

## OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 581, 582, 831, 838, 841,  
842, 843, 848, 870, and 890

RIN 3206-AM71

### Phased Retirement

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is adopting its proposed phased retirement regulations with four minor changes. Phased retirement is a human resources tool that will allow full-time employees to work a part-time schedule and draw partial retirement benefits during employment. The “Moving Ahead for Progress in the 21st Century Act,” or “MAP-21,” requires OPM to publish regulations implementing phased retirement under the Civil Service Retirement System (CSRS) and the Federal Employees’ Retirement System (FERS). The final rule informs agencies and employees about who may elect phased retirement, what benefits are provided during phased retirement, how OPM intends to compute the annuity payable during and after phased retirement, and how employees may fully retire after a period of phased retirement. The final rule does not address every administrative detail of the phased retirement process. OPM will be issuing separate guidance to assist agencies and employees with administrative and procedural matters that do not need to be addressed in this rule. Employees may not enter phased retirement or submit applications for phased retirement to OPM until 90 days after publication of this final rule.

**DATES:** Effective November 6, 2014.

**FOR FURTHER INFORMATION CONTACT:**  
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**SUPPLEMENTARY INFORMATION:** On June 5, 2013, OPM published (at 78 FR 33912) proposed regulations to amend 5 CFR parts 581, 582, 831, 838, 841, 842, 843, 870 and 890, and added 5 CFR part 848 to implement phased retirement pursuant to 5 U.S.C. 8336a and 8142a, as required by section 100121(d) of MAP-21, Public Law 112-141.

Section 100121 of MAP-21 amended chapters 83 and 84 of title 5, United States Code, by adding provisions, at 5 U.S.C. 8336a and 8412a, to permit certain retirement-eligible employees to enter phased retirement. An employee participating in phased retirement is still an employee for all purposes, unless otherwise specified in law or

regulation. Initially, OPM will implement the phased retirement working schedule as prescribed in the statute. Thus, the regulations will require an eligible employee who enters phased retirement, with the approval of an authorized agency official, to enter into a 50 percent working schedule and receive approximately 50 percent of what his or her annuity would have been (not including credit for sick leave), had the individual retired completely from Federal service, without electing a survivor annuity. Entry into phased retirement is not guaranteed and must be mutually agreeable to the eligible employee and the employing agency.

Phased retirement is designed to assist agencies with knowledge management and continuity of operations in the short term. Although the main purpose of phased retirement is to enhance the mentoring and training of the employees who will be filling the positions or taking on the duties of more experienced retiring employees, it may also be used to provide employees with the opportunity to share experiences across sections or divisions of an agency. Phased retirement is simply another tool to enable agencies to manage their workforce, promote best practices, and encourage experienced employees to spend some time mentoring the next generation of experts.

### Comments

OPM received 237 comments regarding the proposed rule; 234 of which were submitted before the close of the public comment period. We decline to address the three comments received after the comment period closed. For the most part, OPM will not address comments that were aimed at benefits not in OPM’s purview, nor administrative and procedural issues outside the scope of the regulations.

### *Out of Scope Comments*

A member of the public and one agency questioned OPM’s decision to issue this rule as a proposed rule. This rule was properly issued as a proposed rule pursuant to section 4 of the Administrative Procedure Act (APA), 5 U.S.C. 553, and does not meet any of the exceptions to the required notice and public comment provisions in 5 U.S.C. 553(b)(3)(A) and (B), and Executive Order 13563. Although OPM is implementing phased retirement with all of the explicit statutory restrictions in place, the rule has been designed to allow OPM to modify both the rule and its accompanying guidance as needed in the future. Phased retirement is not a

one-size-fits-all program; an agency and an employee must agree that phased retirement is appropriate for the agency and the employee. After making a decision that phased retirement is appropriate in a given situation, coordination is needed between the employing agency and OPM. Moreover, the technical variables present in the law require OPM to take a measured approach to implementation to ensure a smoother transition to the availability of a new end-of-career option. For these reasons, OPM must provide rules for phased retirement. OPM determined the most appropriate rulemaking process was to issue a proposed rule with public notice and comment to ensure that there is an opportunity for all issues appropriate for regulation to be fully considered and addressed.

Several agencies, commenters, and professional organizations asked questions related to administrative and processing issues outside the scope of these regulations. One commenter suggested that OPM refashion this rule for ease of use by employees so they can make more informed decisions about phased retirement. We decline to make these changes as outside the scope of the rule. Administrative and procedural matters involved with employee elections, agency agreement, coding of personnel actions, processing of forms, and technical and employee information, and other similar issues, are best addressed in guidance, not regulation. This rule is intended to fill gaps in the statutory scheme of phased retirement, and to establish the relative rights and responsibilities of OPM, agencies, and employees with regard to phased retirement. Regulations are not the best means for conveying non-substantive procedural and administrative details regarding the program. OPM has determined that guidance, in the form of advisory documents to agencies, is the most appropriate means to address those matters.

We received many comments concerning benefits or programs administered by other agencies. For example, a few commenters asked about the effect phased retirement would have on Full Time Equivalents. One union suggested that OPM add specific language to the regulations requiring agencies to refrain from making certain budgetary statements and conclusions about the status of employees in phased retirement. OPM cannot address these comments because we do not have authority related to budgetary matters. With regard to Full Time Equivalents, information may be found in existing

guidance, specifically in *OMB Circular A-11*, section 85.5.

We also received numerous comments and questions about the role the Thrift Savings Plan (TSP) plays in many employees' plans for retirement and how employees' access to their TSP funds might be impacted by phased employment. Several professional organizations and agencies voiced similar concerns. For example, some commenters described their plans to rely on withdrawals from the TSP in retirement, particularly prior to age 62. The Federal Retirement Thrift Investment Board is responsible for administering the TSP. Therefore, TSP withdrawal rules and guidelines are outside the scope of this rule. OPM notes that this rule clearly states that participants in phased retirement are still Federal employees; therefore, they may continue to contribute to the TSP, in accordance with TSP rules, during phased employment.

Similarly, several commenters suggested that OPM include more information about the interplay between OPM's benefits and the Social Security Administration's (SSA) benefits within the phased retirement regulations. Commenters requested information about the Windfall Elimination Provision (WEP) and the Government Pension Offset (GPO) as it applies to phased retirement. The SSA is responsible for applying the WEP and the GPO. OPM cannot address these comments.

Other commenters asked how OPM plans to administer the offset applicable to CSRS offset annuities. How CSRS annuities will be offset during phased retirement is briefly addressed below and in the rule. But, more information will be provided in guidance to be issued separately. OPM will also provide information about where employees and agencies can look for more information on related topics.

One commenter asked how OPM would address an employee's entitlement to worker's compensation if an on-the-job injury occurs during phased retirement. The Office of Workers' Compensation Programs, Division of Federal Employees' Compensation (OWCP), is responsible for the administration of Federal employees' compensation. OPM cannot address this comment. In general, however, an individual cannot receive both annuity (including a phased retirement annuity) and OWCP non-scheduled award benefits at the same time.

Several commenters requested information about income tax-related issues. The Internal Revenue Service

(IRS) is responsible for the tax code, tax regulations and official guidance. To the extent that OPM is responsible for providing information about taxes to annuitants, we will do so in guidance. We decline to address taxes here.

Many commenters simply expressed interest in participating in phased retirement and requested information to that effect. Several commenters submitted duplicate comments and requests for information about when phased retirement would be available. Other commenters asked whether their specific work unit or branch of government would be implementing phased retirement. A commenter suggested that phased retirement should be mandatory for all federal employees beginning at age 55. Another commenter wanted OPM to apply lessons learned from academia's experiences with phased retirement. These comments are outside the scope of the rule and OPM declines to address them further except to state that agencies are responsible for employee retirement counseling; entry into phased retirement is not mandatory and it is just one of several end-of-career options for employees and agencies to consider on a case-by-case basis. Because agencies must decide whether to implement phased retirement, OPM cannot address comments or questions about specific work unit or agency timelines for implementation. However, OPM encourages agencies to evaluate and implement phased retirement as a workforce planning tool as soon as possible. OPM is not attempting to impose participation by employees or agencies on any set schedule.

Multiple commenters inquired about a phased retiree's leave accrual and the lump-sum payment for annual leave. As provided by 5 CFR § 831.1715(g) and § 848.205(i), except as otherwise expressly provided in law or regulation, a phased retiree is treated like any other employee on a part-time tour of duty. The normal leave accrual rules for part-time employees apply to phased retirees. Leave accrual for part-time employees is prorated based on hours in a pay status. *See* 5 U.S.C. 6302(c) and 5 CFR 630.303. An employee does not receive a lump-sum payment for annual leave upon electing phased retirement. The lump-sum annual leave payment would be made in full when the phased retiree fully retires. *See* 5 U.S.C., chapter 55, subchapter VI, and 5 CFR part 550, subpart L. Therefore, an employee would maintain his or her annual leave balance upon transition to phased retirement.

Some commenters questioned whether or not a phased retiree is eligible for holiday pay. Under 5 CFR

831.1715(g) and 848.205(i), except as otherwise expressly provided in law or regulation, a phased retiree is treated as any other employee on a part-time tour of duty. The normal rules for part-time employees and holidays apply to phased retirees. A part-time employee is entitled to a holiday when the holiday falls on a day when he or she would otherwise be required to work or take leave. If a holiday falls on a non-workday, part-time employees are not entitled to an "in lieu of" holiday.

A few commenters inquired as to whether or not a phased retiree would be eligible to earn compensatory time off. Overtime pay and compensatory time off generally is earned for work in excess of 8 hours in a day or 40 hours in a workweek. (*See* 5 U.S.C. 5542 and 5 CFR 550.101 for FLSA-exempt employees and 5 CFR part 551, subpart E, for FLSA-covered employees.) Phased retirees will normally not work more than 40 hours in a biweekly pay period (*see* limited exceptions discussed at 5 CFR 831.1715(h) and 848.205(j)), but they potentially could earn overtime pay or compensatory time off for work in excess of 8 hours in a day.

