definition of minimum retirement age which will be codified at 5 CFR 842.202 reads:

Minimum retirement age means an age based on an individual's year of birth, as follows:

(1) As a refund of contribution, to separated employees; or

(2) As a death benefit, to survivors of employees, separated employees, and retirees; and

(b) For payment of any accrued, but unpaid, annuity to survivors of retirees.

§ 843.202 Eligibility for payment of the unexpended balance to a separated employee.

(a) Except as provided in §§ 843.208 and 843.209 or in section 3716 of title 31, United States Code, on administrative offset for Government claims, a separated employee who has been separated from a covered position for at least 31 days and who is ineligible for an annuity commencing within 31 days after the date of filing an application for refund is eligible for a payment of the unexpended balance.

(b) Periods of service for which employee contributions have been refunded are not creditable service in determining whether the employee has sufficient service to have title to an annuity or for any other purpose.

§ 843.203 Eligibility for a one-time payment upon death of an employee, separated employee, or retiree if no one is eligible for an annuity.

(a) If there is no survivor who is entitled to monthly survivor annuity benefits on the death of an employee, separated employee, retiree, or survivor annuitant, the unexpended balance 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 8424 of title 5, United States Code.

(b) 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. 8424(d), payment of the proceeds to the duly appointed representative of the deceased's estate will bar recovery by any other person.

[52 FR 2074, Jan. 16, 1987, as amended at 57 FR 29784, July 7, 1992]

§ 843.204 Eligibility for a one-time payment upon death of an employee, separated employee, or retiree if someone is eligible for an annuity.

(a) Except as provided in section 3716 of title 31, United States Code, on administrative offset for Government claims, even if an annuity is payable, the person entitled in the order of precedence described in section 8424 of title 5, United States Code, may be paid—

(1) Partial deposits for civilian service performed on and after October 1, 1982; and

(2) Partial deposits for post-1956 military service; and

(3) The accrued benefit.

(b) Except as provided in subpart G of part 842 of this chapter or §843.311, when someone is eligible for an annuity, the person entitled in the order of precedence may not be paid—

(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 FERS; 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 or FERS; or

(3) Completed deposits for post-1956 military service, unless the service covered by the deposit is not creditable under FERS.

(c) Payments of the partial or completed deposits mentioned in paragraph (b) of this section are subject to section 3716 of title 31, United States Code (administrative offset for Governmental claims).

§ 843.205 Designation of beneficiary—form and execution.

(a) A designation of beneficiary must be in writing, signed and witnessed, and received in the employing office (or in OPM, in the case of a retiree, or a compensationer, or a separated employee) before the death of the designator.

(b) A 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, will not have 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. This right cannot be waived or restricted.

(f) A designation of beneficiary is automatically cancelled whenever a separated employee is paid the unexpended balance.

(g)(1) If the shares designated equal less than 100 percent, the undesignated portion will be paid according to the order of precedence provided in section 8424 of title 5, United States Code.

(2) If the shares designated exceed 100 percent, each designee's share will be in proportion to the share originally designated. Each share is computed by multiplying the percentage designated for that designee by a fraction whose numerator is 100 and whose denominator is the total number of percent designated.

§ 843.206 Designation of beneficiary—proof of receipt.

(a) Upon receipt of a designation of beneficiary, the agency (or OPM) will mark the designation to show the date of receipt.

(b) The date of receipt of designation of beneficiary is presumed to be the date marked by the agency (or OPM).

§ 843.207 Agent of next of kin.

When a deceased employee or retiree has not named a beneficiary and one of the next of kin entitled makes a claim for the accrued benefit, other next of kin entitled to share in the unexpended balance or accrued benefit may designate the one who made the claim to act as their agent to receive their distributive shares.

§ 843.208 Notification of current and/or former spouse before payment of unexpended balance to a separated employee.

(a) Payment to an employee of the unexpended balance may be made only if current and former spouses are notified of the former employee's application.

(b) 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 application for the unexpended balance 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 the unexpended balance.

(c) If the current and/or former spouse refuses to acknowledge the notification or the employee is otherwise unable to obtain the acknowledgment, the employee must submit—

(1) Affidavits signed by two individuals who witnessed the employee's attempt to personally notify the current or former spouse. The witnesses must attest that they were in the presence of the employee and the current or former spouse and that the employee'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. The unexpended balance will not be paid until OPM receives the signed return receipt.

