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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 837, 842, 843, 844,
and 847

RIN 3206-AJ72

Retirement Coverage and Service Credit Elections Available to Current and Former Nonappropriated Fund Employees

AGENCY: Office of Personnel
Management.

ACTION: Interim rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the civilian retirement provisions of the National Defense Authorization Act for Fiscal Year 2002. These regulations establish procedures whereby Federal employees may elect to use service they performed for a Nonappropriated Fund Instrumentality (NAFI) of the Department of Defense or Coast Guard to qualify for an immediate retirement under the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS). These regulations also establish the methodology for computing the CSRS or FERS annuity when employees elect to use NAFI service to qualify for immediate CSRS or FERS retirement.

DATES: Interim rules effective December 28, 2001, comments must be received on or before March 17, 2003.

ADDRESSES: Send or deliver comments to Mary Ellen Wilson, Chief, Retirement Policy Center; Retirement and Insurance Service; Office of Personnel Management; 1900 E Street NW., Washington DC 20415-3200, FAX (202) 606-0990, or e-mail them to combox@opm.gov.

FOR FURTHER INFORMATION CONTACT: Jim Giuseppe, (202) 606-0299.

SUPPLEMENTARY INFORMATION:

1. Overview

The President signed into law the National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, on December 28, 2001. Sections 1131 and 1132 of that law amend existing provisions of the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) relating to service with a Department of Defense (DoD) or Coast Guard Nonappropriated Fund Instrumentality (NAFI). Section 1131 amends rules relating to portability of retirement coverage when employees move from NAFI positions to civil service positions and vice versa. Section 1132 amends rules relating to service credit for NAFI service under CSRS and FERS.

These interim regulations amend current regulations that define a qualifying move from DoD or Coast Guard NAFI positions to civil service positions and vice versa. In addition, these interim regulations add two subparts to 5 CFR part 847. Subpart H describes how employees may elect to credit NAFI service to qualify for immediate CSRS or FERS retirement. Subpart I describes how such an election will affect the computation of the CSRS or FERS annuity benefit.

A qualifying move from a DoD or Coast Guard NAFI position to a civil service position allows an employee to elect to continue NAFI retirement coverage in the civil service position. Similarly, a qualifying move from a civil service position to a DoD or Coast Guard NAFI position allows an employee to elect to continue civil service retirement coverage in the NAFI position. As originally defined, for a move to be considered qualifying, among other requirements, employees had to be vested in the retirement plan of the position they were leaving. Section 1131 of Public Law 107-107 eliminates that vesting requirement for moves that occur on or after December 28, 2001.

Section 1132 of Public Law 107-107 allows CSRS and FERS employees to use NAFI service to qualify for immediate retirement. However, crediting NAFI service under Public Law 107-107 will not result in higher annuity benefits. The annuities of employees electing to use NAFI service

to qualify for immediate retirement must be reduced to ensure that there will be no long-term cost to the Retirement Fund. The annuities payable after this reduction will be actuarially equivalent to the present value of the deferred annuities employees would receive if they simply left Government service and didn't use the NAFI time to qualify for an immediate retirement.

Section 1132 has no effect on previous laws that allow credit for certain NAFI service. Public Law 104-106, approved February 10, 1996, allowed certain FERS employees to elect retirement credit for their NAFI service. Public Law 99-638, enacted on November 10, 1986, allowed CSRS employees to credit certain NAFI service performed between June 19, 1952, and December 31, 1965. NAFI service creditable under either of those laws remains creditable under the provisions of those laws.

2. Qualifying Moves

We have amended 5 CFR 847.202 to reflect the new definition of a qualifying move. An employment move on or after December 28, 2001, from a covered NAFI position to a covered civil service position is a qualifying move allowing the employee to elect to continue the NAFI retirement coverage if:

- The employee has not had a prior opportunity to elect to continue NAFI retirement coverage;
- The employee has moved from a covered NAFI position within DoD or the Coast Guard to any covered civil service position; and
- The employee has moved to the covered civil service position not more than 1 year after separating from the covered NAFI position.

Likewise, an employment move on or after December 28, 2001, from a covered civil service position to a covered NAFI position is a qualifying move allowing the employee to elect to continue CSRS, CSRS Offset, or FERS retirement coverage if:

- The employee has not had a prior opportunity to elect to continue CSRS, CSRS Offset, or FERS retirement;
- The employee has moved from any covered civil service position to a covered NAFI position within DoD or the Coast Guard; and
- The employee has moved to the covered NAFI position not more than 1 year after separating from the covered civil service position.

3. Electing NAFI Credit for Retirement Eligibility

A new subpart H in 5 CFR part 847 outlines the rules relating to electing NAFI credit to qualify for immediate CSRS or FERS retirement.

CSRS or FERS employees leaving Federal service on or after December 28, 2001, who have DoD or Coast Guard NAFI service not otherwise creditable under CSRS or FERS, may use that service to qualify for immediate retirement. To be able to use their NAFI service in this way, employees must already be eligible for CSRS or FERS deferred retirement benefits based on their non-NAFI service. Employees already eligible for immediate retirement benefits based on their non-NAFI service cannot make an election under 5 CFR part 847, subpart H, to credit their NAFI service for CSRS or FERS retirement purposes.