Some commenters and one agency, asked for clarification on work in excess of the part-time schedule and the ability of a phased retiree to earn compensatory time off for travel. Under 5 U.S.C. 5550b and 5 CFR part 550, subpart N, compensatory time off for travel is earned by an employee for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable. A phased retiree is eligible to earn compensatory time off for travel under the normal rules.

Official travel time during periods when a part-time employee is otherwise scheduled to work counts as hours of work. Treatment of travel time outside an employee's officially established part-time schedule depends on the applicable rules. (**Note:** The rules on travel hours of work depend on whether an employee is covered by or exempt from the Fair Labor Standards Act (FLSA). For FLSA-exempt employees, the crediting of travel time as hours of work is governed under title 5, United States Code. In particular, 5 U.S.C. 5542(b)(2) and 5544(a)(3) and 5 CFR 550.112(g) and (j). For FLSA-covered employees, travel time is credited if it qualifies as hours of work under either the title 5 rules or under OPM's FLSA regulations. *See*, 5 CFR §§ 551.401(h) and 551.422.

If a phased retiree's travel time outside of the officially established part-time schedule does not count as hours of work under the applicable rules, it

will not cause a violation of 5 CFR 831.1415(h) or 848.205(j). If the travel outside of the officially established part-time schedule is considered hours of work under the applicable rules, then the travel may be assigned only under the circumstances listed in 5 CFR 831.1415(h) and 848.205(j).

Multiple commenters inquired about eligibility for receiving voluntary separation incentive payments (VSIP) when entering phased retirement or when leaving phased retirement to enter full retirement. The VSIP authority, also known as buyout authority, allows agencies that are downsizing or restructuring to offer employees lump-sum payments of up to \$25,000 as an incentive to voluntarily separate from Federal service. An employee entering phased retirement is not separating from Federal employment and is not eligible for a VSIP. An employee leaving phased retirement to separate and enter full retirement may be eligible for a VSIP if the eligibility criteria in 5 U.S.C. Chapter 35, subchapter II, and the implementing regulations are met at that time.

Multiple commenters also inquired about eligibility for voluntary early retirement in conjunction with entry into phased retirement. Employees eligible under an approved voluntary early retirement authority (VERA) are not eligible for phased retirement. The statutory definition of "retirement-eligible employee" in 5 U.S.C. §§ 8336a and 8412a expressly limits eligibility to phased retirement to individuals who meet the requirements for retirement under 5 U.S.C. 8336(a) and (b) for CSRS and 5 U.S.C. 8412(a) and (b) for FERS. These subsections establish eligibility for optional retirement. The provisions concerning early retirement eligibility are set out at 5 U.S.C. 8336(d) for CSRS and 5 U.S.C. 8414 for FERS. Therefore, employees eligible under a VERA do not meet the statutory definition of a "retirement-eligible employee" for entry into phased retirement.

One agency remarked that the use of phased retirement may make VERA less attractive to employees when an agency is downsizing. OPM disagrees because employees eligible for VERA are not eligible for phased retirement. Any further discussion of the impact of phased retirement on the use of VERA is outside the scope of these regulations.

Multiple commenters inquired about a phased retiree's treatment during a reduction in force (RIF). An employee in phased retirement is treated as a part-time employee for the purposes of RIF. The treatment of a part-time employee during a RIF is outside the scope of this

regulation and is covered in 5 CFR part 351.

One agency and one commenter asked whether a phased retiree would be subject to a furlough. An employee in phased retirement is a part-time employee for the purposes of a furlough and as such, is subject to furlough in the same manner as part-time employees in regular employment. The treatment of part-time employees for the purposes of furloughs is outside the scope of these regulations.

One commenter asked whether work schedules would be negotiable or fixed. Work schedules for employees represented by a labor organization are generally negotiable within the bounds of governing law and regulation, but the negotiability of a particular proposal relating to work schedules of a phased retiree, as for any part-time employee, will depend on the specific facts of each situation. Negotiability of work schedules is outside the scope of these regulations and will have to be addressed through regularly established employee relations processes.

OPM received questions about the potential for outside employment while in phased retirement and the option for employment as a reemployed annuitant after the phased retiree enters full retirement. During a period of phased employment, phased retirees are still employees, and are bound, as such, by ethics rules and any restrictions on outside employment. We decline to address the issue of employment as a reemployed annuitant after a period of phased retirement because it is outside the scope of this rule.

Two agencies expressed interest in how the use of phased retirement would impact an agency's authority to hire reemployed annuitants. One agency asked if phased retirement was intended to be a replacement for the use of reemployed annuitants. Phased retirement and reemployment of annuitants are both tools that an agency may use to meet workforce planning goals. Phased retirement is not meant to replace the reemployment of annuitants. Whether the use of phased retirement will impact an agency's use of reemployed annuitants is outside the scope of these regulations.

Several commenters requested information about the appeals process available to phased retirees. They questioned, whether, in the final regulations, OPM intends to provide an appeals process for employees who believe they were unfairly denied the opportunity to participate in phased retirement initially or who were unfairly denied consent to return from phased retirement to regular full-time

employment. Similarly, other commenters made excellent observations about circumstances where employees may dispute an agency's decision. All of these issues are best addressed in guidance. Participation in phased retirement is entirely voluntary and requires the mutual consent of both the employee and employing agency. A retirement-eligible employee "may elect" to enter phased retirement status if she meets the eligibility criteria. This discretionary language regarding the employee's decision describes the voluntary nature of phased retirement. Also, an employee is not entitled to enter into phased retirement. Other than the new statutory and regulatory requirements unique to phased retirement, employees in phased retirement retain the same rights and responsibilities as in regular employment. Any complaint procedures, including any applicable administrative or collective bargaining grievance procedures that are available in regular employment remain available to phased retirees, but no new rights are provided.

One commenter, presumably a CSRS employee not subject to OASDI tax, asked to be able to contribute to Social Security during phased retirement. Social Security coverage is governed by existing law and the amendments made by section 100121 of the MAP-21 made no change to the existing law. Employees who are excluded from Social Security coverage at the time they enter phased retirement continue to be excluded from Social Security coverage during phased retirement.

Another commenter, also presumably a CSRS employee, asked OPM to clarify whether he would be able to receive more than 80 percent of his pension after phased retirement. In general, under CSRS an annuity may not exceed 80 percent of the average pay of the employee (see 5 U.S.C. 8339(f)). Therefore, the amount of the phased retirement annuity computed under 5 U.S.C. 8339, before it is multiplied by the phased retirement percentage, cannot exceed 80 percent of the employee's average pay. Likewise, the amount of the fully retired phased component of the composite annuity computed under 5 U.S.C. 8339, before it is multiplied by the working percentage, may not exceed 80 percent of the employee's average pay (unless credit for the employee's unused sick leave raises the annuity above the 80 percent threshold). If a CSRS employee exceeds the 80 percent limitation either before or during phased retirement; his excess contributions will be refunded back to him at his full retirement.

Several commenters requested information concerning changes to the eligibility rules and employee contributions for the Federal Employees Dental and Vision Program (FEDVIP), the Federal Long Term Care Insurance Program (FLTCIP), and the Federal Flexible Spending Account Program (FSAFEDS). The authorizing legislation for phased retirement did not alter the laws or regulations governing the FEDVIP, the FLTCIP, or the FSAFEDS programs. A phased employee may elect to participate in these benefit programs and work as a phased retiree if he/she meets all benefit eligibility requirements. Also, because a phased retiree is an active Federal employee, the rules governing enrollment and participation in these programs are the same as for all other eligible employees.

One commenter requested information concerning an employee's bargaining unit status eligibility under a Master Agreement if the employee enters phased retirement. Whether an employee is in a particular bargaining unit depends on the bargaining unit's description found in the Certification of Representative issued by the Federal Labor Relations Authority. Phased retirees are part-time employees. Therefore, it is possible that bargaining unit status could change, for example, if full-time employees are covered by that particular bargaining unit's Certification of Representative, but part-time employees are excluded from that bargaining unit.

One agency submitted a question concerning employees who elect phased retirement and are subsequently found to be in the wrong retirement system. Phased retirees are covered by the Federal Erroneous Retirement Coverage Corrections Act (FERCCA), Title II of Public Law 106-265, 114 Stat. 762, enacted September 19, 2000, and have the same rights under the FERCCA as before entry into phased retirement. OPM expects coverage errors to be addressed by the agencies prior to an employee's entry into phased retirement.

Below, OPM describes in more detail the comments we received which are specifically applicable to the proposed regulations themselves. In general, these comments will be addressed in regulatory part and section order. Certain comments referring to regulatory parts 831 and 848 are addressed together for the convenience of the reader. In those instances, where the comments require different answers OPM will first address part 831 and then part 848. If a section is not addressed, either OPM did not receive comments referencing that section, or

the comments were addressed more generally above.

#### *Parts 581 and 582; Garnishment*

There were three comments regarding garnishment. One commenter asked that the new provision at 5 CFR 581.306(d) identify the responsible office within agencies for garnishment notification. This rule does not modify the other provisions related to processing garnishment orders found in 5 CFR parts 581 and 582. The agents designated for service of process for garnishment orders are listed in Appendix A of part 581 and Appendix A of part 582. Appendix A presently lists the following address for garnishment of payments of retirement benefits under CSRS and FERS: "Associate Director for Retirement and Insurance, Office of Personnel Management, Court Ordered Benefits Branch, P.O. Box 17, Washington, DC 20044." OPM notes that parts 581 and 582 may be further updated in a separate rule.