§ 843.209 Waiver of 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 and two other persons, at least one of whom is not related to the former employee, 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.

§ 843.210 Transfers between retirement systems.

Transfers of employees' contributions between the Civil Service Retirement 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 of this subpart.

§ 843.211 Determining when children prevent payment of the unexpended balance.

Someone entitled to an annuity for purposes of §§ 843.203 and 843.204 includes a child, even if the amount of the child's annuity is zero because the amount of the social security child survivor benefits exceeds the child survivor benefits payable under CSRS, unless—

(a) The child's annuity entitlement has terminated under § 843.408(b); or

(b) The child is—

(1) A disabled child under § 843.407,

(2) At least age 23, and

(3) Entitled to social security child survivor benefits in an amount that equals or exceeds the amount of the child survivor benefits payable under CSRS.

[52 FR 23014, June 17, 1987]

§ 843.212 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 41721, Aug. 9, 1996]

Subpart C—Current and Former Spouse Benefits

§ 843.301 Purpose.

This subpart explains the survivor benefits payable under FERS to current and former spouses based on the death or retirees, employees, and separated employees.

§ 843.302 Time for filing applications for death benefits.

A current or former spouse of a deceased retiree, employee, or separated employee may file an application for benefits under this subpart, personally or through a representative, at any time within 30 years after the death of the retiree, employee, or separated employee.

§ 843.303 Marriage duration requirements.

(a) The current spouse of a retiree, an employee, or a separated employee can qualify for a current spouse annuity or the basic employee death benefit only if—

(1) The current spouse and the retiree, employee, or separated employee 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 retiree, employee, or separated employee 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 retiree, employee, or separated employee 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 retiree, employee, or separated employee is included. This includes a child born out of wedlock if the parents later married 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 caused by or the result of intentional self-destruction or intentionally self-inflicted injury, while sane or insane.

(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.

[52 FR 2074, Jan. 16, 1987, as amended at 52 FR 23014, June 17, 1987]

§ 843.304 Commencing and terminating dates of survivor annuities.

(a) A current or former spouse annuity under this subpart commences on the day after the death of the person on whose service the annuity is based.

(b) A current or former spouse annuity under this subpart terminates on the last day of the month before the current or former spouse remarries before age 55 or dies.

(c) A current spouse annuity under this subpart terminated for reasons other than death may be restored under § 843.305.

(d) 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.

§ 843.305 Reinstatement.

(a) If a current spouse annuity is terminated because of a 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 another survivor benefit to which he or she may be entitled (under FERS 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).

(b) If present or future entitlement to a former spouse annuity terminates because of remarriage of the recipient or potential recipient, the entitlement is permanently extinguished. An annulment of the remarriage does not reinstate the entitlement.

§ 843.306 Basic benefits on death of a non-disability retiree.

(a) Except as provided in §§ 843.307 and 843.312, and paragraph (b) of this section, if an annuitant dies and is survived by a current spouse, the current spouse is entitled to a current spouse annuity equal to 50 percent of an annuity computed under subpart D of part 842 of this chapter, with respect to the retiree, unless—

(1) The right to a current spouse annuity was waived under § 842.603 of this chapter (and no election was subsequently made under § 842.610 of this chapter nullifying the waiver); or

(2) In the case of a marriage after retirement, the retiree did not file an election under § 842.612 of this chapter.

(b) A current spouse who married the retiree after retirement is entitled to an annuity under paragraph (a) of this section only upon electing this annuity instead of any other survivor benefit to which such spouse may be entitled under this subpart, subpart B of this part, or under another retirement system for Government employees.

[52 FR 2074, Jan. 16, 1987, as amended at 52 FR 23014, June 17, 1987]

§ 843.307 Basic benefits on death of a disability retiree.

(a) Except as provided in § 843.312, the widow or widower of a retiree who retired based on disability under part 844 of this chapter is entitled to a current spouse annuity based on the service of the disability annuitant computed under paragraph (b) of this section.