Employees may elect to credit any service they performed as an employee paid from nonappropriated funds of an instrumentality of DoD or Coast Guard. This includes NAFI service that was covered by an NAFI retirement plan as well as NAFI service that was not covered by an NAFI plan. FERS employees may even elect to credit NAFI service performed after 1988. Employees cannot pay CSRS or FERS deposits to cover the NAFI service, and NAFI retirement deductions withheld for any of the NAFI service cannot be transferred to the CSRS or FERS retirement fund.

There is one limitation affecting elections to credit NAFI service to qualify for immediate CSRS or FERS retirement. NAFI service used to qualify for CSRS or FERS immediate retirement cannot also be used under an NAFI retirement system for any purpose.

Employees must elect complete periods of service with an NAFI employer. For example, a CSRS employee who worked 6 years under a covered appointment for a DoD NAFI must elect to credit the entire 6 years even if the employee only needs 2 years of service to qualify for an immediate CSRS retirement.

A complete period of service with an NAFI employer is the period from the date of appointment to the date of separation. If an employee moves directly from an NAFI appointment excluded from NAFI retirement coverage to an appointment subject to NAFI retirement coverage with the same NAFI employer, the move from non-covered employment to covered employment is considered to be a separation. For example, a CSRS employee needs 2 years of service to

qualify for an immediate CSRS retirement. The employee has 6 consecutive years of NAFI service—2 years under an appointment excluded from NAFI retirement coverage and 4 years under an appointment covered by an NAFI retirement plan. The 2 years of NAFI service not subject to NAFI retirement coverage is considered a complete period of service, and the employee may elect to credit only that 2 years of NAFI service for CSRS retirement purposes.

Employees wanting to elect to credit NAFI service to qualify for immediate CSRS or FERS retirement must do so when they retire. They need to submit their election, on a form specified by OPM, to their employing agency before their actual retirement date. They must also notify the appropriate NAFI retirement plan of their election and obtain verification of their NAFI employment from the NAFI retirement system.

4. Computing the Annuity When NAFI Service Is Used for Retirement Eligibility

A new subpart I in 5 CFR part 847 outlines the rules OPM will use to compute the annuity of employees who elect to use NAFI service to qualify for immediate CSRS or FERS retirement.

Electing to credit NAFI service to qualify for immediate CSRS or FERS retirement will not increase the amount of the annuity. The amount of annuity including NAFI service must be reduced by the amount necessary to ensure that the present value of the annuity payable to the employee is actuarially equivalent to the present value of the deferred annuity that would be payable to the employee assuming the employee:

- Separated from service on the actual date of retirement; and
- Elected not to credit the NAFI service to qualify for immediate retirement.

Present value is a financial term. As used in retirement, present value is the sum of money required at the present time to fund a future stream of payments. It is computed using an actuarial model that incorporates appropriate assumptions as to inflation and interest rates.

To ensure that the present value of the immediate annuity with credit for NAFI service equals the present value of the deferred annuity without credit for NAFI service, the gross monthly rate of the immediate annuity must be reduced by an amount derived using the following formula:

(the present value of the immediate annuity minus the present value of the deferred annuity) divided by the present value

factor corresponding to the employee's age at retirement.

The present value of an immediate annuity is the sum of money required at the commencing date of the annuity to fund the annuity. It is calculated by multiplying the monthly rate of annuity by the present value factor corresponding to the employee's age as of the commencing date of the annuity. A present value factor is a factor calculated by OPM's actuary using generally accepted actuarial standards and on the basis of assumptions used by the Board of Actuaries of the Civil Service Retirement System.

The present value of a deferred annuity is the sum of money required at the commencing date of the immediate annuity to fund the future deferred annuity. It is calculated by multiplying the monthly rate of the deferred annuity by the present value factor corresponding to the employee's age as of the commencing date of the deferred annuity, and then multiplying the result by a discount factor. The discount factor is a factor derived from the assumed rate of investment return earned by the Civil Service Retirement and Disability Fund, and the amount of time between the commencing dates of the immediate and deferred annuities.

(Currently, the rate of investment return on the Civil Service Retirement and Disability Fund is 7 percent. However, on May 9, 2002, OPM published a notice in the **Federal Register** announcing a change in the FERS normal cost percentages. In that notice, OPM also announced that the rate of investment return on the Civil Service Retirement and Disability Fund will change to 6.75 percent beginning October 1, 2002.)

The gross monthly rates of annuity used in the present value calculations are computed under the appropriate annuity formula applying the proper reductions for age, survivor elections, unpaid deposits and redeposits, and alternative annuity elections. In computing the gross monthly rate of the deferred annuity, interest on any deposit or redeposit balances does not accrue beyond the commencing date of the immediate annuity. In addition, the present value factors used in the reductions for unpaid redeposit and alternative annuity election correspond to the employee's age as of the commencing date of the deferred annuity.

If a FERS employee has at least 10 years of creditable (non-NAFI) service, the gross monthly rate of the deferred annuity is computed as of the first day of the month after the employee reaches

the minimum retirement age. Using that commencing date for the deferred annuity maximizes the present value of the deferred annuity.

5. FERS Annuity Supplement

An FERS annuity supplement is not payable to FERS employees who elect to use NAFI service to qualify for an immediate FERS retirement.

6. Reemployment

If a retiree who elected to credit NAFI service to qualify for an immediate retirement returns to work for the Government, the following rules will apply to any benefit earned as the result of the reemployment.

- If the retiree qualifies for a supplemental annuity under 5 CFR part 837, the supplemental annuity will not be subject to the reduction outlined in 5 CFR part 847, subpart I.

