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(1) The procedures that employees. separated employees, retirees, and survivors must follow in applying for benefits under FERS;

(2) The procedures that OPM will generally follow in determining eligibility for benefits under FERS;

(3) The appeal rights available to claimants adversely affected by OPM decisions under FERS; and

(4) The special rules for processing competing claimant cases under FERS.

(b) This subpart does not apply to processing—

(1) Forfeiture of annuity for conviction of certain criminal offenses relating to national security under subchapter II of chapter 83 of title 5, United States Code (processed under subpart K of part 831 of this chapter);

(2) Court orders affecting FERS benefits (processed under subpart I of this part); or

(3) Collection of debts due to the United States (processed under part 845 of this chapter).

§841.302 Definitions.

In this subpart—

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

MSPB means the Merit Systems Protection Board described in chapter 12 of title 5, United States Code.

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 or Member 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.

Survivor means a person entitled to benefits under part 843 or 846 of this chapter based on the death of an employee, separated employee, retiree, or survivor.

§841.303 Applications filed with agencies.

(a) Employees filing applications for retirement or to make deposits or redeposits under FERS (including applications for disability retirement) and separating employees filing applications for refunds of contributions must file their applications with their employing agencies.

(b) Survivors filing applications for death benefits based on the death of an employee may file their applications with the employee's employing agency.

§841.304 Applications filed with OPM.

(a) Separated employees filing applications for retirement or refunds of contributions; survivors filing applications for death benefits based on the deaths of separated employees, retirees, or survivors; and retirees making elections or seeking to change information in their retirement records must file their applications with OPM.

(b) Survivors filing applications for death benefits based on the death of an employee may file their applications with OPM.

§841.305 Decisions subject to reconsideration.

(a) A OPM decision under FERS is subject to reconsideration by OPM, whenever the decision is in writing and states the right to reconsideration.

(b) OPM will reconsider a decision subject to reconsideration under §841.306. A decision subject to reconsideration is not subject to appeal under §841.308.

§ 841.306 Reconsideration.

(a) *Who may file.* Except as noted in paragraph (b) of this section, any individual whose rights or interests under FERS are affected by an OPM decision (under § 841.305) stating the right to request reconsideration may request OPM to review its initial decision.

(b) *Actions covered elsewhere.* (1) A request for reconsideration of termination of annuity payments under 5 U.S.C. 8311 through 22 will be made in accordance with the procedures set out in subpart K of part 831 of this chapter.

(2) A request for reconsideration of a decision to collect a debt will be made in accordance with § 845.204(b).

(3) A decision on court orders affecting FERS benefits will be made in accordance with subpart I of this part.

(c) *Reconsideration.* A request for reconsideration, when applicable, must be in writing, must include the applicant's name, address, date of birth and claim number, if applicable, and must state the basis for the request.

(d) *Time limits on reconsideration.* (1) A request for reconsideration must be received by OPM within 30 calendar days from the date of the initial decision.

(2) The Associate Director's representative responsible for reconsiderations may extend the time limit for filing when the requestor 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.

(e) *Final decision.* After any applicable reconsideration, the Associate Director's representative will issue a final decision that must be in writing, must fully set forth the findings and conclusions of the reconsideration, and must contain notice of the right to request an appeal provided in § 841.308. Copies of the final decision must be sent to the individual, to any competing claimants and, where applicable, to the agency.

§ 841.307 Final decisions without reconsideration.

OPM may issue a final decision providing the opportunity to appeal under § 841.308 rather than an opportunity to request reconsideration under § 841.306. Such a decision must be in writing and state the right to appeal under § 841.308.

§ 841.308 Appeals to MSPB.

Except as noted in this paragraph, an individual whose rights or interests under FERS are affected by a final decision of OPM may request MSPB to review the decision in accord with procedures prescibed by MSPB. Decisions made in accord with the procedures referenced in § 841.306(b)(1) are made under subchapter II of chapter 83, title 5, United States Code. Such decisions are not appealable to MSPB under section 8461(e) of title 5, United States Code.

§ 841.309 Competing claimants.

(a) Competing claimants are applicants for survivor benefits based on the service of an employee, separated employee, or retiree when—

(1) A benefit is payable based on the service of the employee, separated employee, or retiree; and

(2) Two or more claimants have applied for benefits based on the service of the employee, separated employee, or retiree; and

(3) An OPM decision in favor of one claimant will adversely affect another claimant(s).

(b) In cases involving competing claimants, the Associate Director or his or her designee will issue a final decision that will be in writing, will fully set forth findings and conclusions, and will contain notice of the right to appeal provided in § 841.308. Copies of the final decision will be sent to all competing claimants.

(c)(1) When OPM receives applications from competing claimants before any payments are made based on the service of the employee or Member, OPM will begin payments to the claimant(s) found entitled in the decision issued under paragraph (b) of this section.

(2) When OPM does not receive an application from a competing claimant(s) until after another person has begun to receive payments based on the service of the employee or Member, the payments will continue until a decision is issued under paragraph (b) of this section. When a decision is issued under paragraph (b) of this section, OPM will—