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individual (survivor) of the election right.

(C) The agency may waive the 60-day time limit under paragraphs (b)(2)(ii)(A) and (B) of this section if the individual (if living, otherwise the appropriate survivor) exercised due diligence in making the election but was prevented by circumstances beyond his or her control from making the election within the time limit. An agency decision not to waive the time limit under this paragraph must include notice to the individual of the individual's right to request OPM to reconsider the denial of the waiver of the time limit. OPM's reconsideration decision on denial of a waiver of the time limit will notify the individual of the right to appeal to the Merit Systems Protection Board under chapter II of this title.

(iii) The employing agency must document the individual's records to reflect his or her decision concerning retirement coverage.

(c) *OPM's reconsideration.* An agency decision concerning an individual's opportunity to elect FERS coverage or the effective date of an election of FERS coverage is subject to reconsideration by OPM under §846.205.

(d) *Correction of other administrative errors.* Failure to begin employee deductions and Government contributions on the effective date of coverage must be corrected in accordance with §841.505 of this chapter.

[52 FR 19235, May 21, 1987, as amended at 58 FR 47822, Sept. 13, 1993]

§846.205 Reconsideration and appeal rights.

(a) *Who may file.* An individual may request OPM to reconsider a decision of an employing office affecting his or her election of coverage under FERS. A request for reconsideration of a decision by OPM regarding extension of the time limit or a waiver under §846.202 or refunds under §846.401 must be made in accordance with §841.305 of this chapter.

(b) *Reconsideration.* A request for reconsideration of an agency decision must be filed within the time limit given in paragraph (c) of this section. A request for reconsideration must be made in writing and must include the claimant's name, address, date of birth, and the reason for the request.

(c) *Time limit.* A request for reconsideration of an agency decision must be filed within 30 calendar days from the date of the agency's decision stating the right to reconsideration. OPM may extend the time limit on filing when a person shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

(d) *OPM's decision.* After reconsideration, OPM issues its final decision in writing, setting forth its findings and conclusions.

(e) *Appeals to MSPB.* A person whose rights or interests under this part are affected by OPM's decision under paragraph (d) of this section may request the Merit Systems Protection Board (MSPB) to review such decision in accord with procedures prescribed by MSPB.

Subpart C—Effect of an Election to Become Subject to FERS

§846.301 General rules.

(a) An individual who becomes covered by FERS as a result of an election under §846.201 is subject to the provisions of chapter 84 of title 5, United States Code and parts 841 through 845 of this chapter, except as provided in this part.

(b) Civilian service performed before the effective date of the election under §846.201 is not creditable under FERS except as provided in this part.

§846.302 Crediting civilian service.

(a) Civilian service performed before the effective date of FERS coverage which is CSRS/SS service is creditable under FERS if—

(1) For service performed before January 1, 1987, 1.3 percent of basic pay was withheld as CSRS deductions (or if not withheld or if withheld and later refunded, 1.3 percent of basic pay for the period is deposited with interest computed under §831.105(e) of this chapter); and

(2) For service performed after December 31, 1986, and before the effective

date of the election, the employee contributes an amount equal to the percentage of basic pay for such service required to be withheld under part 841, subpart E of this chapter, whether by withholdings from pay or by later deposit (if not withheld or withheld and later refunded) with interest computed under § 831.105(e) of this chapter.

(b) Civilian service performed before the effective date of the FERS coverage which is not CSRS/SS service is creditable under FERS (subject to the deposit requirements of part 842, subpart C of this chapter) if—

(1) The service would be creditable under CSRS except for § 846.306 (determined without regard to whether the service was performed before, on, or after January 1, 1989, and without regard to the provisions of part 842, subpart C of this chapter requiring that deposit be made for nondeduction or refunded service to be credited); and

(2) The service, in the aggregate, is equal to less than 5 years.

(c) Civilian service performed before the effective date of FERS coverage which is not CSRS/SS service is creditable under FERS only for the purposes specified in paragraph (d) of this section if—

(1) The service would be creditable under CSRS except for § 846.306 (determined without regard to whether the service was performed before, on, or after January 1, 1989, and without regard to the provisions of part 842, subpart C of this chapter, requiring that deposit be made for nondeduction or refunded service to be credited); and

(2) The service, in the aggregate, is equal to 5 years or more.