- If the retiree qualifies for a redetermined annuity under 5 CFR part 837, the redetermined annuity will be computed with the reduction outlined in 5 CFR part 847, subpart I, if the retiree needs to credit NAFI service to qualify for the redetermined annuity. The reduction under 5 CFR part 847, subpart I, will be recomputed based on the retiree's age as of the commencing date of the redetermined annuity. The retiree does not need to make a new election to credit NAFI service under 5 CFR part 847, subpart H. The original election will remain in effect.

- If the retiree qualifies for a redetermined annuity under 5 CFR part 837, the redetermined annuity will not be subject to the reduction outlined in 5 CFR part 847, subpart I, if the retiree qualifies for the redetermined annuity without crediting the NAFI service. If the retiree elects the redetermined annuity, the election the retiree made to credit the NAFI service under 5 CFR part 847, subpart H, when the retiree originally retired will not remain in effect.

- If the retiree's annuity terminated upon reemployment, and if the retiree qualifies for a new immediate annuity when the reemployment ends, the new annuity will be computed with the reduction outlined in 5 CFR part 847, subpart I, if the retiree needs to credit NAFI service to qualify for the new annuity. The retiree must submit a new election to credit the NAFI service in accordance with 5 CFR part 847, subpart H.

- If the retiree's annuity terminated upon reemployment, and if the retiree qualifies for a new immediate annuity when the reemployment ends, the new annuity will not be subject to the reduction outlined in 5 CFR part 847,

subpart I, if the retiree qualifies for the new annuity without crediting the NAFI service. The election the retiree made to credit the NAFI service under 5 CFR part 847, subpart H, when the retiree originally retired will not remain in effect.

- If the retiree's annuity terminated upon reemployment, and if the retiree qualifies for a deferred annuity, but not a new immediate annuity when the reemployment ends, the deferred annuity will not be subject to the reduction outlined in 5 CFR part 847, subpart I. The election the retiree made to credit the NAFI service under 5 CFR part 847, subpart H, when the retiree originally retired, will not remain in effect.

- If the retiree's annuity terminated upon reemployment, and if the retiree does not qualify for either a new immediate annuity or a deferred annuity when the reemployment ends, the old annuity will be reinstated. The retiree does not need to make a new election to credit NAFI service under 5 CFR part 847, subpart H. The original election will remain in effect.

7. Survivor Annuity Rate

The amount of the survivor annuity provided by a retiring employee who elects to credit NAFI service under 5 CFR part 847, subpart H, to qualify for immediate CSRS or FERS retirement is also subject to reduction. The reduction is computed in the same way that the reduction to the employee's annuity rate is computed. The present value of the initial survivor rate generated by the immediate annuity computation (with credit for NAFI service) equals the initial survivor rate multiplied by the present value factor corresponding to the employee's age as of the commencing date of the immediate annuity. The present value of the initial survivor rate generated by the deferred annuity computation (without credit for NAFI service) equals the initial survivor rate multiplied by the present value factor corresponding to the employee's age as of the deferred annuity date, multiplied by the discount factor corresponding to the amount of time between the immediate annuity commencing date and the deferred annuity date. The difference between the two present values is then divided by the present value factor corresponding to the employee's age as of the immediate annuity commencing date. The result, rounded up to the higher dollar, equals the reduction that applies to the initial survivor rate generated by the immediate annuity computation.

Waiver of Notice of Proposed Rulemaking

Under section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and to make these rules effective in less than 30 days. The regulations are effective December 28, 2001, the date the President signed the statute. The statute requires OPM to establish by regulation the procedure for computing an annuity when NAFI service is used to qualify for an immediate retirement. Delaying implementation of these regulations would unnecessarily delay the availability of the benefits of the new law.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Lists of Subjects in 5 CFR Parts 831, 837, 842, 843, 844, and 847

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is amending 5 CFR parts 831, 837, 842, 843, 844 and 847 as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2) and section 7001 of Pub. L. 105-174, 112 Stat. 58; Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105-33, 111 Stat. 251; Sec. 831.201(g) also issued under sections 7(b) and 7(e) of Pub. L. 105-274, 112 Stat. 2419; Sec. 831.201(i) also issued under sections 3 and 7(c) of Pub. L. 105-274, 112 Stat. 2419; Sec. 831.204 also issued under section 102(e) of Pub. L. 104-

8, 109 Stat. 102, as amended by section 153 of Pub. L. 104-134, 110 Stat. 1321; Sec. 831.205 also issued under section 2207 of Pub. L. 106-265, 114 Stat. 784; Sec. 831.301 also issued under section 2203 of Pub. L. 106-265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and section 2203 of Pub. L. 106-235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337; Sec. 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964-1965 Comp. p. 317; Sec. 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under section 11004 (c)(2) of Pub. L. 103-66, 107 Stat. 412; Sec. 831.682 also issued under section 201(d) of Pub. L. 99-251, 100 Stat. 23; Sec. 831.912 also issued under section 636 of H.R. 5658, incorporated by reference in Pub. L. 106-554, 114 Stat. 2763, and published as Appendix C to Pub. L. 106-554 at 114 Stat. 2763A-125; subpart V also issued under 5 U.S.C. 8343a and section 6001 of Pub. L. 100-203, 101 Stat. 1330-275; Sec. 831.2203 also issued under section 7001(a)(4) of Pub. L. 101-508, 104 Stat. 1388-328.

Subpart C—Credit for Service

2. In § 831.305, paragraph (d) is added to read as follows:

§ 831.305 Service with a nonappropriated fund instrumentality after June 18, 1952, but before January 1, 1966.

