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§844.404 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) *Reinstatement of annuity terminated based on recovery.* (1) 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 (§844.401) is not reemployed in a position subject to FERS, and, based on the results of a current medical examination, OPM finds that the disability has recurred, OPM will reinstate the disability annuity as provided in paragraph (d) of this section. The right to the reinstated annuity begins on the date of the medical documentation showing that the disability has recurred, or if the medical documentation clearly shows that the disability recurred on an earlier date, the annuity will be reinstated on that earlier date.

(2) Except in the case of an individual receiving an annuity under §844.404(b), OPM will, as provided in paragraph (d) of this section, reinstate the disability annuity of a former annuitant whose annuity was terminated because he or she was found recovered on the basis of Federal reemployment when:

(i) The results of a current medical examination show 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; and

(ii) As a result, he or she has been:

(A) Separated and not reemployed in a position subject to FERS; or

(B) Placed in a position that results in a reduction in grade or pay below that from which the individual retired, or in a change to a temporary or intermittent appointment. The right to the reinstated annuity begins on the date the reemployment ends or the effective date of the placement in the position that results in a reduction in grade or pay or change in appointment.

(c) *Reinstatement of annuity terminated because earning capacity was restored.* (1) OPM will reinstate the disability annuity as provided in paragraph (d) of this section when a disability annuitant whose annuity was terminated under §844.402(a):

(i) Is not reemployed in a position subject to FERS;

(ii) Has not recovered from the disability for which the individual retired (except in the case of a military reserve technician whose annuity was awarded under 5 U.S.C. 8456); and

(iii) Again loses earning capacity, as determined by OPM.

(2) 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.

(d) Except as provided in §§844.303 and 844.304, a disability annuity reinstated under the preceding paragraphs of this section is paid at the rate provided under §844.302(b) until the end of the 12th month beginning after the annuity is reinstated. Thereafter, the rate determined under §844.302(c) is payable until age 62.

(e) Notwithstanding the preceding paragraphs, an annuity may not be reinstated under this section if the individual is receiving an annuity under part 842 of this chapter.

[55 FR 6598, Feb. 26, 1990. Redesignated and amended at 58 FR 48273, Sept. 15, 1993]

PART 845—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEBT COLLECTION

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AUTHORITY: 5 U.S.C. 8461.

SOURCE: 52 FR 5931, Feb. 27, 1987, and 52 FR 23014, June 17, 1987, unless otherwise noted.

Subpart A—General Provisions

§ 845.101 Purpose.

(a) This part regulates—

(1) The recovery of overpayments of FERS basic benefits;

(2) The standards for waiver of recovery of overpayments of FERS basic benefits; and

(3) The use of FERS basic benefits to recover debts due the United States.

(b) This subpart states the rules of general applicability to this part.

§ 845.102 Definitions.

In this subpart—

FERS means the Federal Employees Retirement System as described in chapter 84 of title 5, United States Code.

FERS basic benefits means any benefits payable under subchapter II, IV, or V of chapter 84 of title 5, United States Code.

Fund means the Civil Service Retirement Fund.

§ 845.103 Prohibition against collection of debts.

(a) Debts may be collected from FERS basic benefits only to the extent expressly authorized by Federal statute.

(b) When collection of a debt from FERS basic benefits is authorized under paragraph (a) of this section, the collection will be made in accordance with this part.

§ 845.104 Status of debts.

A payment by OPM to a debtor because of an OPM error or the failure of the creditor agency to properly and/or timely submit a debt claim under subpart D of this part, does not erase the debt or affect the validity of the claim by the creditor agency.

§ 845.105 Termination and suspension of collection actions.

The termination or suspension of a collection action, other than waiver of an overpayment under subparts B and C of this part, are controlled exclusively by the Federal Claims Collection Standards, chapter II of title 4, Code of Federal Regulations.

Subpart B—Collection of Overpayment Debts

§ 845.201 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 Fund.

§ 845.202 Scope.

This subpart covers the collection of debts due the 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.

§ 845.203 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, former spouse, spouse, widow(er), or child receiving recurring benefits under the provisions of chapter 84 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—

(a) Proper application of law and regulation; and

(b) Correctness of the mathematical computation.

Repayment schedule means the amount of each payment and the number of payments to be made to liquidate the debt as determined by OPM.