(d) The service described in paragraph (c) of this section is creditable under FERS for the following purposes:

(1) The 5 years of civilian service required to be eligible for a basic annuity under FERS as set forth in § 842.203 of this chapter.

(2) The minimum period of service for entitlement to—

(i) An immediate voluntary annuity under FERS as set forth in § 842.204 of this chapter;

(ii) An early retirement under FERS as set forth in § 842.205 of this chapter;

(iii) An involuntary retirement under FERS as set forth in § 842.206 of this chapter;

(iv) A Member retirement under FERS as set forth in § 842.209 of this chapter;

(v) A military reserve technician retirement under FERS as set forth in § 842.210 of this chapter;

(vi) A Senior Executive Service, Defense Intelligence Senior Executive Service, or Senior Cryptological Executive Service retirement under FERS as set forth under § 842.211 of this chapter;

(vii) A deferred annuity under FERS as set forth in § 842.212 of this chapter;

(viii) A survivor annuity under FERS based on the death in service of an employee with at least 10 years of service as set forth in § 843.310 of this chapter, but only if the survivor is entitled to the basic employee death benefit described in § 843.309 of this chapter;

(ix) A disability retirement under FERS as set forth in subchapter V of chapter 84 of title 5 United States Code;

(x) A firefighter or law enforcement annuity under FERS as set forth in § 842.208 of this chapter, but only to the extent that the service was as a law enforcement officer or firefighter as described in § 842.809(b) of this chapter;

(xi) An air traffic controller annuity under FERS as set forth in § 842.207 of this chapter, but only to the extent that the service was as an air traffic controller as described in § 842.809(a) of this chapter;

(3) The computation of benefits under § 846.304(b); and

(4) The computation of average salary under § 846.304(d).

§ 846.303 Crediting military service.

(a) Military service performed before the effective date of the election under § 846.201 creditable as provided under FERS, except as provided in paragraphs (b) and (c) of this section.

(b) Military service described in paragraph (a) of this section which would be creditable under CSRS except for the provisions of § 846.306 and performed by an individual who is subject to an annuity computation under § 846.304(b) is creditable for—

(1) The minimum period for entitlement to an annuity under FERS based on—

(i) The immediate voluntary retirement provisions under §842.204 of this chapter;

(ii) The early retirement provisions under §842.205 of this chapter;

(iii) The involuntary retirement provisions under §842.206 of this chapter;

(iv) The Member retirement provisions under §842.209 of this chapter;

(v) The military reserve technician retirement provisions under §842.210 of this chapter;

(vi) The Senior Executive Service, Defense Intelligence Senior Executive Service, or the Senior Cryptological Executive Service retirement provisions under §842.211 of this chapter; or

(vii) The deferred retirement provisions under §842.212 of this chapter.

(2) Computation of benefits under §846.304(b).

(c) If the effective date of the election of FERS by an individual who is subject to annuity computation under §846.304(b) occurs when the individual is in non-pay status and is performing active military service, benefits for the military service performed before the effective date of the election are computed under CSRS, and benefits for the military service performed after the effective date are computed under FERS. The period of military service is considered to be two separate full periods of service, one ending the day before the effective date of FERS and one beginning on the effective date of FERS. The deposit for the period of service before the effective date of FERS coverage is computed under CSRS provisions set forth in part 831, subpart U of this chapter. The deposit for the period of service beginning on the effective date of FERS coverage is computed under FERS provisions set forth in part 842, subpart C of this chapter.

§846.304 Computing FERS annuities for persons with CSRS service.

(a)(1) The basic annuity of an employee who elected FERS coverage is an amount equal to the sum of the accrued benefits under CSRS as determined under paragraph (b) of this section and the accrued benefits under FERS as determined under paragraph (c) of this section.

(2) The computation method described in paragraph (a)(1) of this section is used in computing basic annuities under part 842, subpart D of this chapter, survivor annuities under part 843, subpart C of this chapter, and the basic annuities for disability retirement under subchapter V of chapter 84 of title 5 United States Code.

(3) An annuity computed under this paragraph is deemed to be the individual's annuity under FERS.

(b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section and §846.305, accrued benefits for civilian service as described in §846.302(c), and military service as described in §846.303(b) are computed under CSRS provisions.

(2) Reductions to provide survivor benefits required under part 831, subpart F of this chapter, and the 50-percent minimum annuity for air traffic controllers described in 5 U.S.C. 8339(e) do not apply to accrued benefits under this paragraph.