(b)(1) In the case of a current spouse entitled to an annuity based on the service of a disability annuitant who died after attaining age 62, the amount of the current spouse annuity is one-half of the amount of the annuity to

which such disability annuitant was entitled as computed under part 844 of this chapter (including any appropriate reduction under §844.302(b)(2) or (c)(2) of this chapter, and any adjustments under section 8462 of title 5, United States Code) as of the day before the date of the disability annuitant's death.

(2) In the case of a current spouse entitled to an annuity based on the service of a disability annuitant who dies before age 62, the amount of the current spouse annuity equals 50 percent of the amount to which the disability annuitant would have been entitled under §844.303 of this chapter, if the disability annuitant had attained age 62 on the day before his or her death. However, in determining the amount under §844.303(a) of this chapter, creditable service includes the period of time between the date of death and the date of the 62nd anniversary of the birth of the annuitant, but average pay is adjusted (under section 8462 of title 5, United States Code) only through date of death.

[52 FR 2074, Jan. 16, 1987, as amended at 52 FR 23014, June 17, 1987]

§843.308 Supplementary benefits on death of a retiree.

(a) Except as provided in §843.312 and paragraph (d) of this section, a current spouse of a deceased retiree who is entitled to a current spouse annuity based on the retiree's service is also entitled to a supplementary annuity.

(b) The amount of the supplementary annuity under this section equals the lesser of—

(1) The amount by which the survivor's assumed CSRS annuity exceeds the annuity payable to the current spouse under §843.306 or §843.307; or

(2) The amount equal to the widow's or widower's insurance benefits that would be payable to him or her under title II of the Social Security Act (without regard to section 202(f)(2) of the Act) based on the wages and self-employment income of the deceased annuitant, except that for purposes of this calculation—

(i) The social security earnings test (section 203 of the Act) does not apply; and

(ii) The benefit is computed—

(A) As of the date on which the retiree dies; and

(B) As if the survivor had attained age 60 and made application for those benefits under subsection (e) or (f) of section 202 of the Act; and

(iii) In computing the primary insurance amount—

(A) For years of service under FERS, only the retiree's basic pay is considered to be wages; and

(B) For each year after age 21 for which the retiree did not work under FERS, the retiree's wages are deemed to equal the amount in appendix B of this subpart corresponding to that year multiplied by the retiree's basic pay for his or her first full year of employment under FERS divided by the amount in appendix B of this subpart corresponding to his or her first full year of employment under FERS.

(c)(1) The supplementary annuity terminates at the beginning of the month in which the survivor first satisfies the minimum age requirement under section 202(e)(1)(B)(i) or 202(f)(1)(B)(i) of the Social Security Act.

(2) The supplementary annuity is not payable to a survivor—

(i) Who would not be entitled to benefits under section 202 (e) or (f) of the Social Security Act based on the wages and self-employment income of the deceased annuitant (determined, as of the date of the annuitant's death, as if the survivor had attained age 60 and made appropriate application for benefits, but without regard to any restriction relating to remarriage); or

(ii) For any calendar month in which the survivor is entitled (or would, on proper application, be entitled) to benefits under section 202(g) of the Social Security Act (relating to mother's and father's insurance benefits), or under section 202 (e) or (f) of the Act by reason of having become disabled, based on the wages and self-employment income of the deceased annuitant.

(d) For purposes of this section—

(1) ''Assumed CSRS annuity,'' as used in the case of a survivor, means the amount of the annuity to which such survivor would be entitled under CSRS based on the service of the deceased annuitant, which is determined—

(i) As of the day after the date of the annuitant's death;

(ii) As if the survivor had made appropriate application therefor; and

(iii) As if the service of the deceased annuitant were creditable under CSRS.

(2) ''Basic pay'' means ''basic pay'' as defined in section 8401 of title 5, United States Code.

(e) An amount payable under this section will be adjusted under section 8462 of title 5, United States Code, and will be treated in the same way as an amount payable under §843.306 or §843.307.

§843.309 Basic employee death benefit.

(a) Except as provided in §843.312, if an employee or Member dies after completing at least 18 months of civilian service creditable under subpart C of part 842 of this chapter and is survived by a current spouse who meets the requirements of §843.303, the current spouse is entitled to the basic employee death benefit equal to the sum of—

(1) Fifty percent of the final annual rate of basic pay (or of the average pay, if higher) of the employee; and

(2) Fifteen thousand dollars as adjusted under section 8462 of title 5, United States Code.