Retirement fund means the Civil Service Retirement 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. 8470(b).

§ 845.204 Processing.

(a) *Notice.* Except as provided in § 845.205, 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) That 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 reconsideration or 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 OPM 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 paragraph 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 C 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, OPM will issue a written decision. 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 or reconsideration request that a timely appeal will stop collection of the debt.

§ 845.205 Collection of debts.

(a) *Means of collection.* Collection of a debt may be made by means of offset under § 845.206, 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 § 845.206. 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 §§ 845.303 through 845.305; or

(2) Waiver would be in the best interest of the United States.

(c) *Collection in installments.* (1) Whenever feasible, debts will be collected in one lump sum.

(2) However, installments payments may be effected when—

(i) The debtor establishes that he or she is financially unable to pay in one lump sum; or

(ii)(A) The benefit payable is insufficient to make collection in one lump sum;

(B) The debtor fails to respond to a demand for full payment; and

(C) Offset is available.

(3) 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 § 845.204(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 failure to make an offset would substantially prejudice the Government's ability to collect the debt; and the time before the payment is to be made does not reasonably permit the completion of the proceedings in § 845.204 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 § 845.204 will not be applied when the debt is caused by 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 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.

§845.206 Collection by administrative offset.

(a) *Offset from retirement payments.* A debt may be collected in whole or in part from any 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 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 6-year limitation provided in 5 U.S.C. 2415, the Director or his or her 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, 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 §845.204 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 §845.204 and requests such a hearing, one will be conducted in accordance with subpart K of part 550 of this chapter.

§845.207 Use of consumer reporting agencies.

(a) *Notice.* If a debtor's response to the notice described in §845.204(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 §845.204 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 §845.204; 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 or the debtor does not respond, 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 FERS or CSRS.

(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.

§845.208 Referral to a collection agency.

(a) OPM retains the responsibility for resolving disputes, compromising claims, referring the debt for litigation, or suspending or terminating collection action.

(b) OPM may refer certain debts to commercial collection agencies under the following conditions:

(1) All processing required by § 845.204 has been completed before the debt is released; and

(2) A contract for collection services has been negotiated.

§ 845.209 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 C—Standards for Waiver of Overpayments

§ 845.301 Conditions for waiver.

Recovery of an overpayment from the Fund may be waived pursuant to section 8470(b), of title 5, United States Code, when (a) the annuitant is without fault and (b) recovery would be against equity and good conscience. When 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 or she shows that it would cause him or her financial hardship to make payment at the rate scheduled.

§ 845.302 Fault.

A recipient of an overpayment is without fault if he or she performed no act of commission or omission that resulted in the overpayment. The fact that the Office of Personnel Management (OPM) or another agency 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 or she should have known to be incorrect;

(2) Whether payment resulted from the individual's failure to disclose material facts in his or her possession, which he or she should have known to be material; or

(3) Whether he or she accepted a payment that he or 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 or her by OPM or a Federal agency may mitigate against finding fault if one or more of these factors contributed to his or her submission of an incorrect statement, a statement that did not disclose material facts in his or her possession, or his or her acceptance of an erroneous overpayment.

§ 845.303 Equity and good conscience.

Recovery is against equity and good conscience when—

(a) It would cause financial hardship to the person from whom it is sought;

(b) 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 he or she either has relinquished a valuable right or has changed positions for the worse; or

(c) Recovery would be unconscionable under the circumstances.

§ 845.304 Financial hardship.

Financial hardship may be deemed to exist in, but not limited to, those situations when the annuitant from whom collection is sought needs substantially all of his or 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 will be placed upon the annuitant's liquid assets and current income in making such determinations.

§ 845.305 Ordinary and necessary living expenses.

An individual's ordinary and necessary living expenses include rent, mortgage payments, utilities, maintenance, transportation, food, clothing, insurance (life, health, and accident), taxes, installment payments, medical expenses, support expenses for which the annuitant is legally responsible, and other miscellaneous expenses that the individual can establish as being ordinary and necessary.

§ 845.306 Waiver precluded.

Waiver of an overpayment cannot be granted when—

(a) The overpayment was obtained by fraud; or

(b) The overpayment was made to an estate.

§ 845.307 Burdens of proof.

(a) *Burden of OPM.* The Associate Director 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 or she is eligible for waiver or an adjustment.

