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

(B) The denominator of which is 40.

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

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

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

§831.1006 Offset from disability or survivor annuity.

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

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

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

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

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by the Social Security Administration that the application referred to in paragraph (b)(1)(i) of this section has been withdrawn unless the evidence described in paragraph (b)(1)(ii) of this section has been provided.

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

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

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

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

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

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

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

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

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

Subpart K—Prohibition on Payments of Annuities

§831.1101 Scope.

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

§831.1102 Definitions.

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

§831.1104 Notice.

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

[34 FR 17618, Oct. 31, 1969]

§831.1105 Answer; request for hearing.

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

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

[34 FR 17618, Oct. 31, 1969]

§831.1106 Hearing.

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

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

§831.1107 Powers of presiding officers.

The presiding officer may:

(a) Administer oaths and affirmations;

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

(c) Fix the time and place of hearing;

(d) Regulate the course of the hearing;

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

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

(g) Dispose of procedural requests or similar matters;