* * * * *

(d) *Crediting other service in a nonappropriated fund instrumentality.* Service not creditable under this section may become creditable for retirement eligibility purposes under the provisions outlined in 5 CFR part 847, subpart H.

Subpart G—Computation of Annuities

3. Section 831.704 is revised to read as follows:

§ 831.704 Annuities including credit for service with a nonappropriated fund instrumentality.

(a) An annuity that includes credit for service with a nonappropriated fund instrumentality performed after December 31, 1965, based on an election under 5 CFR part 847, subpart D, is computed under 5 CFR part 847, subpart F.

(b) An annuity that includes credit for service with a nonappropriated fund instrumentality based on an election under 5 CFR part 847, subpart H, is computed under 5 CFR part 847, subpart I.

PART 837—REEMPLOYMENT OF ANNUITANTS

4. The authority citation for part 837 continues to read as follows:

Authority: 5 U.S.C. 8337, 8344, 8347, 8455, 8456, 8461, and 8468 and section 302 of Pub. L. 99-335, June 6, 1986, as amended.

Subpart E—Retirement Benefits on Separation

5. Section 837.506 is revised to read as follows:

§ 837.506 Computation of redetermined annuity for former employees of nonappropriated fund instrumentalities.

(a) The redetermined annuity of a former employee of a nonappropriated fund instrumentality who elected CSRS or FERS coverage under 5 CFR part 847, subpart D, is recomputed under 5 CFR part 847, subpart F.

(b) The redetermined annuity of a former employee of a nonappropriated fund instrumentality who elected CSRS or FERS retirement credit under 5 CFR part 847, subpart H, is recomputed under 5 CFR part 847, subpart I.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

6. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under sections 3 and 7(c) of Pub. L. 105-274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under section 102(e) of Pub. L. 104-8, 109 Stat. 102, as amended by section 153 of Pub. L. 104-134, 110 Stat. 1321; Sec. 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105-33, 111 Stat. 251; Sec. 842.107 also issued under section 7(b) of Pub. L. 105-274, 112 Stat. 2419; Sec. 842.108 also issued under section 7(e) of Pub. L. 105-274, 112 Stat. 2419; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and section 7001 of Pub. L. 105-174, 112 Stat. 58, as amended by section 651 of Pub. L. 106-58, 113 Stat. 430; Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under section 7001(a)(4) of Pub. L. 101-508, 104 Stat. 1388; Sec. 842.707 also issued under section 6001 of Pub. L. 100-203, 101 Stat. 1300; Sec. 842.708 also issued under section 4005 of Pub. L. 101-239, 103 Stat. 2106 and section 7001 of Pub. L. 101-508, 104 Stat. 1388; subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under section 636 of H.R. 5658, incorporated by reference in Pub. L. 106-554, 114 Stat. 2763, and published as Appendix C to Pub. L. 106-554 at 114 Stat. 2763A-125.

Subpart C—Credit for Service

7. In § 842.304, paragraph (d) is revised to read as follows:

§ 842.304 Civilian service.

* * * * *

(d) *Credit for service performed as an employee of a nonappropriated fund*

instrumentality. (1) Credit for service with a nonappropriated fund instrumentality is allowed in accordance with an election under 5 CFR part 847, subpart D or H.

(2) Service under FERS for which the employee withdrew all deductions is creditable in accordance with an election made under 5 CFR part 847, subpart D.

(3) An annuity that includes credit for service with a nonappropriated fund instrumentality under 5 CFR part 847, subpart D, or refunded service under paragraph (d)(2) of this section is computed under 5 CFR part 847, subpart F.

(4) An annuity that includes credit for service with a nonappropriated fund instrumentality under 5 CFR part 847, subpart H, is computed under 5 CFR part 847, subpart I.

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

8. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

Subpart C—Current and Former Spouse Benefits

9. Section 843.314 is revised to read as follows:

§ 843.314 Amount of survivor annuity where service includes credit for service with a nonappropriated fund instrumentality.

(a) The survivor annuity based on service that includes service with a nonappropriated fund instrumentality made creditable by an election under 5 CFR part 847, subpart D, is computed under 5 CFR part 847, subpart F.

(b) The survivor annuity based on service that includes service with a nonappropriated fund instrumentality made creditable by an election under 5 CFR part 847, subpart H, is computed under 5 CFR part 847, subpart I.

PART 844—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DISABILITY RETIREMENT

10. The authority citation for part 844 continues to read as follows:

Authority: 5 U.S.C. 8461; § 844.201 also issued under 5 U.S.C. 1104.

Subpart A—General Provisions

11. Section 844.106 is revised to read as follows:

§ 844.106 Disability annuities which include credit for service with a nonappropriated fund instrumentality.

A disability annuity that includes credit for service with a nonappropriated fund instrumentality performed after December 31, 1965, based on an election under 5 CFR part 847, subpart D, is computed under 5 CFR part 847, subpart F.

PART 847—ELECTIONS OF RETIREMENT COVERAGE BY CURRENT AND FORMER EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES

12. The authority citation for part 847 is revised to read as follows:

Authority: 5 U.S.C. 8332(b)(17) and 8411(b)(6) and sections 1131 and 1132 of Pub. L. 107–107, December 28, 2001, 115 Stat 1242; 5 U.S.C. 8347(a) and 8461(g) and section 1043(b) of Pub. L. 104–106, Div. A, Title X, Feb. 10, 1996, 110 Stat. 434. Subpart B also issued under 5 U.S.C. 8347(q) and 8461(n).