(b) The current spouse may elect to receive the basic employee death benefit in one of the following forms—

(1) A one-time payment; or

(2)(i) For deaths occurring before October 1, 1987, 36 equal monthly installments of 3.05642 percent of the amount of the basic employee death benefit.

(ii) For deaths occurring on or after October 1, 1987, 36 equal monthly installments of 3.06921 percent of the amount of the basic employee death benefit.

(c)(1)(i) A current spouse who has elected to receive the basic employee death benefit in 36 installments under paragraph (b)(2) of this section may elect to receive the remaining portion of the basic employee death benefit in one payment.

(ii) The election to receive the remaining portion of the basic employee death benefit in one payment must be in writing and signed by the current spouse.

(iii) The election to receive the remaining portion of the basic employee death benefit in one payment is irrevocable when OPM authorizes the payment.

(2) Upon the death of a current spouse who was receiving the basic employee death benefit in 36 installments under paragraph (b)(2) of this section, the remaining portion of the basic employee death benefit will be paid as one payment to the estate of the current spouse.

(3) As used in this section, ''remaining portion of the basic employee death benefit'' means the amount of the basic employee death benefit computed under paragraph (a) of this section that has not been paid. The amount is the remaining principal computed based on an amortization schedule with the initial principal equal to the amount computed under paragraph (a) of this section and the interest rate based on the applicable factor under paragraph (b)(2) of this section.

[52 FR 2074, Jan. 16, 1987, as amended at 52 FR 23014, June 17, 1987; 52 FR 36389, Sept. 29, 1987; 56 FR 65419, Dec. 17, 1991]

§843.310 Annuity based on death of an employee.

Except as provided in §843.312, if an employee dies after completing at least 10 years of service, a current spouse is entitled to an annuity equal to 50 percent of the annuity computed under subpart D of part 842 of this chapter (without reduction for age), with respect to the employee. The annuity is in addition to the benefit described in §843.309.

[52 FR 2074, Jan. 16, 1987, as amended at 52 FR 23014, June 17, 1987]

§843.311 Annuity based on death of a separated employee.

(a) Except as provided in §843.312, if a separated employee who has completed at least 10 years of service dies after having separated from the service with title to a deferred annuity under §842.212 of this chapter, but before having established a valid claim for an annuity, and is survived by a current spouse to whom he or she was married on the date of separation, the current spouse may elect to receive—

(1) An annuity under paragraph (b) of this section; or

(2) The unexpended balance, if the current spouse is the individual who would be entitled to the unexpended balance.

(b) Except as provided in § 843.312 and paragraph (c) of this section, the current spouse annuity under this section equals 50 percent of an annuity computed under subpart D of part 842 of this chapter, for the separated employee. If the separated employee died before having attained the minimum retirement age, the computation is made as if the separated employee had attained the minimum retirement age.

(c)(1) The current spouse annuity commences on the day after the separated employee would have attained—

(i) Age 62 if the separated employee had less than 20 years of creditable service,

(ii) Age 60 if the employee had at least 20 years of creditable service but less than 30 years of creditable service; or

(iii) The minimum retirement age if the employee had at least 30 years of creditable service.

(2)(i) The current spouse may elect to receive an adjusted annuity beginning on the day after the death of the separated employee.

(ii) The rate of the adjusted annuity equals the annuity computed under paragraph (b) of this section multiplied by the factor in appendix A of this subpart for the age of the retiree as of the birthday before the retiree's death.

[52 FR 2074, Jan. 16, 1987, as amended at 52 FR 23014, June 17, 1987; 57 FR 54681, Nov. 20, 1992]

§ 843.312 Payment to former spouses.

(a) Any benefit (or a portion of any benefit) payable to a current spouse under this subpart is payable to a former spouse instead if the former spouse is entitled to that benefit under the terms of a qualifying court order or an election under subpart F of part 842 of this chapter.

(b) A current spouse annuity may not exceed the difference between—

(1) The amount of the annuity that would otherwise be payable to the current spouse under this subpart; and

(2) The amount of the annuity payable to any former spouse of the deceased employee, retiree, or separated employee based on an election made under subpart F of part 842 of this chapter or a qualifying court order.