One agency inquired whether court orders, including garnishments, would be included in the phased retirement application packages and, if not, inquired as to how agencies would otherwise receive such court orders. This rule does not revise the procedures or mechanisms for submitting court orders, including divorce decrees and garnishment orders, to the appropriate officials at the appropriate agencies. Rather, it adds one additional notice requirement when an employee enters phased retirement and has a garnishment order on record. Pursuant to new § 581.306(d), when an employee enters phased retirement, agencies are required to notify the party who caused the garnishment order to be served that the obligor is now entitled to a phased retirement annuity.

Another agency requested more information about the level of coordination required between the agencies and OPM with regard to garnishments. OPM addressed the issue of garnishment in the supplementary information to the proposed rule. Phased retirement annuities, like regular Federal annuities, will not be subject to commercial garnishments under 5 CFR part 582, and only the part-time pay received during phased employment will continue to be subject to commercial garnishment. Paragraph (d) is added to § 581.306 to account for employees who enter phased retirement status and who are subject to non-commercial garnishment orders (such as child support orders).

Governmental entities will still be obligated to honor the non-commercial

garnishment order as it pertains to ongoing part-time pay, subject to the rules set forth in part 581 of title 5, of the Code of Federal Regulation. The amounts subject to garnishment may have to be adjusted at the time an employee enters phased retirement as there are certain caps on the percentage of salary that may be garnished. However, paragraph (d) imposes an additional obligation on the governmental entity to notify the party who caused the legal process to be served that the obligor is now entitled to a phased retirement annuity and to direct the party to the designated agent at OPM who is responsible for the disbursement of retirement benefits. The onus is then on the obligor to submit additional income withholding orders or other garnishment orders to OPM directly if the obligor also seeks to garnish the employee's phased retirement annuity.

#### *831.1702 and 848.102; Definitions*

A commenter inquired about which level of the agency or sub agency would be responsible for approving or denying phased retirement applications. The regulations currently designate the agency head as the authorized approving official and also allow that approving official to delegate the responsibility as appropriate in §§ 831.1702 and 848.102. Therefore, an agency has the discretion to designate the appropriate approving officials.

A number of commenters questioned whether OPM properly excluded them from participation in phased retirement by defining "full-time" as an officially established recurring basic workweek consisting of 40 hours within the employee's administrative workweek (or 80 hours per biweekly pay period for employees with a flexible or compressed work schedule) under 5 CFR 831.1702 and 848.102. For example, one commenter from the judicial branch stated that she presently works a 36-hour workweek, which she stated was considered full-time for purposes of the Federal Employees Health Benefit Program (FEHB). In actuality, the FEHB law does not provide that a 36-hour workweek is a full-time schedule; it merely provides that employees with certain part-time schedules referenced in 5 U.S.C. 3401 (16 to 32 hours per week) are subject to a reduced, prorated Government contribution toward FEHB premiums. The amount of the Government contribution does not change the nature of a schedule as full-time versus part-time. The commenter would not be permitted to elect phased retirement because she does not meet the definition

of “full-time” for phased retirement purposes. The definition of full-time used for phased retirement is the standard definition used by the retirement program to compute annuities. The treatment of employees with various types of work schedules under other benefits programs are not applicable to chapters 83 and 84 of title 5 and would be counter to proper administration of the retirement program. Therefore, OPM declines to modify the regulations to accommodate employees already working a part-time work schedule.

#### *831.1703 and 848.103; Implementing Directives*

Several commenters suggested that OPM regulate phased retirement more stringently; others suggested the opposite. For example, a number of comments suggested making it more difficult for agencies to deny entry into phased retirement. Still others advised that fewer restrictions were better. Some agency commenters recommended that OPM provide more information on aspects of the phased retirement program that impact internal processing issues and procedures. OPM declines to further regulate phased retirement at this time. Moreover, many of the issues raised by these commenters are more properly addressed in Benefits Administration Letters and other guidance to be promulgated by the Director of OPM in conjunction with this final rule.

#### *831.1711 and 848.201; Eligibility*

Numerous commenters, including several unions and employee organizations, objected to the eligibility requirements described in §§ 831.1711 and 848.201. Several commenters objected to the requirement in § 831.1711(a) and § 848.201(a) which states that in order to enter phased retirement, the employee must have been employed on a full-time basis for not less than the 3-year period ending on the effective date of entry into phased retirement status. A few commenters suggested that OPM allow some employees who have part-time service in the preceding 3-year period to enter phased retirement with a smaller or prorated annuity. One commenter suggested that annuitants should be allowed to come back to mentor during an emergency situation like fighting a large forest fire. Another commenter asked that we allow persons who have retired since phased retirement was enacted to come back to work under phased retirement. OPM does not have the authority to waive or adjust the requirement that eligible employees

must have been employed full-time for the 3 years preceding entry into phased retirement. This is an express statutory requirement of 5 U.S.C. 8336a(b)(1) and 8412a(b)(1).

Many commenters, including several unions and employee organizations, also objected to the requirement in § 831.1711(b) and § 848.201(b) that describes, for the purposes of phased retirement only, a retirement-eligible employee as an employee, who if separated from service, would meet the requirements for retirement under subsections (a) or (b) of 5 U.S.C. 8336 and 8412. Several commenters opined that OPM is arbitrarily excluding certain groups of employees from participation in phased retirement. A few commenters noted that they became Federal employees later in life and felt unfairly excluded from phased retirement because of their late entry into Federal careers. Many commenters suggested that OPM allow persons with at least 15 years of service to participate in phased retirement, while others suggested that OPM allow those who have at least 5 years of service and who have reached at least age 62 to participate. Some commenters suggested that OPM should waive the eligibility requirements for employees in receipt of military retired pay. Two commenters asked for a waiver specific to their worksite. Some commenters argued that OPM should waive the age requirements in certain situations; others suggested that OPM simply restrict phased retirement using any of these criteria: Prior experiences, total number of years of service, or willingness to mentor others. OPM cannot modify the regulations to permit expansion of the eligibility criteria to include these employees. Under CSRS, participation in phased retirement is limited to those persons eligible for an immediate retirement with at least 30 years of service and who are at least age 55 or who have at least 20 years of service and who are at least age 60. *See* 5 U.S.C. 8336a(a)(9). Similarly, under FERS, participation in phased retirement is limited to those persons eligible for an immediate retirement with at least 30 years of service and who have reached their minimum retirement age (between ages 55 and 57 depending on birth year) or who have at least 20 years of service and who are at least age 60. *See* 5 U.S.C. 8412a(a)(9). There is no ambiguity or flexibility in the law which would permit OPM to limit or expand phased retirement eligibility based on age or years of service, therefore, OPM cannot modify the rule as requested.

Two commenters asked why OPM would exclude most retirement-eligible

employees who are subject to mandatory retirement from entry into phased retirement under § 831.1711(c) or § 848.201(c). Both suggested that employees subject to mandatory retirement might want to spend the last couple of years of their career in phased retirement mentoring younger employees, particularly if they have already served twenty years, but are waiting until their mandatory separation age. OPM is unable to make the suggested changes. Except for certain Customs and Border Protection Officers hired prior to 2008, law enforcement officers, firefighters, nuclear materials couriers, air traffic controllers, customs and border protection officers, members of the Capital Police and members of the Supreme Court Police are excluded from participation in phased retirement under 5 U.S.C. 8336a(a)(9)(B) and 8412a(a)(9)(B). Further, sections 8336a and 8412a require OPM to compute phased retirement annuities under the annuity formulas under 5 U.S.C. 8339 and 8415 applicable to regular employees; an outcome that employees subject to the higher retirement deductions would not want, if it were allowed, because it would entail giving up their higher annuity benefits computed using a higher accrual rate.

#### *831.1712 and 848.202; Working Percentage and Established Hours*

Numerous commenters asked OPM to immediately allow a wider range of permissible working percentages. OPM declines to do so at this time. Under 5 U.S.C. 8336a(b)(2)(A) and (B) and 8412a(b)(2)(A) and (B), the working percentage for employees in phased retirement must be 50 percent unless the Director of OPM determines that other percentages are appropriate. We have determined that the working percentage should remain at 50 percent for the time being. The implementation of phased retirement requires a complex realignment of end-of-career planning for both individuals and agencies. Multiple administrative and technical processes either have to be established or adjusted to accommodate phased retirement. Furthermore, OPM has determined that the working percentage should remain at 50 percent, at least during the beginning of the program, to allow time to assess the impact of phased retirement processing on regular retirement processing.

Several other commenters suggested that under §§ 831.1712 and 848.202 OPM has promulgated too narrow a “working percentage,” arguing that OPM does not have the authority to specify a single “working percentage” of 50 percent. Instead, they assert that the

50 percent “working percentage” would, not only not meet their needs, but OPM is wrong to mandate a particular working percentage at all. Under 5 U.S.C. 8336a(b)(2)(A) and 8412a(2)(A), the “working percentage” must be 50 percent unless the Director of OPM, in her discretion, decides otherwise. As we stated above, phased retirement is complex; it not only requires OPM to modify its processes and procedures, other organizations must make similar efforts to implement it effectively. Ultimately, OPM requires a certain amount of experience with phased retirement before we are comfortable introducing more complexity into the program. Therefore, OPM declines to modify the rule.

Other commenters suggested that we provide a range of working percentages to accommodate other work schedules. As noted in the supplementary information of the proposed rule (see 78 FR 33914), the statute permits a working percentage of 50 percent (i.e., a halftime work schedule) and contemplates additional working percentages, at OPM’s discretion. Although a working percentage of 50 percent is the only working percentage permitted under §§ 831.1712 and 848.202, these sections have been drafted using language to easily allow OPM to amend the regulations in the future to allow working percentages other than 50 percent, if and when OPM determines that such an amendment is appropriate. OPM will be evaluating the phased retirement program to determine if different “working percentages” should be allowed. For now, a phased retiree will not be permitted to have a working percentage other than 50 percent.