Subpart A—General Provisions

13. In § 847.101, paragraph (a) is revised to read as follows:

§ 847.101 Purpose and scope.

(a) This part contains the regulations issued by the Office of Personnel Management (OPM) to implement the statutory election rights of certain current and former NAFI employees under the Portability of Benefits for Nonappropriated Fund Employees Act of 1990, section 1043 of the National Defense Authorization Act for Fiscal Year 1996, and sections 1131 and 1132 of the National Defense Authorization Act for Fiscal Year 2002.

14.–15. In § 847.102, new paragraphs (a)(8) and (a)(9) are added and paragraph (c)(4) is revised to read as follows:

§ 847.102 Regulatory structure.

(a) * * *

(8) Subpart H of this part contains information about elections to credit NAFI service to qualify for immediate retirement under section 1132 of Public Law 107–107, the National Defense Authorization Act for Fiscal Year 2002.

(9) Subpart I of this part contains information about how benefits are computed when employees elect to credit NAFI service to qualify for immediate retirement under section 1132 of Public Law 107–107, the National Defense Authorization Act for Fiscal Year 2002.

* * * * *

(c) * * *

(4) Part 870 of this chapter contains information about the Federal Employees' Group Life Insurance Program.

* * * * *

16. In § 847.103, paragraph (b), the definition of *Deficiency* is revised to read as follows:

§ 847.103 Definitions.

* * * * *

(b) * * *

Deficiency means the remainder of the actuarial present value of crediting NAFI service, after subtracting the amount credited to the employee from a transfer to the Fund under subpart E of this part, and earnings under § 847.507 on the transferred amount.

* * * * *

17. In § 847.104, paragraph (c) is added to read as follows:

§ 847.104 OPM responsibilities.

* * * * *

(c) OPM will determine if an employee who wishes to make an election under 5 CFR part 847, subpart H, is eligible to make such an election, and OPM's determination is subject to reconsideration under 5 CFR part 831, subpart A, or 5 CFR part 841, subpart C.

18. Section 847.105 is revised to read as follows:

§ 847.105 Agency responsibilities.

(a) Each agency is responsible for notifying its employees of the opportunity to make an election under this part and for determining if an employee who wishes to make an election under subparts B and D of this part is qualified to do so, and for counseling employees in accordance with guidance issued by OPM.

(b) If an agency determines that an employee is not eligible to make an election under subparts B and D of this part, the agency shall issue a final decision to the employee that meets the requirements of § 847.106, including notice of the right to appeal under § 847.107.

19. In § 847.106, paragraph (a) is revised to read as follows:

§ 847.106 Agency decision concerning eligibility.

(a) If the agency determines that the employee is not eligible to make an election under subpart B or D of this part, it must issue a final decision to the employee.

* * * * *

20. In § 847.107, paragraph (b) is revised to read as follows:

§ 847.107 Appeals to MSPB.

* * * * *

(b) Paragraph (a) of this section is the exclusive remedy for review of agency decisions concerning eligibility to make an election under subparts B and D of this part. An agency decision must not allow review under any employee grievance procedures, including those established by 5 U.S.C. chapter 71, and 5 CFR part 771.

Subpart B—Election To Continue Retirement Coverage After a Qualifying Move

21. Section 847.202 is revised to read as follows:

§ 847.202 Definition of qualifying move.

(a) A qualifying move occurring on or after December 28, 2001, that would allow an opportunity to elect to continue retirement coverage under CSRS and FERS must meet all of the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue CSRS or FERS retirement coverage.

(2) The employee must have moved from a position covered by CSRS or FERS to a retirement-covered position in an NAFI, and

(3) The employee must begin employment in a retirement-covered position in an NAFI no later than 1 year after separation from CSRS- or FERS-covered employment.

(b) A qualifying move occurring on or after December 28, 2001, that would allow an opportunity to elect to continue retirement coverage under an NAFI retirement system must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue NAFI retirement system coverage;

(2) The employee must have moved from an NAFI to a civil service position subject to CSRS or FERS coverage; and

(3) The employee must be appointed to a CSRS- or FERS-covered position no later than 1 year after separation from retirement-covered NAFI employment.

(c) A qualifying move occurring on or after August 10, 1996, and before December 28, 2001, that would allow an opportunity to elect to continue retirement coverage under CSRS and FERS must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue CSRS or FERS retirement coverage;

(2) The employee must have been vested in CSRS or FERS prior to the move to an NAFI;

(3) The employee must have moved from a position covered by CSRS or FERS to a retirement-covered position in an NAFI; and

(4) The employee must begin employment in a retirement-covered position in an NAFI no later than 1 year after separation from CSRS- or FERS-covered employment.

(d) A qualifying move occurring on or after August 10, 1996, and before December 28, 2001, that would allow an opportunity to elect to continue retirement coverage under an NAFI retirement system must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue NAFI retirement system coverage;

(2) The employee must have been a vested participant in the NAFI retirement system (as the term "vested participant" is defined by that retirement system) prior to the move to a CSRS- or FERS-covered position;

(3) The employee must have moved from an NAFI to a civil service position subject to CSRS or FERS coverage; and

(4) The employee must be appointed to a CSRS- or FERS-covered position no later than 1 year after separation from retirement-covered NAFI employment.