(c) The basic employee death benefit paid to a current spouse may not exceed the difference between—

(1) The amount that would otherwise be payable to the current spouse under § 843.310; and

(2) The portion of the basic employee death benefit payable to a former spouse based on a qualifying court order.

§ 843.313 Elections between survivor annuities.

(a) A current spouse annuity cannot be reinstated under § 843.305 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 FERS, 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 § 842.612 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 FERS, 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 § 842.611, 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 FERS, 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.

[57 FR 54681, Nov. 20, 1992]

§843.314 Amount of survivor annuity where service includes credit for service with a nonappropriated fund instrumentality.

The survivor annuity in the case of an employee or survivor whose service includes service with a nonappropriated fund instrumentality made creditable by an election under subpart D of part 847 of this chapter is computed under part 847 of this chapter.

[61 FR 41721, Aug. 9, 1996]

APPENDIX A TO SUBPART C OF PART 843—PRESENT VALUE CONVERSION FACTORS FOR EARLIER COMMENCING DATE OF ANNUITIES OF CURRENT AND FORMER SPOUSES OF DECEASED SEPARATED EMPLOYEES

With at least 10, but less than 20 years of creditable service—

Age of separated employee at birthday before death	Multiplier
26	0.0280
27	.0309
28	.0340
29	.0375
30	.0413
31	.0454
32	.0500
33	.0550
34	.0605
35	.0665
36	.0731
37	.0804
38	.0884
39	.0973
40	.1071
41	.1179
42	.1298
43	.1430
44	.1577
45	.1739
46	.1920
47	.2121
48	.2346
49	.2597
50	.2878
51	.3193
52	.3544
53	.3934
54	.4365
55	.4842
56	.5367
57	.5948
58	.6591
59	.7305
60	.8103
61	.8996

With at least 20, but less than 30 years of creditable service—

Age of separated employee at birthday before death	Multiplier
36	0.0901
37	.0991
38	.1090
39	.1199
40	.1319
41	.1452
42	.1600
43	.1762
44	.1943
45	.2144
46	.2367
47	.2615
48	.2892
49	.3202
50	.3548
51	.3936
52	.4369
53	.4851
54	.5383
55	.5971
56	.6620
57	.7337
58	.8131
59	.9015

With at least 30 years of creditable service—

Age of separated employee at birthday before death	Multipliers by separated employee's year of birth		
	After 1964	From 1949 to 1964	Before 1949
46	0.3224	0.3573	0.3962
47	.3562	.3948	.4378
48	.3940	.4367	.4842
49	.4362	.4835	.5361
50	.4835	.5359	.5942
51	.5363	.5945	.6592
52	.5954	.6599	.7317
53	.6610	.7327	.8124
54	.7336	.8132	.9017
55	.8139	.9021	.0000
56	.9023		

[52 FR 36389, Sept. 29, 1987]

APPENDIX B TO SUBPART C OF PART 843—AVERAGE TOTAL WAGES TABLE—Continued

Calendar year	Amount
1951	$2,799.16
1952	2,973.32
1953	3,139.44
1954	3,155.64
1955	3,301.44
1956	3,532.36
1957	3,641.72
1958	3,673.80

APPENDIX B TO SUBPART C OF PART 843—AVERAGE TOTAL WAGES TABLE—Continued

Calendar year	Amount
1959	3,855.80
1960	4,007.12
1961	4,086.76
1962	4,291.40
1963	4,396.64
1964	4,576.32
1965	4,658.72
1966	4,938.36
1967	5,213.44
1968	5,571.76
1969	5,893.76
1970	6,186.24
1971	6,497.08
1972	7,133.80
1973	7,580.16
1974	8,030.76
1975	8,630.92
1976	9,226.48
1977	9,779.44
1978	10,556.03
1979	11,479.46
1980	12,513.46
1981	13,773.10
1982	14,531.34
1983	15,239.24
1984	16,135.07
1985	16,822.51
1986	17,321.82
1987	18,426.51
1988	19,334.04
1989	20,099.55
1990	21,027.98
1991	21,811.60

[58 FR 43493, Aug. 17, 1993]

Subpart D—Child Annuities

§ 843.401 Purpose.