One commenter suggested that a step-down approach to the working percentage would enable phased retirement to be more widely adopted. Sections 8336a(b)(2)(C) and 8412(a)(b)(2)(C) specify that “[t]he working percentage for a phased retiree may not be changed during the phased retiree’s phased retirement period.” Therefore, OPM cannot authorize agencies to allow phased retirees to change their working percentage during phased retirement.

Some commenters asked OPM to allow phased employees to stagger their work schedules over months and not pay periods. As provided by 5 CFR 831.1712 and 848.202, the number of officially established hours per pay period to be worked by an employee in phased retirement status must equal one-half the number of hours the phased retiree would have been scheduled to work had the phased retiree remained in a full-time work schedule and not

elected to enter phased retirement status (i.e., 40 hours per pay period for most employees). The specific hours the phased retiree works is subject to agency work schedule policy and any applicable negotiated agreement. For example, a phased retiree may participate in an agency’s flexible or compressed work schedule program under subchapter II of 5 U.S.C. 6101 and subpart D of 5 CFR part 610 on the same basis as any other part-time employee.

One commenter suggested that OPM allow phased retirees to work at least 1,040 hours per year (50 percent of 2,080 hours per work year) to offer greater flexibility to potential retirees while allowing federal agencies to benefit from phased retirees’ knowledge and experience. The commenter’s suggestion cannot be implemented because a phased retiree must be a part-time employee with a regularly scheduled tour of duty. A phased retiree may not work on an intermittent basis (i.e., without a regularly scheduled tour of duty). For this reason, the required working percentage must be met on a pay period basis rather than an annual basis. We also note that using an annual approach would impose a more burdensome administrative and recordkeeping requirement on the agencies and payroll providers.

A commenter questioned whether or not a phased retiree would be allowed to be placed into an intermittent schedule status. The commenter also noted that the proposed regulations appear to imply a fixed part-time tour of duty. Although unclear, the commenter seemed to be concerned as to whether such individuals would have their phased retirement benefits discontinued, or would be required to be removed from the phased retirement program. In certain circumstances, outside the context of phased retirement, employees may be moved to an intermittent tour (i.e., no weekly work guarantee). An intermittent employee does not have a scheduled tour of duty. A phased retiree must be a part-time employee with a scheduled tour of duty equal to one-half the number of hours the phased retiree would have been scheduled to work had the phased retiree remained in a full-time work schedule and not elected to enter phased retirement status (i.e., 40 hours per pay period for most employees). The change to an intermittent schedule is not allowed for an employee in phased retirement. An employee in phased retirement wishing to make such a change in work schedule would need to opt out of the phased retirement program by returning to regular employee status before making

the schedule change. A phased retiree may have a part-time flexible schedule under 5 U.S.C. 6122, but the number of hours worked each biweekly pay period must be fixed at 40 hours.

#### *831.1713 and 848.203; Applications for Phased Retirement*

A number of commenters inquired whether employees in supervisory or managerial positions would be eligible to participate in phased retirement. Each agency has the discretion to determine whether or not phased retirement would be appropriate for an employee in a supervisory or managerial position just as for non-supervisory positions.

Several commenters expressed interest in how an agency would use its discretion to approve or deny requests to enter phased retirement. Two commenters inquired as to whether or not there were specific criteria an agency must use when approving or denying requests. Similarly, an agency asked if there would be guidelines in place to ensure consistent application among managers. Yet another agency inquired about how an agency could implement its discretion based on the regulations and avoid discrimination concerns. OPM agrees that an agency should have criteria in place that guide decisions to approve or deny applications for phased retirement. Such criteria will provide transparency to the approval process by allowing managers and employees to understand the basis for an approval or denial decision. Therefore, we are amending the regulations at §§ 831.1713(e) and 848.203(e) to require agencies to establish written criteria to be used when approving or denying applications for phased retirement. Agencies should be aware that some matters relating to phased retirement, including procedures and arrangements for adversely affected employees, may be subject to collective bargaining obligations.

One agency questioned whether an agency has the discretion to determine that it will not approve any applications for phased retirement. Phased retirement is a workforce planning tool that an agency may choose to use when appropriate. At the same time, phased retirement is not an employee entitlement. Agencies have the discretion to approve some, all, or none of the phased retirement applications received from employees. Phased retirement is just one of many tools designed to provide agencies with more flexibility in managing their workforces, therefore OPM encourages agencies to utilize phased retirement when

appropriate. Agencies should be aware that some matters relating to phased retirement, including procedures and arrangements for adversely affected employees, may be subject to collective bargaining obligations.

*831.1713(d), 848.203(d); Time Limits*

Multiple commenters expressed concerns about the length of time that an employee may participate in phased retirement. Some agencies inquired as to whether OPM intended phased retirement to be open-ended or time-limited. OPM recognizes that for most employees phased retirement will be of a limited duration. However, there may also be instances where agencies may find it useful for phased retirees to serve for longer periods of time. To allow agencies the maximum amount of flexibility in using phased retirement as a workforce management tool, OPM is leaving the establishment and use of time limits to the discretion of the agencies.

A number of commenters, employees and agencies alike, requested that OPM impose a maximum period of time for an employee to spend in phased retirement. OPM disagrees that a maximum time limit is needed for phased retirement. An agency's need for an employee in phased retirement will most likely vary on a case-by-case basis; therefore, agencies should have flexibility in determining the amount of time any employee may spend in phased retirement.

Some commenters remarked that the use of a time limit as a condition of approval could potentially create a coercive situation. Other commenters noted that the use of a time limit is a way of establishing mandatory separations or imposing an adverse action upon the employee. OPM disagrees with these suggestions. By allowing the use of a time limit, the agency and the employee may choose a mutually agreeable time limit at the start of phased retirement as a tool to set clear expectations for both the agency and the employee. If an employee does not like the proposed time limit, he or she has the freedom to withdraw the application for phased retirement. Once a time limit agreement is in place, the employee still has the discretion to enter full retirement status at any time prior to reaching the established time limit or request approval from the agency to return to regular employment. At the end of the agreed upon time limit, the employee has the option to return to regular employment with the approval of the current agency, or to transfer to another agency (where phased retirement may or may not be

continued), or to enter full retirement status. If an agency needs to remove an employee in phased retirement prior to the end of the time limit agreement due to budget restrictions, performance, or conduct, the agency may continue to use existing workforce authorities such as removal for performance or conduct; transfer of function or reduction in force; as appropriate.

*831.1715(c)-(d), 848.205(c)-(d); Effect of Phased Retirement*

Several commenters inquired about the ability of an employee in phased retirement to transfer to another agency. To do so, the employee must request approval from the new agency to continue in phased retirement upon transfer just as he or she did when entering phased retirement in the current agency. OPM will provide additional procedural information on transferring an employee in phased retirement in guidance.

One commenter noted that the agency would have to take an adverse action to separate a phased retiree who has no time limit agreement. While in phased retirement, an employee continues to have the same performance and conduct requirements as in regular employment. Thus, an employee in phased retirement who has poor performance or conduct problems will be subject to the appropriate action, up to and including removal. The individual retains the same due process rights as any other employee in a similar situation.

*831.1715(g) and 848.205(i); Phased Retirees Treated as Part-Time Employees*

OPM also received several comments regarding employee contributions to FERS and CSRS. During phased employment, retirement deductions for FERS and CSRS, Social Security (as appropriate) and Medicare taxes, as well as income tax will continue to be withheld from the pay the employee receives from the employing agency during phased employment. Those deductions and taxes are made at the normal deduction and tax rates and are based on the pay the employee actually receives during phased employment, not on the amount the employee would have received had the employee continued to work full-time.

A commenter inquired about the possibility of liquidating annual leave for those employees who receive approval for phased retirement. The commenter suggested that he would like the ability to roll over the dollar value of his annual leave directly into his traditional (non-Roth) or Roth TSP. OPM does not have the statutory

authority to permit liquidation of annual leave upon an employee's election of phased retirement.

Some commenters asked if phased retirement would affect an employee's annual leave ceiling. As provided by 5 CFR 831.1715(g) and 848.205(i), except as otherwise expressly provided by law or regulation, a phased retiree is treated as any other employee on a part-time tour of duty. The normal leave accrual rules for part-time employees apply to phased retirees. Leave accrual for part-time employees is prorated based on hours in a pay status. See 5 U.S.C. 6302(c) and 5 CFR 630.303. Under 5 CFR 630.304, a part-time employee may accumulate not more than 240 or 360 hours' of annual leave on the same basis as a full-time employee may accumulate not more than 30 or 45 days' annual leave. Thus, the election of phased retirement will not alter an employee's annual leave ceiling (i.e., "use-or-lose" annual leave).

Some commenters questioned if phased retirees would be eligible for within grade increases. A phased retiree is treated just as any other employee on a part-time tour of duty. See 5 CFR 831.1715(g) and 848.205(i). The normal within-grade increase rules for part-time employees apply to phased retirees. Days of full-time and part-time service are equally creditable towards within-grade increase waiting periods. See 5 CFR 531.405(a).

*831.1715, 848.205, and 890.501; Health and Life Insurance Premiums*

One commenter questioned why the proposed rule states that Federal Employees Health Benefit Program (FEHB) and Federal Employees' Group Life Insurance Program (FEGLI) contributions will be deducted from the phased retiree's pay, while the definition of "net annuity" in 5 CFR 838.103 lists health and life insurance premiums among the deductions from a phased retiree's gross annuity. The definition of "net annuity" in 5 CFR 838.103 is used in applying regulations dealing with court orders, which apply to all retirees, not just phased retirees. Most retirees have health and life insurance premiums deducted from their annuities; therefore, the definition of "net annuity" must reference those premiums. In the case of phased retirees, the references to health and life insurance premiums in the definition of "net annuity" may be disregarded, since during phased retirement the FEHB and FEGLI enrollments will stay with the employing agency and premiums will be deducted from a phased retiree's pay. Also, the FEHB employer contribution will be the same as for full-time

employees, and FEGLI benefit coverage amounts will be based upon the full-time salary for the position occupied during the phased employment period. See §§ 831.1715(a)(1) and 848.205(a)(1) for FEHB premiums; §§ 831.1715(a)(2) and 848.205(a)(2) for FEGLI premiums.