(3) Sick leave creditable under §831.302 of this chapter is equal to the number of days of unused sick leave to an individual's credit as of the day of retirement, death, or as of the effective date of the election of FERS coverage, whichever is the lesser amount of sick leave, for an individual who—

(i) Retires under §§842.204, 842.205, 842.206, 842.207, 842.208, 842.209, 842.210, or 842.211 of this chapter;

(ii) Dies leaving a survivor eligible for a monthly FERS survivor annuity under §843.310 or §843.311 of this chapter; or

(iii) After retiring for disability, becomes entitled to an annuity computation under part 842, subpart D of this chapter.

(c) Accrued benefits are computed under FERS for the following service:

(1) Creditable civilian service performed on or after the effective date of the election of FERS coverage;

(2) Creditable civilian service other than as described in §846.302(c); and

(3) Creditable military service other than that described in §846.303 (b) and (c).

(d)(1) Except as specified in §846.305, the average pay for computations

under paragraphs (b) and (c) of this section is the largest annual rate resulting from averaging the individual's rates of basic pay in effect over any 3 consecutive years of creditable service or, in the case of an annuity based on service of less than 3 years, over the total period of creditable service, with each rate weighted by the period it was in effect.

(2) For the purposes of paragraph (d)(1) of this section, service is considered creditable if it is creditable under either CSRS or FERS.

(e)(1) The cost-of-living adjustments for the annuities of individuals electing FERS coverage are made as follows:

(i) The portion of the annuity computed under paragraph (b) of this section is adjusted as provided under CSRS.

(ii) The portion of the annuity computed under paragraph (c) of this section is adjusted as provided under FERS.

(2) An annuity initially payable to an annuitant's survivor (other than a child under part 843, subpart D of this chapter) is increased by the total percent by which the annuitant's annuity was increased under this paragraph. Thereafter, the survivor annuity is adjusted for cost-of-living increases under 5 U.S.C. 8462.

(f) In computing an annuity under paragraph (a) of this section for an employee retiring under §842.204(a)(1) or §842.212(b) of this chapter, any reduction for age required by §842.404 of this chapter applies to the sum computed under paragraph (a) of this section. No reduction under CSRS is applicable.

(g) In computing an annuity under paragraph (a) of this section for an employee retiring early under §842.205 of this chapter or involuntarily under §842.206 of this chapter, the reduction for age required by 5 U.S.C. 8339(h) applies to the portion of the annuity computed under CSRS provisions.

(h) In computing an annuity under paragraph (a) for an employee retiring as a firefighter or law enforcement officer under §842.208 of this chapter or as an air traffic controller under §842.207 of this chapter, there is no applicable reduction for age.

(i) An annuity supplement under part 842, subpart E of this chapter, is computed using the same civilian service used for the computation under paragraph (c) of this section.

(j) An alternative form of annuity for a basic annuity computed under paragraph (a) of this section is computed as follows:

(1) The alternative benefit for the portion of the annuity computed under paragraph (b) of this section is computed under CSRS as provided in part 831, subpart V of this chapter, except that a refund of CSRS contributions based on a refund application filed after the individual elects FERS coverage may not be deemed to be redeposited under §831.2206 of this chapter if the individual is entitled to a deferred annuity under §842.212 of this chapter.

(2) The alternative benefit for the portion of the annuity computed under paragraph (c) of this section is computed under FERS as provided in part 842, subpart G of this chapter.

§846.305 General inapplicability of CSRS provisions.

(a) Except as provided by this part, CSRS provisions are not applicable with respect to an individual who elects FERS coverage.

(b) An employee (or an employee's survivor for the purposes of a survivor annuity) may make a deposit under CSRS for any civilian service under §846.302(c) of this part or military service under §846.303.

(c) Nothing in paragraph (a) of this section precludes the payment of any lump-sum credit (as defined in 5 U.S.C. 8331(8)) in accordance with part 831, subpart T of this chapter.

[52 FR 19235, May 21, 1987. Redesignated at 58 FR 48273, Sept. 15, 1993]

Subpart D—Refunds of CSRS Contributions

§846.401 Refunds of excess contributions.

(a) An individual who elects FERS coverage is entitled to a refund of CSRS contributions made prior to the effective date of the election for service that is subject to FERS computation under §846.304(c) (if not already refunded) which exceed the contributions