(e) A qualifying move occurring between January 1, 1987, and August 9, 1996, that would allow an opportunity to elect to continue retirement coverage under CSRS or FERS must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue CSRS or FERS retirement coverage;

(2) The employee must have been vested in CSRS or FERS prior to the move to an NAFI;

(3) The employee must have moved from a CSRS- or FERS-covered position within the Department of Defense or the U.S. Coast Guard to a retirement-covered position with an NAFI; and

(4) The employee must begin employment in a retirement-covered position in an NAFI no later than 4 days after separation from CSRS- or FERS-covered employment.

(f) A qualifying move occurring between January 1, 1987, and August 9, 1996, that would allow an opportunity to elect to continue retirement coverage under an NAFI retirement system must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue NAFI retirement system coverage;

(2) The employee must have been a vested participant in the NAFI retirement system (as the term "vested participant" is defined by that retirement system) prior to the move to the civil service;

(3) The employee must have moved from an NAFI to a CSRS- or FERS-covered position within the Department of Defense or the U.S. Coast Guard; and

(4) The employee must be appointed to a CSRS- or FERS-covered position no later than 4 days after separation from retirement-covered NAFI employment.

(g) A qualifying move under paragraphs (a), (b), (c), and (d) of this section is considered to occur on the date the individual enters into the new position, not at the time of separation from the prior position.

(h) A retroactive election opportunity under subpart D of this part (pertaining to elections of CSRS, FERS, or NAFI retirement coverage) is not considered a prior opportunity to elect retirement coverage under this section.

22. In § 847.203, paragraph (a) is revised to read as follows:

§ 847.203 Election of CSRS coverage.

(a) An employee who completes a qualifying move (under § 847.202(a), (c), or (e)) from a CSRS-covered position to an NAFI may elect to continue CSRS coverage.

* * * * *

23. In § 847.204, paragraph (a) is revised to read as follows:

§ 847.204 Election of FERS coverage.

(a) An employee who completes a qualifying move under § 847.202(a), (c) or (e) from an FERS-covered position to an NAFI may elect to continue FERS coverage.

* * * * *

24. In § 847.205, paragraph (a) is revised to read as follows:

§ 847.205 Elections of NAFI retirement system coverage.

(a) An employee who completes a qualifying move under § 847.202(b), (d), or (f), from an NAFI position to a CSRS- or FERS-covered position may elect to continue coverage under the NAFI retirement system.

* * * * *

Subpart D—Elections of Coverage Under the Retroactive Provisions

25. In § 847.402, paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 847.402 Definition of qualifying move.

(a) * * *

(1)(i) For moves occurring before February 10, 1996, the employee must not have had a prior opportunity to elect to continue CSRS, FERS, or NAFI retirement coverage under § 847.202(e) or (f);

(ii) For moves occurring on or after February 10, 1996, the employee must not have made an election under § 847.202(e) or (f);

* * * * *

(b) * * *

(1)(i) For moves occurring before February 10, 1996, the employee must not have had a prior opportunity to elect to continue CSRS, FERS, or NAFI retirement coverage under § 847.202(e) or (f);

(ii) For moves occurring on or after February 10, 1996, the employee must not have made an election under § 847.202(e) or (f);

* * * * *

26. In § 847.421, paragraph (a)(2) is revised to read as follows:

§ 847.421 Election requirements.

(a) * * *

(2) A FERS employee who has had a previous opportunity to elect retirement coverage under § 847.202(e) or (f) is not excluded from making this election.

* * * * *

27. In § 847.431, paragraph (a)(2) is revised to read as follows:

§ 847.431 Election requirements.

(a) * * *

(2) An NAFI employee who has had a previous opportunity to elect retirement coverage under § 847.202(e) or (f) is not excluded from making this election.

* * * * *

28. Add subpart H to read as follows:

Subpart H—Electing To Credit NAFI Service for CSRS and FERS Retirement Eligibility

Sec.

847.801 What information is in this subpart?

847.802 Who may elect to use NAFI service to qualify for immediate retirement under CSRS or FERS?

847.803 When do employees make the election to use their NAFI service to qualify for an immediate retirement under CSRS or FERS?

847.804 How do employees make an election to use their NAFI service to qualify for an immediate retirement under CSRS or FERS?

847.805 What NAFI service can employees elect to credit toward retirement eligibility under CSRS or FERS?

847.806 How much NAFI service must employees elect to use to qualify for an immediate CSRS or FERS retirement?

847.807 Do employees have to pay CSRS or FERS deposits for the NAFI service they use to qualify for immediate retirement under CSRS or FERS?

847.808 Is money in the NAFI retirement fund covering NAFI service that an employee elects to use for immediate retirement under CSRS or FERS, transferred to the Civil Service Retirement and Disability Fund?

847.809 What effect will NAFI service used to qualify for an immediate retirement have on the amount of the CSRS or FERS annuity?

Subpart H—Electing to Credit NAFI Service for CSRS and FERS Retirement Eligibility

§ 847.801 What information is in this subpart?

This subpart contains OPM's regulations on the procedures, eligibility requirements, and time limits for elections under 5 U.S.C. 8332(b)(17) and 5 U.S.C. 8411(b)(6).

§ 847.802 Who may elect to use NAFI service to qualify for immediate retirement under CSRS or FERS?

CSRS and FERS employees may elect to credit NAFI service for retirement purposes under this subpart if:

- (a) They separate for retirement on or after December 28, 2001;
- (b) They do not otherwise qualify for immediate retirement; and
- (c) They have enough otherwise creditable civilian service to qualify for deferred retirement.