Phased employment service is creditable toward the 5 years of service needed to continue FEHB coverage as an annuitant. In the event an employee ends his or her phased retirement for full retirement, FEHB benefits will continue if the employee meets all eligibility requirements as of the separation from service on which the full retirement is based.

*831.1721, 831.1731, 848.301, and 848.401; Management Decision To End Phased Retirement*

One commenter asked if management can end phased retirement at its discretion; similar to the removal of a reemployed annuitant, the removal of an employee on a temporary appointment, or for reasons such as budget or poor performance. Employees in phased retirement remain employees on permanent appointments. The phased retirement statute specifies that an employee may return to regular employment by mutual agreement of the agency and the phased retiree. Agencies may continue to use existing workforce authorities such as removal for performance or conduct; transfer of function or reduction in force, as appropriate, should the agency need to limit, change or end the employment of an employee in phased retirement. Agencies should be aware that some matters relating to phased retirement, including procedures and arrangements for adversely affected employees, may be subject to collective bargaining obligations.

*831.1731(b) and 848.401(b); Entering Full Retirement*

One union commented that OPM's deeming an employee to have elected full retirement results in a needlessly harsh outcome if the employee were separated from phased employment and not reemployed elsewhere in the Federal government within 3 days. The organization suggested that OPM modify the rule to allow 30 days to elapse before deeming an election of full retirement to have taken place. OPM declines to adopt this suggestion because §§ 831.1732(b) and 848.402(b) require the phased retirement annuity to end upon an employee's separation from service as a phased retiree. OPM considers a separation of more than 3 days after ending phased employment to be just like any other 3 day break in

service affecting retirement coverage. Here, the difference is that the composite retirement annuity will commence the day after separation. Sections 831.1731(b) and 848.401(b) must be read in conjunction with §§ 831.1732 and 848.402, since the later sections state that a phased retirement annuity terminates upon separation from service and the composite retirement annuity begins the next day. From an administrative standpoint, it does not make sense for OPM to continue phased retirement annuity payments for even a 30 day window where an improper payment might result. Employees are responsible for taking the appropriate actions to return to full employment, accept a different non-phased retirement part-time schedule, or to fully retire. Procedures are already in place that would enable a losing or gaining agency to modify an employee's retirement records where the employee's apparent inaction should be corrected.

*831.1732 and 848.402; Commencing Date of the Composite Retirement Annuity*

A commenter and an agency noted that under § 831.1732(a), unlike retirements under the regular CSRS rules, a phased retiree's composite annuity would commence the day after separation and wondered about the rationale OPM used to justify this change. Section 848.402(a) has the same effect. In analyzing the effect of phased retirement on employees, OPM determined that for a phased retiree, this change in practice was necessary to ensure continuity of income and proper crediting of service in the context of the composite retirement annuity. Therefore, under §§ 831.1732(a) and 848.402(a), the composite retirement annuity commences the day after the employee's separation from service.

*831.1741, 831.1742, 848.501, and 848.502; Phased Retirement Annuity Computation*

One commenter suggested that OPM increase the appeal of phased retirement by adjusting the CSRS annuity formula upward to make phased retirement more attractive to employees. Other commenters suggested that OPM similarly modify the FERS annuity formula as well. The commenters opined that more generous incentives would motivate CSRS and FERS employees to remain in Federal service as phased retirees. We also received comments suggesting that FERS employees should receive their full unreduced pensions upon final retirement to make up for the perceived

shortfalls in their pensions as a result of not having coverage under CSRS. OPM cannot make the suggested changes because OPM has no authority to change the annuity formulas and calculations established by Congress in statute. Moreover, phased retirement is strictly optional and its attractiveness, or lack thereof, will not alter the basic structural differences between CSRS and FERS. If phased retirement is unattractive to an employee, then the employee is under absolutely no obligation to enter into it.

OPM also received several questions about how changes in an employee's "high-three" average pay would be addressed during phased retirement. Upon entry into phased retirement, OPM will compute the "phased retirement annuity" using the three highest consecutive average pay years the employee had accrued up until that point. During phased retirement, if a new high-three average pay were to accrue, it would be reflected in the computation of the composite annuity. At full retirement, the "phased retirement annuity" portion of the employee's annuity would not change; but, the "fully retired phased component" portion would take the new average pay into account. Therefore, a new high-three average pay achieved during phased retirement would only affect the portion of the total (composite) annuity (i.e., the "fully retired phased component" of the composite annuity), but not the portion of the composite annuity consisting of the "phased retirement annuity."

Two commenters noted that it appeared that OPM had made an error in describing the computation of a phased retirement annuity in the Benefits and Computation section of the supplementary information. We agree. The statement should have read "[w]hile working part-time during phased retirement, employees will also receive annuity payments, consistent with the retirement benefits they were entitled to prior to entering phased retirement status, multiplied by the "phased retirement percentage" (i.e., 50 percent)."

OPM received a few comments concerning the methodology we will employ in applying the required offset to CSRS Offset annuities based on the employee's entitlement to Social Security benefits. Upon entry into phased retirement, the offset will be computed by first determining the offset amount that would have applied had the employee fully retired instead electing phased retirement and then multiplying that offset amount by the phased retirement percentage. This

adjustment is made from the monthly rate of the phased retirement benefit. When the composite annuity is computed, a new offset amount will be determined as if the employee had retired for the first time and that amount will be applied to the total composite monthly annuity. See 5 CFR 831.1741(c) and 831.1742(c)(2). The offset amount applied to the phased retirement annuity will not be factored in to the computation of the composite annuity. See 5 CFR 831.1742(a)(1).

*831.1742(b)(2) and 848.502(b)(2); Deemed Rate of Basic Pay*

One union asked OPM to consider allowing overtime pay earned under 19 U.S.C. § 267(a) to be considered in base pay for the purposes of computing the composite retirement annuity. We decline to make the requested change. The phased retirement statute requires phased retirees to be deemed to be full-time for the purpose of determining basic pay for either life insurance or the composite annuity. The law also limits the pay subject to retirement deductions based on this concept of full time. As a result, hours worked above and beyond a 40-hour work schedule will not be considered basic pay for either life insurance or the composite annuity.

*831.1742(b)(3) and 848.502(b)(3); Crediting Sick Leave*

Several commenters questioning how employees will be credited for their unused sick leave in the computation of the composite annuity received at final retirement. The commenters appear to be concerned that OPM is not correct in using division where multiplication might be expected. However, the statute expressly addresses this issue. The division of unused sick leave is appropriate. The formula is designed to ensure that employees receive full credit for their unused sick leave balance in the computation of the composite annuity. The unused sick leave balance is credited in the fully retired phased component of the composite annuity calculation before that component gets multiplied by the working percentage. Without any adjustment made to the unused sick leave balance, the value of the unused sick leave in the composite annuity would be proportionally reduced when the fully retired phased component gets multiplied by the working percentage. Dividing the unused sick leave balance by the working percentage and using the result in the computation of the fully retired phase component of the composite annuity ensures that the appropriate credit for the unused sick leave is retained in the annuity after the fully

retired phased component is multiplied by the working percentage.

For example, if a regular CSRS employee separates for retirement with 6 months of unused sick leave credit (1,044 hours) and a high-3 average pay of \$80,000, the value of the unused sick leave credit would equal \$800 ( $\$80,000 \times 2 \text{ percent} \times 6/12$ ). If a CSRS phased retiree with a working percentage of 50 percent separates for full retirement with 6 months of unused sick leave credit (1,044 hours) and a high-3 average pay of \$80,000, the value of the unused sick leave credit without any adjustment would equal \$400 ( $[\$80,000 \times 2 \text{ percent} \times 6/12] \times 50 \text{ percent}$ ), which is \$400 less than the value that should be attributed to the unused sick leave credit. Dividing the sick leave credit by the working percentage and using the result in the fully retired phased component would result in 12 months credit (2,088 hours) for unused sick leave (6 months divided by 50 percent equals 12 months; 1,044 hours divided by 50 percent equals 2,088 hours). The resulting value of the unused sick leave in the composite annuity, after applying 12 months credit for the unused sick leave in the fully retired phased component, equals \$800 ( $[\$80,000 \times 2 \text{ percent} \times 12/12] \times 50\%$ ), the full value that should be attributed to the unused sick leave credit.

This analysis applies equally to the FERS computation. If a FERS employee retires at age 61 with a high-3 average pay of \$80,000 and 6 months unused sick leave credit, the value of that unused sick leave credit would be \$400 ( $\$80,000 \times 1\% \times 6/12$ ). To ensure that a phased retiree with a working percentage of 50 percent separating at age 61 with a high-3 average pay of \$80,000 and 6 months unused sick leave credit would get \$400 credit for the unused sick leave, divide the sick leave credit by the working percentage and use the result (6 months divided by 50 percent equals 12 months) in the computation of the fully retired phased component ( $[\$80,000 \times 1\% \times 12/12] \times 50\% = \$400$ ).

Several employees requested that we consider allowing the use of unused sick leave in both the phased retirement annuity component and the fully retired phased component. OPM cannot make the suggested change. Under §§ 8336a and 8412a, of title 5, United States Code, unused sick leave is available for use in the annuity computation only upon an employee's entry into full retirement.