Subpart D—Agency Requests to OPM for Recovery of a Debt From the Civil Service Retirement Fund

§ 845.401 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 Fund. This subpart also prescribes the procedures that OPM must follow to make these administrative offsets.

§ 845.402 Scope.

This subpart applies to agencies and debtors, as defined by § 845.403.

§ 845.403 Definitions.

In this subpart—

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 § 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 § 102 of title 5, United States Code;

(c) An agency or court in the judicial branch, including a court as defined in § 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 means an annuitant as defined in § 8401(2) of title 5, United States Code, or a survivor as defined in § 8401(28) of title 5, United States Code.

Annuity means the monthly benefit of indefinite duration 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, interest, 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 8401(11) 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.

Individual Retirement Record means the record of retirement contributions that must be maintained under § 841.504 of this chapter.

Lump-sum credit has the same meaning as in section 8401(19) of title 5, United States Code.

Member has the same meaning as in section 8401(20) of title 5, United States Code.

Net annuity means annuity after excluding amounts required by law to be deducted.

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.

§ 845.404 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 § 845.405(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 subpart K of part 550 of this chapter; or

(4) Following the procedures agreed upon by the creditor agency and OPM, if it is excepted by § 845.405(b)(4) from the completion of procedures prescribed by § 845.405(b)(3).

§ 845.405 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 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 5 U.S.C. 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 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 5 U.S.C. 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 by 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 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 (to OPM) 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 must 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) That 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, identify the action(s) taken to comply with 4 CFR 102.3, including any required hearing or review, and give 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 that 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 Individual Retirement Record, if the Individual Retirement Record 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 § 845.406(a)) when the debtor is eligible for a refund and OPM receives his or her application requesting payment. In this 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 the Individual Retirement Record 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 FERS.

§ 845.406 OPM processing for nonfraud claims.

(a) *Refunds—incomplete debt claims.* (1) If a creditor agency sends OPM a notice of 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 8424 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) *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, OPM 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 debt claim 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 § 845.405(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.* (1) 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—

(i) The procedures in this subpart and 4 CFR 102.4 must be completed; and

(ii) A debt claim must be completed and sent to OPM.

(2) No time limit will be given for the submission of a debt claim against an annuity; however, a 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 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 (c)(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.

(e) *Limitations on OPM review*. In no case will OPM review—

(1) The merits of a creditor agency's decision regarding reconsideration, compromise, or waiver; or

(2) The creditor agency's decision that a hearing was not required in any particular proceeding.

§ 845.407 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 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 § 845.405(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.

§ 845.408 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 Individual Retirement Record to OPM, as required by § 845.405(c)(2). The agency where the claim arose must send OPM notice that a claim is pending with Justice. (See § 845.405(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 § 845.405.

(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 (i) the procedures in this subpart and 4 CFR 102.4 must be completed; and (ii) 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 § 845.406(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 §§ 845.406 and 845.407.

(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.

PART 846—FEDERAL EMPLOYEES RETIREMENT SYSTEM—ELECTING COVERAGE

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AUTHORITY: 5 U.S.C. 8461(g); § 846.201(b) also issued under 5 U.S.C. 7701(b)(2); § 846.202 also issued under section 301(d)(3) of Pub. L. 99–335, 100 Stat. 600; § 846.201(b)(ii) also issued under section 153 of Pub. L. 104–134, 110 Stat. 1321.

SOURCE: 52 FR 19235, May 21, 1987, unless otherwise noted.

Subpart A—General Provisions

§ 846.101 Purpose.

This part identifies the employees who may transfer to the Federal Employees Retirement System (FERS), gives the conditions under which they may transfer, and sets forth the method of computing the annuities of employees who transfer to FERS.

§ 846.102 Definitions.

In this part—

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

CSRS/SS service means service subject to both CSRS deductions (or deductions under another retirement system for Federal employees if such service is creditable under CSRS) and social security deductions as a result of the Social Security Amendments of 1983. For this purpose, the service of an individual is considered CSRS/SS service if the service would have been covered under CSRS except for an election under section 208(a)(1)(A) of the Federal Employees Retirement Contribution Temporary Adjustment Act of 1983 to have no CSRS coverage.

Employee means an employee as defined by § 842.102 of this chapter.