§ 847.803 When do employees make the election to use their NAFI service to qualify for an immediate retirement under CSRS or FERS?

Employees about to retire must make their election to credit NAFI service under this subpart no later than the date of separation on which their retirement is based.

§ 847.804 How do employees make an election to use their NAFI service to qualify for an immediate retirement under CSRS or FERS?

Employees electing to credit NAFI service under this subpart must:

- (a) Inform the NAFI retirement plan that they are electing to credit NAFI service for CSRS or FERS retirement eligibility;
- (b) Document the election on a form prescribed by OPM; and
- (c) Submit the election with their application for immediate retirement.

§ 847.805 What NAFI service can employees elect to credit toward retirement eligibility under CSRS or FERS?

(a) Employees may elect to credit under this subpart any NAFI service that isn't already creditable under 5 U.S.C. 8332(b)(16), or under 5 CFR part 847, subpart D.

(b) NAFI service used to qualify for an immediate annuity based on an election in paragraph (a) of this section cannot be credited in a NAFI retirement plan for any purpose including eligibility and calculations of NAFI benefits.

§ 847.806 How much NAFI service must employees elect to use to qualify for an immediate CSRS or FERS retirement?

(a) Employees must elect complete periods of NAFI service under this subpart.

(b) A complete period of NAFI service in paragraph (a) of this section consists of the period from the date of appointment with an NAFI employer to the date of termination.

§ 847.807 Do employees have to pay CSRS or FERS deposits for the NAFI service they use to qualify for immediate retirement under CSRS or FERS?

Employees are not required to pay CSRS or FERS deposits for the NAFI service they use to qualify for immediate retirement under CSRS or FERS. In fact, deposits cannot be made for any NAFI service employees elect to credit for immediate retirement under this subpart.

§ 847.808 Is money in the NAFI retirement fund covering NAFI service that an employee elects to use for immediate retirement under CSRS or FERS, transferred to the Civil Service Retirement and Disability Fund?

Money in the NAFI retirement fund covering NAFI service that an employee elects to use for immediate retirement under CSRS or FERS under this subpart cannot be transferred to the Civil Service Retirement and Disability Fund.

§ 847.809 What effect will NAFI service used to qualify for an immediate retirement have on the amount of the CSRS or FERS annuity?

The annuity of a CSRS or FERS employee who elects to credit NAFI service under this subpart will be reduced under the provisions outlined in subpart I of this part.

29. Add subpart I to read as follows:

Subpart I—Computing the Retirement Annuity for Employees Who Elect To Use NAFI Service to Qualify for an Immediate CSRS or FERS Retirement

Sec.

847.901 What information is in this subpart?

847.902 How does an election to credit NAFI service for immediate CSRS or FERS retirement under subpart H of this part affect the computation of the CSRS or FERS retirement annuity?

847.903 How is the monthly reduction to the retirement annuity computed?

847.904 What are Present Value Factors?

847.905 How is the present value of an immediate annuity with credit for NAFI service computed?

847.906 How is the present value of a deferred annuity without credit for NAFI service computed?

847.907 How is the monthly annuity rate used to compute the present value of the deferred annuity without credit for NAFI service determined?

847.908 If a retiree who elected to credit NAFI service under subpart H of this part earns a supplemental annuity under 5 CFR part 837, how will that supplemental annuity be computed?

847.909 If a retiree who elected to credit NAFI service under subpart H of this part earns a right to a redetermined annuity under 5 CFR part 837, how will the redetermined annuity be computed?

847.910 If a retiree who elected to credit NAFI service for CSRS immediate retirement returns to work for the Government under conditions that terminate the annuity, how will the retirement annuity be computed when the employee's service with the Government ends?

847.911 Is an employee who elects to credit NAFI service to qualify for an immediate FERS retirement under subpart H of this part eligible for an FERS annuity supplement under 5 CFR 842 subpart E?

847.912 If an employee who elects to credit NAFI service under subpart H of this part elects a survivor annuity will the monthly survivor annuity rate be subject to reduction?

Subpart I—Computing the Retirement Annuity for Employees Who Elect To Use NAFI Service To Qualify for an Immediate CSRS or FERS Retirement

§ 847.901 What information is in this subpart?

This subpart contains OPM's regulations describing the computation of a CSRS or FERS retirement annuity when an employee elects to use NAFI service to qualify for immediate retirement under subpart H of this part.

§ 847.902 How does an election to credit NAFI service for immediate CSRS or FERS retirement under subpart H of this part affect the computation of the CSRS or FERS retirement annuity?

The retirement annuity of an employee who elects to use NAFI service to qualify for an immediate CSRS or FERS retirement benefit will be reduced to ensure the present value of the benefits payable will be actuarially equivalent to those that would have been payable if the employee had separated on the same date, but without credit for the NAFI service.

§ 847.903 How is the monthly reduction to the retirement annuity computed?

(a) The reduction equals:
 (1) The difference in the present value of the immediate annuity with credit for NAFI service and the deferred annuity without credit for NAFI service, divided by
 (2) The present value factor for the retiree's attained age (in full years) at the time of retirement.

(b) The reduction computed in paragraph (a) of this section is rounded to the next higher dollar.

§ 847.904 What are Present Value Factors

Present value factors have the same meaning in this subpart as they do in 5 CFR 847.602.

§ 847.905 How is the present value of an immediate annuity with credit for NAFI service computed?

(a) OPM will determine the present value of the immediate annuity including service credit for NAFI service by multiplying the monthly annuity rate as of the commencing date of the annuity by the present value factor for the retiree's age on that date.