*831.1761–831.1763 and 848.701–848.703; Death Benefits and Lump-sums*

We received one comment from an employee organization which noted that §§ 848.701 through 848.703 did not appear to have equivalent CSRS sections. The organization suggested that OPM fix this perceived oversight as an equitable consideration. We would direct the employee organization to §§ 831.1761 through 831.1763 which are the corresponding CSRS sections to the FERS sections they cited. No changes to the regulations are required.

*831.1771; Reemployment of an Individual Who Has Separated From Phased Employment*

One agency commented that the first sentence in § 831.1771(b) was difficult to read. We agree and have modified the sentence for clarity. The word “reemployment” has been substituted for the words “the employment” and the term “upon reemployment” has been substituted for “upon employment”.

*831.1781 and 848.901; Mentoring*

Many comments addressed the necessity of requiring an employee in phased retirement to spend 20 percent of work time in mentoring activities. One agency commented that the regulations should allow an agency and the employee to determine the number of mentoring hours collaboratively instead of requiring mentoring 20 percent of the time. The authorizing statute clearly requires that not less than 20 percent of hours worked must consist of mentoring. Therefore, OPM cannot adopt this suggestion.

One union and several individual commenters remarked that a more specific definition of mentoring should be included in the regulations. The same union also commented that mentoring should be defined as peer mentoring. Mentoring can encompass a wide range of activities that allow for the transfer of knowledge and skills from one employee to others. To provide agencies with the maximum amount of flexibility in meeting the mentoring requirement we have purposefully included a broad definition of mentoring so that employees and managers would have options in choosing mentoring activities that would best fit an agency's needs.

Several commenters suggested that the regulations should include specific criteria for a establishing a formal mentoring program as well as procedures for monitoring compliance with the mentoring requirement. Participation in a formal mentoring

program is just one of many ways that an employee in phased retirement could meet the mentoring requirement. In some instances, other forms of mentoring that are not a part of a formal mentoring program would be appropriate. Therefore, OPM declines to adopt this suggestion.

Some commenters also indicated that agencies should be encouraged to use best practices when assigning mentoring activities. While OPM does encourage agencies to use best practices and any other available resources when implementing the mentoring requirement, such information is outside the scope of this rule. A professional organization inquired if a phased retiree could meet the mentoring requirement by participating as a volunteer mentor for students in school or community programs while on leave or during other non-work periods. While we appreciate the efforts of all federal employees who participate in school and community volunteer activities during non-work periods, such volunteer efforts will not count toward the mentoring requirement. The mentoring requirement can only be met when an employee spends 20 percent of paid working hours in mentoring activities.

*838.242(b); Court Orders and Service Computation*

One agency and one union noticed that our amendment to § 838.242(b) omitted a reference to how OPM will credit unused sick leave under FERS in computing an annuity subject to a court order. We agree and we have made the change. The sentence now reads as follows: “Unused sick leave is counted as “creditable service” on the date of separation for an immediate CSRS or FERS annuity.”

*848.501 and 848.502; Phased Retirement and Composite Annuities Under FERS*

Several commenters inquired as to how OPM plans to apply the 1.1 percent computation that applies to FERS annuitants who separate from service after reaching at least age 62 with at least 20 years of service to phased retirees during phased retirement and again at full retirement. Because the 1.1 percent annuity computation is predicated on the eligible FERS employee having reached at least age 62 with at least 20 years of service, OPM will apply it to both the phased retirement annuity and the composite annuity as appropriate. Under 5 U.S.C. 8412a(c)(1), OPM must compute the phased retirement annuity using the appropriate amount of annuity payable

under 5 U.S.C. 8415 as if, on the date on which she enters phased retirement, the FERS employee had separated from service and retired under section 8412(a) or (b). For example, a FERS employee who is otherwise eligible to receive the 1.1 percent annuity computation at retirement would, upon entry into phased retirement, have her annuity computed using the 1.1 percent annuity computation. However, a FERS employee who enters phased retirement prior to reaching age 62 would not receive the 1.1 percent annuity computation in her phased retirement annuity. If she later fully retires after reaching at least age 62 and meets the eligibility requirements, under 5 U.S.C. 8412a(f), she would receive the 1.1 percent annuity computation in the fully retired phased component of her composite annuity; the phased retirement component of her composite annuity would be based on the original 1.0 percent annuity computation, updated by cost-of-living adjustments.

*848.504; Phased Retirees Are Not Eligible for the Annuity Supplement*

Several commenters, including a few agencies, employee organizations and unions objected to the requirement in the regulations that FERS covered phased retirees would be ineligible for the FERS annuity supplement under 5 U.S.C. 8421 and asked OPM to modify the rule. Others noted that it would be a disincentive to FERS covered employees to enter phased retirement without OPM also authorizing payment of the FERS annuity supplement. One commenter suggested, therefore, that OPM should pay 50 percent of the FERS annuity supplement to remedy this issue. OPM cannot modify the rule to pay the FERS annuity supplement during phased retirement because 5 U.S.C. 8412a(j) specifically states that FERS-covered phased retirees are not eligible to receive it.

**Summary of Changes**

Based on the comments OPM received, we made four changes to the regulatory text. A new paragraph (e) was added to §§ 831.1713 and 848.203, respectively. Section 831.1771(b) was edited for clarity: In the first sentence, “reemployment” has been substituted for “the employment” and “upon reemployment” has been substituted for “upon employment”. Section 838.242(b) was modified to include the words “and FERS”. No other changes were made.

**Executive Order 13563 and Executive Order 12866**

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and E.O. 12866.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees who elect phased retirement status.

**List of Subjects**

*5 CFR Part 581*

Alimony, Child support, Government employees, Wages.

*5 CFR Part 582*

Claims, Government employees, Wages.

*5 CFR Part 831*

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

*5 CFR Part 838*

Alimony, Claims, Courts, Government employees, Pensions, Retirement.

*5 CFR Part 841*

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

*5 CFR Part 842*

Air traffic controllers, Alimony, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

*5 CFR Part 843*

Air traffic controllers, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

*5 CFR Part 848*

Air traffic controllers, Alimony, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

*5 CFR Part 870*

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Katherine Archuleta,

Director.

Accordingly, OPM is amending 5 CFR parts 581, 582, 831, 838, 841, 842, 843, 870, and 890 and adding a new part 848, as follows:

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND/OR ALIMONY

■ 1. The authority citation for part 581 is revised to read as follows:

Authority: 42 U.S.C. 659; 15 U.S.C. 1673; E.O. 12105 (43 FR 59465 and 3 CFR 262)(1979). Secs. 581.102 and 581.306 also issued under 5 U.S.C. 8336a and 8412a.

■ 2. Amend § 581.102 by adding paragraphs (l) and (m) to read as follows:

§ 581.102 Definitions.

\* \* \* \* \*

(l) *Phased retirement status* has the same meaning given that term in § 838.103 of this chapter; and

(m) *Phased retirement annuity* has the same meaning given that term in § 838.103 of this chapter.

■ 3. Amend § 581.306 by revising the section heading and adding paragraph (d) to read as follows:

§ 581.306 Lack of moneys due from, or payable by, a governmental entity served with legal process; transfer of service of legal process to another governmental entity.

\* \* \* \* \*

(d) In instances where an employee obligor, who is employed by a governmental entity which is honoring a continuing legal process, enters phased retirement status in accordance with part 831, subpart Q, and part 848 of this chapter, the entity must inform the party who caused the legal process to be served, or the party's representative, and the court or other authority, that remuneration for employment will continue at a reduced rate and that the employee obligor will be receiving a phased retirement annuity. The governmental entity must provide the party with the designated agent at the Office of Personnel Management who is responsible for the disbursement of retirement benefits.

PART 582—COMMERCIAL GARNISHMENT OF FEDERAL EMPLOYEES' PAY

■ 4. The authority citation for part 582 is revised to read as follows:

Authority: 5 U.S.C. 5520a; 15 U.S.C. 1673; E.O. 12897; Sec. 582.102 also issued under 5 U.S.C. 8336a and 8412a.

■ 5. Amend § 582.102 by revising paragraph (2) to read as follows:

§ 582.102 Definitions.

\* \* \* \* \*

(2) *Employee or employee-obligor* means an individual who is employed by an agency as defined in this section, including a reemployed annuitant, an individual engaged in phased employment as defined in part 831, subpart Q, and part 848 of this chapter, and a retired member of the uniformed services who is employed by an agency. *Employee* does not include a retired employee, a member of the uniformed services, a retired member of the uniformed services, or an individual whose service is based on a contract, including an individual who provides personal services based on a contract with an agency.

\* \* \* \* \*

PART 831—RETIREMENT

■ 6. The authority citation for part 831 is revised 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 Sec. 1313(b)(5) of Pub. L. 107-296, 116 Stat. 2135; 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 Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105-33, 111 Stat. 251; Sec. 831.201(g) also issued under Secs. 7(b) and (e) of Pub. L. 105-274, 112 Stat. 2419; Sec. 831.201(i) also issued under Secs. 3 and 7(c) of Pub. L. 105-274, 112 Stat. 2419; Sec. 831.204 also issued under Sec. 102(e) of Pub. L. 104-8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104-134, 110 Stat. 1321; Sec. 831.205 also issued under Sec. 2207 of Pub. L. 106-265, 114 Stat. 784; Sec. 831.206 also issued under Sec. 1622(b) of Pub. L. 104-106, 110 Stat. 515; Sec. 831.301 also issued under Sec. 2203 of Pub. L. 106-265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and Sec. 2203 of Pub. L. 106-235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337, and under Sec. 1(3), E.O. 11228, 3 CFR 1965-1965 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 Sec. 11004(c)(2) of Pub. L. 103-66, 107 Stat. 412; Sec. 831.682 also issued under Sec. 201(d) of Pub. L. 99-251, 100 Stat. 23; Sec. 831.912 also issued under Sec. 636 of Appendix C to

Pub. L. 106-554, 114 Stat. 2763A-164; Subpart P also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110-161, 121 Stat. 2042; Subpart Q also issued under 5 U.S.C. 8336a; Subpart V also issued under 5 U.S.C. 8343a and Sec. 6001 of Pub. L. 100-203, 101 Stat. 1330-275; Sec. 831.2203 also issued under Sec. 7001(a)(4) of Public Law 101-508, 104 Stat. 1388-328.

