

### §831.113

establishes whether the deceased individual was an “employee” or a “retiree” on the date of death. If the decedent was an “employee” on the date of death, survivor benefits are paid as though the individual died in service. If the decedent was a “retiree” on the date of death, survivor benefits are only paid as provided in the individual’s election, provided it was properly made. However, if a former employee was eligible only for a deferred annuity at age 62, survivor benefits are only paid if the individual was a “retiree” on the date of death. For purposes of this paragraph—

(1) *Employee* is a person—

(i) Who had not been separated from service prior to his or her death, even if he or she had applied for retirement (for example, an applicant for disability annuity) and the application had been approved; or

(ii) Whose death occurs before the commencing date of annuity, even though separation has occurred.

(2) *Retiree or annuitant* is a person—

(i) Who has been separated from service and met all the requirements to receive an annuity including having filed an application for the annuity prior to his or her death; and

(ii) Whose death occurs on or after the commencing date of annuity.

(c) *Determinations involving the requirement of spousal consent for elections of alternative annuity and survivor annuity benefits.* Spousal consent is required as specified in §§831.614 and 831.2203(c), if the employee/annuitant is married on the commencing date of annuity, regardless of whether that date is before or after the date of separation from service.

[56 FR 45883, Sept. 9, 1991, as amended at 58 FR 52880, Oct. 13, 1993]

### §831.113 Payments to children.

For purposes of section 8345(e) of title 5, United States Code, persons who have attained age 18 are considered adults regardless of the age of majority in the jurisdiction in which they reside.

[56 FR 45884, Sept. 9, 1991]

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### §831.114 Voluntary early retirement—substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring.

(a) A *specific designee* is defined as a senior official within an agency who has been specifically designated to sign requests for voluntary early retirement authority under a designation from the head of the agency. Examples include a Chief Human Capital Officer, an Assistant Secretary for Administration, a Director of Human Resources Management, or other official.

(b) An agency’s request for voluntary early retirement authority must be signed by the head of the agency or by a specific designee.

(c) The request must contain the following information:

(1) Identification of the agency or specified component(s) for which the authority is being requested;

(2) Reasons why the agency needs voluntary early retirement authority. This must include a detailed summary of the agency’s personnel and/or budgetary situation that will result in an excess of personnel because of a substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping, consistent with agency human capital goals;

(3) The date on which the agency expects to effect the substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping;

(4) The time period during which the agency plans to offer voluntary early retirement;

(5) The total number of non-temporary employees in the agency (or specified component(s));

(6) The total number of non-temporary employees in the agency (or specified component(s)) who may be involuntarily separated, downgraded, transferred, or reassigned as a result of the substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping;

(7) The total number of employees in the agency (or specified component(s)) who are eligible for voluntary early retirement;

(8) An estimate of the total number of employees in the agency (or specified component(s)) who are expected to retire early during the period covered by the request for voluntary early retirement authority; and

(9) A description of the types of personnel actions anticipated as a result of the agency's need for voluntary early retirement authority. Examples include separations, transfers, reassignments, and downgradings.

(d) OPM will evaluate a request for voluntary early retirement based on:

(1) A specific request to OPM from the agency for voluntary early retirement authority;

(2) A voluntary separation incentive payment implementation plan, as discussed in part 576, subpart A, of this chapter, which must outline the intended use of the incentive payments and voluntary early retirement; or

(3) The agency's human capital plan, which must outline its intended use of voluntary separation incentive payments and voluntary early retirement authority, and the changes in organizational structure it expects to make as the result of projected separations and early retirements.

(e) Regardless of the method used, the request must include all of the information required by paragraph (c) of this section.

(f) OPM may approve an agency's request for voluntary early retirement authority to cover the entire period of the substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping described by the agency, or the initial portion of that period with a requirement for subsequent information and justification if the period covers multiple years.