(b) The monthly annuity rate under paragraph (a) of this section for CSRS and CSRS Offset retirees equals the monthly rate of annuity otherwise payable under 5 U.S.C. chapter 83, subchapter III, including all reductions provided under that subchapter.

(c) The monthly annuity rate under paragraph (a) of this section for FERS retirees equals the monthly rate of annuity otherwise payable under 5 U.S.C. chapter 84, subchapter II, including all reductions provided under that subchapter.

§ 847.906 How is the present value of a deferred annuity without credit for NAFI service computed?

(a) The present value of a deferred annuity equals the present value of the deferred annuity without credit for the NAFI service as of the deferred annuity date discounted for interest to that date.

(b) The present value of the deferred annuity without credit for the NAFI service as of the deferred annuity date equals the retiree's monthly annuity without credit for the NAFI service as of the deferred annuity date times the present value factor for the retiree's age on that date.

(c) The present value under paragraph (b) of this section is discounted for interest by dividing that amount by a factor equal to the value of the exponential function in which—

(1) The base is one plus the assumed interest rate under 5 CFR part 841, subpart D, on the commencing date of the retiree's immediate annuity, and

(2) The exponent is one-twelfth of the number of months between the commencing date of the retiree's immediate annuity and the deferred annuity date.

§ 847.907 How is the monthly annuity rate used to compute the present value of the deferred annuity without credit for NAFI service determined?

(a) The monthly annuity rate used to compute the present value of the deferred annuity under § 847.906 of this subpart for CSRS retirees equals the monthly annuity otherwise payable under 5 U.S.C. chapter 83, subchapter III, including all reductions provided under that subchapter.

(b) The monthly annuity rate used to compute the present value of the

deferred annuity under § 847.906 of this subpart for CSRS Offset retirees is computed as described in paragraph (a) of this section, except that the reduction under section 5 U.S.C. 8349 does not apply.

(c) The monthly annuity rate used to compute the present value of the deferred annuity under § 847.906 of this subpart for FERS retirees equals the monthly rate of annuity otherwise payable under 5 U.S.C. chapter 84, subchapter II, including all reductions provided under that subchapter.

§ 847.908 If a retiree who elected to credit NAFI service under subpart H of this part earns a supplemental annuity under 5 CFR part 837, how will that supplemental annuity be computed?

This subpart does not affect supplemental annuities under 5 CFR part 837. Supplemental annuities will be computed in accordance with the provisions of that part.

§ 847.909 If a retiree who elected to credit NAFI service under subpart H of this part earns a right to a redetermined annuity under 5 CFR part 837, how will the redetermined annuity be computed?

(a) A redetermined annuity will not be subject to a reduction under this subpart if, on the date reemployment with the Government ends, the retiree qualifies for an immediate retirement without credit for the NAFI service.

(b) A redetermined annuity will be subject to a reduction under this subpart if, on the date reemployment with the Government ends, the retiree does not qualify for immediate retirement without credit for the NAFI service.

(c) The reduction in paragraph (b) of this section is computed as in accordance with § 847.903 of this subpart as if the individual was retiring for the first time.

§ 847.910 If a retiree who elected to credit NAFI service for CSRS immediate retirement returns to work for the Government under conditions that terminate the annuity, how will the retirement annuity be computed when the employee's service with the Government ends?

(a) If an individual whose annuity terminates upon reemployment with the Government elects to credit NAFI service under subpart B of this part to qualify for a new immediate retirement when the reemployment ends, the annuity will be subject to a reduction under this subpart.

(b) If an individual whose annuity terminates upon reemployment with the Government qualifies for a new immediate retirement when the reemployment ends without crediting NAFI service, the new annuity will not

be subject to a reduction under this subpart.

(c) If an individual whose annuity terminates upon reemployment with the Government qualifies for a deferred annuity when the reemployment ends, the deferred annuity will not be subject to a reduction under this subpart.

(d) The reduction in paragraph (a) of this section is computed in accordance with § 847.903 of this subpart as if the individual was retiring for the first time.

§ 847.911 Is an employee who elects to credit NAFI service to qualify for an immediate FERS retirement under subpart H of this part eligible for an FERS annuity supplement under 5 CFR 842 subpart E?

An FERS Annuity Supplement is not payable to a retiree who elects to credit NAFI service under subpart H of this part.

§ 847.912 If an employee who elects to credit NAFI service under subpart H of this part elects a survivor annuity will the monthly survivor annuity rate be subject to reduction?

(a) The monthly survivor annuity benefit of an employee who elects to credit NAFI service under subpart H of this part will be subject to reduction.

(b) The reduction under paragraph (a) of this section equals:

(1) The difference in the present value of the initial survivor annuity generated from the immediate annuity computation with credit for NAFI service and the initial survivor annuity generated from the deferred annuity computation without credit for NAFI service, divided by

(2) The present value factor for the retiree's age (in full years) at the time of retirement.

(c) The present value of the survivor annuity generated from the immediate annuity with credit for NAFI service in paragraph (b)(1) of this section is computed under the provisions of § 847.905 of this subpart.

(d) The present value of the initial survivor annuity generated from the deferred annuity without credit for NAFI service in paragraph (b)(1) of this section is computed under the provisions of § 847.906 of this subpart.

(e) The ages of the employee as of the commencing date of the immediate retirement and the commencing date of the deferred retirement are used to compute the present value of the survivor benefits under paragraphs (c) and (d) of this section.

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