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(4) A Senior Executive Service or Senior Foreign Service noncareer appointee; or

(5) An individual appointed by the President (or his designee) or the Vice President under section 105(a)(1), 107(a)(1), or (b)(1) of title 3, United States Code, to a position for which the maximum rate of basic pay payable is at or above the rate for Level V of the Executive Schedule.

(c) *Employees rehired after December 31, 1986, following a break in service.* An employee who is rehired after December 31, 1986, who has had a break in service and who, at the time of the last separation from the service, had at least 5 years of civilian service creditable under CSRS rules, any part of which was covered by CSRS or the Foreign Service Retirement System, is excluded from FERS coverage.

(d) *Employees who have not had a break in service ending after December 31, 1986.* An employee who has not had a break in service of more than 3 days ending after December 31, 1986, and who, as of December 31, 1986, had at least 5 years of credible civilian service under CSRS rules (even if none of this service was covered by CSRS), is excluded from FERS coverage.

(e) *Break in service.* For the purposes of paragraph (c) and (d) of this section, ''break in service'' means a separation from CSRS-covered service lasting at least 4 days, or a transfer or separation of less than 4 days when the employee becomes subject to automatic coverage under social security (title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954).

(f) *Coverage under a retirement system for NAF employees.* An employee who has elected coverage under a retirement system for NAF employees in accordance with part 847 of this chapter is excluded from FERS coverage during that and all subsequent periods of service, including service as a reemployed annuitant.

[59 FR 64283, Dec. 14, 1994, as amended at 61 FR 41720, Aug. 9, 1996]

§842.105 Regulatory exclusions.

(a) OPM is authorized in 5 U.S.C. 8402(c)(1) to ''exclude from the operation of this chapter an employee or group of employees in or under an Executive agency, the United States Postal Service, or the Postal Rate Commission, whose employment is temporary or intermittent, except an employee whose employment is part-time career employment (as defined in section 3401(2)).'' Therefore, under this authority, OPM is excluding the following:

(1) Employees serving under appointments limited to 1 year or less, unless such appointments meet the definition of provisional appointments contained in §§316.401 and 316.403 of this chapter; and

(2) Intermittent employees serving under other than career or career conditional appointments.

(b) When an employee who is covered by FERS moves to a position listed in paragraph (a) of this section without a break in service or after a separation of 3 days or less, his or her FERS coverage will continued.

(c) Paragraph (a) of this section does not deny FERS coverage to an employee who receives an interim appointment under §772.102 of this chapter and was covered by FERS at the time of the separation for which interim relief is required.

[51 FR 47197, Dec. 31, 1986, as amended at 56 FR 10143, Mar. 11, 1991; 57 FR 3714, Jan. 31, 1992]

§842.106 Elections of retirement coverage under the District of Columbia Financial Responsibility and Management Assistance Act of 1995.

(a) *Who may elect*—(1) *General rule.* Any individual appointed by the District of Columbia Financial Responsibility and Management Assistance Authority (the Authority) in a position not excluded from FERS coverage under §842.105 may elect to be deemed a Federal employee for FERS purposes unless the employee has elected to participate in a retirement, health or life insurance program offered by the District of Columbia.

(2) *Exception.* A former Federal employee being appointed by the Authority on or after October 26, 1996, no more than 3 days (not counting District of Columbia holidays) after separation from Federal employment cannot elect to be deemed a Federal employee for FERS purposes unless the election was