(g) After OPM approves an agency's request, the agency must immediately notify OPM of any subsequent changes in the conditions that served as the basis for the approval of the voluntary early retirement authority. Depending upon the circumstances involved, OPM will modify the authority as necessary to better suit the agency's needs.

(h) The agency may further limit voluntary early retirement offers based on:

(1) An established opening and closing date for the acceptance of applications that is announced to employees at the time of the offer; or

(2) The acceptance of a specified number of applications for voluntary early retirement, provided that, at the time of the offer, the agency notified employees that it retained the right to limit the number of voluntary early retirements.

(i) Within the timeframe specified for its approved voluntary early retirement authority, the agency may subsequently establish a new or revised closing date, or reduce or increase the number of early retirement applications it will accept, if management's downsizing and/or reshaping needs change. If the agency issues a revised closing date, or a revised number of applications to be accepted, the new date or number of applications must be announced to the same group of employees included in the original announcement. If the agency issues a new window period with a new closing date, or a new instance of a specific number of applications to be accepted, the new window period or number of applications to be accepted may be announced to a different group of employees as long as they are covered by the approved voluntary early retirement authority.

(j) Chapter 43 of title 38, United States Code, requires that agencies treat employees on military duty, for all practical purposes, as though they were still on the job. Further, employees are not to be disadvantaged because of their military service. In accordance with these provisions, employees on military duty who would otherwise be eligible for an offer of voluntary early retirement will have 30 days following their return to duty to either accept or reject an offer of voluntary early retirement. This will be true even if the voluntary early retirement authority provided by OPM has expired.

(k) An employee who separates from the service voluntarily after completing 25 years of service, or becoming age 50 and completing 20 years of service, is entitled to an annuity if, on the date of separation, the employee:

(1) Is serving in a position covered by a voluntary early retirement offer; and

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(2) Meets the following conditions which are covered in 5 U.S.C. 8336(d)(2):

(i) Has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in section 831.114(b);

(ii) Is serving under an appointment that is not time limited;

(iii) Has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

(iv) Is separated from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office:

(A) Such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

(B) A significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

(C) Identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

(v) As determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made based on the following criteria:

(A) 1 or more organizational units;

(B) 1 or more occupational series or levels;

(C) 1 or more geographical locations;

(D) Specific periods;

(E) Skills, knowledge, or other factors related to a position; or

(F) Any appropriate combination of such factors.

(1) Agencies are responsible for ensuring that employees are not coerced into voluntary early retirement. If an agency finds any instances of coercion,

it must take appropriate corrective action.

(m) Except as provided in paragraph (j) of this section, an agency may not offer or process voluntary early retirements beyond the stated expiration date of a voluntary early retirement authority or offer early retirements to employees who are not within the scope of the voluntary early retirement authority approved by OPM.

(n) OPM may terminate a voluntary early retirement authority if it determines that the condition(s) that formed the basis for the approval of the authority no longer exist.

(o) OPM may amend, limit, or terminate a voluntary early retirement authority to ensure that the requirements of this subpart are properly being followed.

(p) Agencies must provide OPM with interim and final reports for each voluntary early retirement authority, as covered in OPM's approval letter to the agency. OPM may suspend or cancel a voluntary early retirement authority if the agency is not in compliance with the reporting requirements or reporting schedule specified in OPM's voluntary early retirement authority approval letter.

[69 FR 33278, June 15, 2004, as amended at 69 FR 50265, Aug. 16, 2004]

### Subpart B—Coverage

#### § 831.201 Exclusions from retirement coverage.

(a) The following groups of employees in the executive branch of the Government are excluded from subchapter III of chapter 83 of title 5, United States Code:

(1) Employees serving under appointments limited to one year or less, except annuitants appointed by the President to fill unexpired terms of office on or after January 1, 1976.

(2) Intermittent employees—non-full-time employees without a prearranged regular tour of duty.

(3) Employees whose salary, pay, or compensation on an annual basis is \$12 a year or less.

(4) Member or patient employees in Government hospitals or homes.