This subpart explains the survivor benefits payable under FERS to children based on the deaths of employees and retirees.

§ 843.402 Eligibility requirements.

A surviving child of an employee or retiree who dies after completing 18 months of civilian service creditable under FERS is entitled to an annuity under this subpart.

§ 843.403 Proof of parentage.

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

(b) Except as provided in paragraph (a) 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.

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

§ 843.404 Proof of adoption.

(a) An adopted child is—

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

(2) 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.

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

(c) The only acceptable evidence to prove status as an adopted child under paragraph (a)(2) of this section is copies of—

(1) The petition for adoption (clearly showing the date filed); and

(2) The judicial decree of adoption.

§ 843.405 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.

§ 843.406 Proof of dependency.

(a) A child is considered to have been dependent on the deceased employee or retiree if he or she is—

(1) A legitimate child; or

(2) An adopted child; or

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

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

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

(b) 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 natural 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.

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

(2) 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;

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

(4) Evidence of goods or services that show regular contributions of considerable value;

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

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

(c) Survivor benefits may be denied—

(1) 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

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

§843.407 Disabilities.

A child is eligible for continued annuity because the child is incapable of self-support if the Social Security Administration finds that the child is eligible for continued social security child's benefits because the child is incapable of self-support.

§843.408 Commencing and terminating dates of child annuities.

(a) An annuity under this subpart—

(1) Commences on the day after the retiree or employee dies;

(2) Commences or resumes on the first day of the month in which the child later becomes or again becomes a student as described by §843.313, if any lump sum paid is returned to the Civil Service Retirement Fund; or

(3) Commences or resumes on the first day of the month in which the child later becomes or again becomes incapable of self-support because of a mental or physical disability incurred before age 18 (or a later recurrence of such disability), if any lump sum is returned to the Fund.

(b) An annuity under this subpart terminates on the last day of the month before the child—

(1) Becomes 18 years of age unless he or she is a student as described in §843.410 or is incapable of self-support;

(2) Becomes capable of self-support after becoming 18 years of age unless he or she is a student as described in §843.410;

(3) Becomes 22 years of age if he or she is a student as described in §843.410 and—

(i) Capable of self-support; or

(ii) Incapable of self-support because of a mental or physical disability incurred after age 18;

(4) Ceases to be such a student as described in §843.410 after becoming 18 years of age unless he or she is incapable of self-support; or

(5) Dies or marries.

(c) 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.

§843.409 Rates of annuities.

(a) For each month, the amount of annuity payable to each surviving child under this subpart is—

(1) The difference between the basic child's annuity rate for that month and the total amount of child's insurance benefits under title II of the Social Security Act payable for that month to all children of the employee or retiree based on the total earnings (including any non-Federal wages or self employment subject to FICA taxes) of the employee or retiree;

(2) Divided by the total number of children entitled to annuity based on the service of that employee or retiree.

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

§ 843.410 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 § 841.109 of this chapter, 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 period 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]

§ 843.411 Direct payments to children.

For purposes of section 8466(c) 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.

Subpart E—Insurable Interest Annuities

§ 843.501 Purpose.

This subpart explains the benefit payable under FERS to an insurable interest beneficiary based on the death of a retiree who elected to take an annuity reduction to provide such benefits.

§ 843.502 Eligibility.

An insurable interest beneficiary is eligible for an annuity under this subpart upon the death of a retiree if the retiree had elected (under § 842.606 of this chapter) to receive an insurable interest rate with the insurable interest beneficiary as his or her survivor.

§ 843.503 Commencing and terminating dates.

(a) An annuity under this subpart commences on the day after the retiree dies.

(b) An annuity under this subpart terminates on the last day of the month before the insurable interest beneficiary dies.

(c) A survivor annuity accrues on a daily basis, one-thirtieth of the monthly rate constituing 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.

§ 843.504 Rate of annuity.

The amount of an annuity under this subpart is 55 percent of the retiree's annuity after the insurable interest reduction.

PART 844—FEDERAL EMPLOYEES' RETIREMENT SYSTEM—DISABILITY RETIREMENT

Subpart A—General Provisions

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844.101 Purpose.
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Subpart B—Applications for Disability Retirement

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