■ 7. Amend § 831.303 by revising paragraph (c)(1) to read as follows:

§ 831.303 Civilian service.

\* \* \* \* \*

(c)(1)(i) An employee or Member whose retirement is based on a separation before October 28, 2009, and who has not completed payment of a redeposit for refunded deductions based on a period of service that ended before October 1, 1990, will receive credit for that service in computing the nondisability annuity for which the individual is eligible under subchapter III of chapter 83 of title 5, United States Code, provided the nondisability annuity commences after December 1, 1990; and

(ii) An employee or Member whose retirement is based on a separation on or after October 28, 2009, and who has not completed payment of a redeposit for refunded deductions based on a period of service that ended before March 1, 1991, will receive credit for that service in computing the nondisability annuity for which the individual is eligible under subchapter III of chapter 83 of title 5, United States Code.

\* \* \* \* \*

■ 8. Amend § 831.402 by revising the definition of "applicant for retirement" and adding the definitions of "full retirement status" and "phased retiree" in alphabetical order to read as follows:

§ 831.402 Definitions.

In this subpart:

*Applicant for retirement* means a person who is currently eligible to retire under CSRS on an immediate or deferred annuity, and who has filed an application to retire, other than an application for phased retirement status, that has not been finally adjudicated.

\* \* \*

*Full retirement status* means the status of a phased retiree who has ceased employment and is entitled, upon application, to a composite retirement annuity.

\* \* \*

*Phased retiree* means a retirement-eligible employee who—

- (1) Has entered phased retirement status under subpart Q of this part; and
- (2) Has not entered full retirement status.

\* \* \* \* \*

■ 9. Amend § 831.403 by revising paragraph (a) to read as follows:

**§ 831.403 Eligibility to make voluntary contributions.**

(a) Voluntary contributions may be made only by—

(1) Employees (including phased retirees) or Members currently subject to CSRS, and

(2) Applicants for retirement, including phased retirees who apply for full retirement status under subpart Q of this part.

\* \* \* \* \*

■ 10. Revise § 831.501 to read as follows:

**§ 831.501 Time for filing application.**

An employee or Member who is eligible for retirement must file a retirement application with his or her agency. A former employee or Member who is eligible for retirement must file a retirement application with OPM. The application should not be filed more than 60 days before becoming eligible for benefits. If the application is for disability retirement, the applicant and the employing agency should refer to subpart L of this part. If the application is for phased retirement status, the employee and the employing agency should refer to subpart Q of this part.

■ 11. Amend § 831.701 as follows:

■ a. Revise paragraph (a) introductory text;

■ b. Redesignate paragraphs (d) through (f) as paragraphs (e) through (g);

■ c. Add new paragraph (d).

The revision and addition read as follows:

**§ 831.701 Effective dates of annuities.**

(a) Except as provided in paragraphs (b) through (d) of this section, an annuity of an employee or Member commences on the first day of the month after—

\* \* \* \* \*

(d) A phased retirement annuity and a composite retirement annuity granted to an employee under section 8336a of title 5, United States Code, and defined under § 831.1702, commences as provided in subpart Q of this part.

\* \* \* \* \*

■ 12. Amend § 831.703 by revising the definition of “full-time service” in paragraph (b) to read as follows:

**§ 831.703 Computation of annuities for part-time service.**

\* \* \* \* \*

(b) \* \* \*

*Full-time service* means service performed by an employee who has—

(1) An officially established recurring basic workweek consisting of 40 hours

within the employee’s administrative workweek (as established under § 610.111 of this chapter or similar authority);

(2) An officially established recurring basic work requirement of 80 hours per biweekly pay period (as established for employees with a flexible or compressed work schedule under 5 U.S.C. chapter 61, subchapter II, or similar authority);

(3) For a firefighter covered by 5 U.S.C. 5545b(b) who does not have a 40-hour basic workweek, a regular tour of duty averaging at least 106 hours per biweekly pay period; or

(4) A work schedule that is considered to be full-time by express provision of law, including a work schedule established for certain nurses under 38 U.S.C. 7456 or 7456A that is considered by law to be a full-time schedule for all purposes.\* \* \*

■ 13. Add subpart Q to part 831 to read as follows:

**Subpart Q—Phased Retirement**

Sec.

831.1701 Applicability and purpose.

831.1702 Definitions.

831.1703 Implementing directives.

Entering Phased Retirement

831.1711 Eligibility.

831.1712 Working percentage and officially established hours for phased employment.

831.1713 Application for phased retirement.

831.1714 Effective date of phased employment and phased retirement annuity commencing date.

831.1715 Effect of phased retirement.

Returning to Regular Employment Status

831.1721 Ending phased retirement status to return to regular employment status.

831.1722 Effective date of end of phased retirement status to return to regular employment status.

831.1723 Effect of ending phased retirement status to return to regular employment status.

Entering Full Retirement Status

831.1731 Application for full retirement status.

831.1732 Commencing date of composite retirement annuity.

Computation of Phased Retirement Annuity at Phased Retirement and Composite Retirement Annuity at Full Retirement

831.1741 Computation of phased retirement annuity.

831.1742 Computation of composite annuity at final retirement.

831.1743 Cost-of-living adjustments.

Opportunity of a Phased Retiree to Pay a Deposit or Redeposit for Civilian or Military Service

831.1751 Deposit for civilian service for which no retirement deductions were withheld and redeposit for civilian

service for which retirement deductions were refunded to the individual.

831.1752 Deposit for military service.

831.1753 Civilian and military service of an individual affected by an erroneous retirement coverage determination.

Death Benefits

831.1761 Death of phased retiree during phased employment.

831.1762 Death of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.

831.1763 Lump-sum credit.

Reemployment After Separation From Phased Retirement Status

831.1771 Reemployment of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.

Mentoring

831.1781 Mentoring.

**Subpart Q—Phased Retirement**

**§ 831.1701 Applicability and purpose.**

This subpart contains the regulations implementing provisions of 5 U.S.C. 8336a authorizing phased retirement. This subpart establishes the eligibility requirements for making an election to enter phased retirement status, the procedures for making an election, the record-keeping requirements, and the methods to be used for certain computations not addressed elsewhere in part 831.

**§ 831.1702 Definitions.**

In this subpart—  
*Authorized agency official* means—  
(1) For the executive branch agencies, the head of an Executive agency as defined in 5 U.S.C. 105;

(2) For the legislative branch, the Secretary of the Senate, the Clerk of the House of Representatives, or the head of any other legislative branch agency;

(3) For the judicial branch, the Director of the Administrative Office of the U.S. Courts;

(4) For the Postal Service, the Postmaster General;

(5) For any other independent establishment that is an entity of the Federal Government, the head of the establishment; or

(6) An official who is authorized to act for an official named in paragraphs (1)–(5) in the matter concerned.

*Composite retirement annuity* means the annuity computed when a phased retiree attains full retirement status.

*Director* means the Director of the Office of Personnel Management.

*Full retirement status* means that a phased retiree has ceased employment and is entitled, upon application, to a composite retirement annuity.

*Full-time* means—

(1) An officially established recurring basic workweek consisting of 40 hours within the employee's administrative workweek (as established under § 610.111 of this chapter or similar authority); or

(2) An officially established recurring basic work requirement of 80 hours per biweekly pay period (as established for employees with a flexible or compressed work schedule under 5 U.S.C. chapter 61, subchapter II, or similar authority).

*Phased employment* means the less-than-full-time employment of a phased retiree.

*Phased retiree* means a retirement-eligible employee who—

(1) With the concurrence of an authorized agency official, enters phased retirement status; and

(2) Has not entered full retirement status.

*Phased retirement annuity* means the annuity payable under 5 U.S.C. 8336a before full retirement.

*Phased retirement percentage* means the percentage which, when added to the working percentage for a phased retiree, produces a sum of 100 percent.

*Phased retirement period* means the period beginning on the date on which an individual becomes entitled to receive a phased retirement annuity and ending on the date on which the individual dies or separates from phased employment.

*Phased retirement status* means that a phased retiree is concurrently employed in phased employment and eligible to receive a phased retirement annuity.

*Working percentage* has the meaning given that term in § 831.1712(a).

#### **§ 831.1703 Implementing directives.**

The Director may prescribe, in the form he or she deems appropriate, such detailed procedures as are necessary to carry out the purpose of this subpart.

#### **Entering Phased Retirement**

##### **§ 831.1711 Eligibility.**

(a) A retirement-eligible employee, as defined in paragraphs (b) and (c), may elect to enter phased retirement status if the employee has been employed on a full-time basis for not less than the 3-year period ending on the effective date of phased retirement status, under § 831.1714(a).

(b) Except as provided in paragraph (c) of this section, a retirement-eligible employee means an employee who, if separated from the service, would meet the requirements for retirement under subsection (a) or (b) of 5 U.S.C. 8336.

(c) A retirement-eligible employee does not include—

(1) A member of the Capitol Police or Supreme Court Police, or an employee occupying a law enforcement officer, firefighter, nuclear materials courier, air traffic controller, or customs and border protection officer position, except a customs and border protection officer who is exempt from mandatory separation and retirement under 5 U.S.C. 8335 pursuant to section 535(e)(2)(A) of Division E of the Consolidated Appropriations Act, 2008, Public Law 110-161;

(2) An individual eligible to retire under 5 U.S.C. 8336(c), (m), or (n); or

(3) An employee covered by a special work schedule authority that does not allow for a regularly recurring part-time schedule, such as a firefighter covered by 5 U.S.C. 5545b or a nurse covered by 38 U.S.C. 7456 or 7456A.

##### **§ 831.1712 Working percentage and officially established hours for phased employment.**

(a) For the purpose of this subpart, *working percentage* means the percentage of full-time equivalent employment equal to the quotient obtained by dividing—

(1) The number of officially established hours per pay period to be worked by a phased retiree, as described in paragraph (b) of this section; by

(2) The number of hours per pay period to be worked by an employee serving in a comparable position on a full-time basis.

(b) The number of officially established hours per pay period to be worked by an employee in phased retirement status must equal one-half the number of hours the phased retiree would have been scheduled to work had the phased retiree remained in a full-time work schedule and not elected to enter phased retirement status. These hours make up the officially established part-time work schedule of the phased retiree and exclude any additional hours worked under § 831.1715(h).

##### **§ 831.1713 Application for phased retirement.**

(a) To elect to enter phased retirement status, a retirement-eligible employee covered by § 831.1711 must—

(1) Submit to an authorized agency official a written and signed request to enter phased employment, on a form prescribed by OPM;

(2) Obtain the signed written approval of an authorized agency official to enter phased employment; and

(3) File an application for phased retirement, in accordance with § 831.104.

(b) Except as provided in paragraph (c) of this section, an applicant for

phased retirement may withdraw his or her application any time before the election becomes effective, but not thereafter.

(c) An applicant for phased retirement may not withdraw his or her application after OPM has received a certified copy of a court order (under part 581 or part 838 of this chapter) affecting the benefits.

(d)(1) An employee and an agency approving official may agree to a time limit to the employee's period of phased employment as a condition of approval of the employee's request to enter phased employment and phased retirement, or by mutual agreement after the employee enters phased employment status.

(2) To enter into such an agreement, the employee and the approving official must complete a written and signed agreement.

(3) The written agreement must include the following:

(i) The date the employee's period of phased employment will terminate;

(ii) A statement that the employee can request the approving official's permission to return to regular employment status at any time as provided in § 831.1721; the agreement must also explain how returning to regular employment status would affect the employee, as described in §§ 831.1721-1723.

(iii) A statement that the employee has a right to elect to fully retire at any time as provided in § 831.1731;

(iv) A statement that the employee may accept a new appointment at another agency, with or without the new agency's approval of phased employment, at any time before the expiration of the agreement or within 3 days of the expiration of the agreement; the agreement must also explain how accepting an appointment at a new agency as a regular employee would affect the employee, as described in §§ 831.1721-1723;

(v) An explanation that when the agreed term of phased employment ends, the employee will be separated from employment and that such separation will be considered voluntary based on the written agreement; and

(vi) An explanation that if the employee is separated from phased employment and is not employed within 3 days (i.e., the employee has a break in service of greater than 3 days), the employee will be deemed to have elected full retirement.

(4) The agency approving official and the employee may rescind an existing agreement, or enter into a new agreement to extend or reduce the term of phased employment agreed to in an

existing agreement, by entering into a new written agreement meeting the requirements of this paragraph, before the expiration of the agreement currently in effect.

(e) An agency must establish written criteria that will be used to approve or deny applications for phased retirement before approving or denying applications for phased retirement.

**§ 831.1714 Effective date of phased employment and phased retirement annuity commencing date.**

(a) Phased employment is effective the first day of the first pay period beginning after phased employment is approved by the authorized agency official under § 831.1713(a), or the first day of a later pay period specified by the employee with an authorized agency official's concurrence.

(b) The commencing date of a phased retirement annuity (i.e., the beginning date of the phased retirement period) is the first day of the first pay period beginning after phased employment is approved by an authorized agency official under § 831.1713(a), or the first day of a later pay period specified by the employee with the authorized agency official's concurrence.

**§ 831.1715 Effect of phased retirement.**

(a)(1) A phased retiree is deemed to be a full-time employee for the purpose of 5 U.S.C. chapter 89 and 5 CFR part 890 (related to health benefits), as required by 5 U.S.C. 8336a(i). The normal rules governing health benefits premiums for part-time employees in 5 U.S.C. 8906(b)(3) do not apply.

(2) A phased retiree is deemed to be receiving basic pay at the rate applicable to a full-time employee holding the same position for the purpose of determining a phased retiree's annual rate of basic pay used in calculating premiums (employee withholdings and agency contributions) and benefits under 5 U.S.C. chapter 87 and 5 CFR part 870 (dealing with life insurance), as required by 5 U.S.C. 8336a(n). The deemed full-time schedule will consist of five 8-hour workdays each workweek, resulting in a 40-hour workweek. Only basic pay for hours within the deemed full-time schedule will be considered, consistent with 5 U.S.C. 8336a(n) and the definition of "full-time" in § 831.1702. Any premium pay creditable as basic pay for life insurance purposes under 5 CFR 870.204 for overtime work or hours outside the full-time schedule that an employee was receiving before phased retirement, such as standby duty pay under 5 U.S.C. 5545(c)(1) or customs officer overtime pay under 19 U.S.C. 267(a), may not be considered in

determining a phased retiree's deemed annual rate of basic pay under this paragraph.

(b) A phased retiree may not be appointed to more than one position at the same time.

(c) A phased retiree may move to another position in the agency or another agency during phased retirement status only if the change would not result in a change in the working percentage. To move to another agency during phased retirement status and continue phased employment and phased retirement status, the phased retiree must submit a written and signed request and obtain the signed written approval, in accordance with § 831.1713(a)(1) and (2), of the authorized agency official of the agency to which the phased retiree is moving. Notwithstanding the provisions of § 831.1714, if the authorized agency official approves the request, the phased retiree's phased employment and phased retirement status will continue without interruption at the agency to which the phased retiree moves. If the authorized agency official at the agency to which the phased retiree moves does not approve the request, phased employment and phased retirement status terminates in accordance with § 831.1722(b).

(d) A phased retiree may be detailed to another position or agency, subject to 5 CFR part 300, subpart C, if the working percentage of the position to which detailed is the same as the working percentage of the phased retiree's position of record.

(e) A retirement-eligible employee who makes an election under this subpart may not elect an alternative annuity under 5 U.S.C. 8343a.

(f) If the employee's election of phased retirement status becomes effective, the employee is barred from electing phased retirement status again. Ending phased retirement status or entering full retirement status does not create a new opportunity for the individual to elect phased retirement status.

(g) Except as otherwise expressly provided by law or regulation, a phased retiree is treated as any other employee on a part-time tour of duty for all other purposes.

(h)(1) A phased retiree may not be assigned hours of work in excess of the officially established part-time schedule (reflecting the working percentage), except under the conditions specified in paragraph (h)(2) of this section.

(2) An authorized agency official may order or approve a phased retiree to perform hours of work in excess of the officially established part-time schedule

only in rare and exceptional circumstances meeting all of the following conditions:

(i) The work is necessary to respond to an emergency posing a significant, immediate, and direct threat to life or property;

(ii) The authorized agency official determines that no other qualified employee is available to perform the required work;

(iii) The phased retiree is relieved from performing excess work as soon as reasonably possible (e.g., by management assignment of work to other employees); and

(iv) When an emergency situation can be anticipated in advance, agency management made advance plans to minimize any necessary excess work by the phased retiree.

(3) Employing agencies must inform each phased retiree and his or her supervisor of—

(i) The limitations on hours worked in excess of the officially established part-time schedule;

(ii) The requirement to maintain records documenting that exceptions met all required conditions;

(iii) The fact that, by law and regulation, any basic pay received for hours outside the employee's officially established part-time work schedule (as described in § 831.1712(a)(1) and (b)) is subject to retirement deductions and agency contributions, in accordance with 5 U.S.C. 8336a(d), but is not used in computing retirement benefits; and

(iv) The fact that, by law and regulation, any premium pay received for overtime work or hours outside the full-time schedule, that would otherwise be basic pay for retirement, such as customs officer overtime pay under 19 U.S.C. 267(a), will not be subject to retirement deductions or agency contributions, in accordance with 5 U.S.C. 8336a(d), and that any such premium pay received will not be included in computing retirement benefits.

(4) Employing agencies must maintain records documenting that exceptions granted under paragraph (h)(2) of this section meet the required conditions. These records must be retained for at least 6 years and be readily available to auditors. OPM may require periodic agency reports on the granting of exceptions and of any audit findings.

(5) If OPM finds that an agency (or subcomponent) is granting exceptions that are not in accordance with the requirements of this paragraph (h), OPM may administratively withdraw the agency's (or subcomponent's) authority to grant exceptions and require OPM approval of any exception.

(6) If OPM finds that a phased retiree has been working a significant amount of excess hours beyond the officially established part-time schedule to the degree that the intent of the phased retirement law is being undermined, OPM may require that the agency end the individual's phased retirement by unilateral action, notwithstanding the normally established methods of ending phased retirement. This finding does not need to be based on a determination that the granted exceptions failed to meet the required conditions in paragraph (h)(2) of this section. With the ending of an individual's phased retirement, that individual must be returned to regular employment status on the same basis as a person making an election under § 831.1721—unless that individual elects to fully retire as provided under § 831.1731.

(7) A phased retiree must be compensated for excess hours of work in accordance with the normally applicable pay rules.

(8) Any premium pay received for overtime work or hours outside the full-time schedule that would otherwise be basic pay for retirement, such as customs officer overtime pay under 19 U.S.C. 267(a), is not subject to retirement deductions or agency contributions, in accordance with 5 U.S.C. 8336a(d).

(i) A phased retiree is deemed to be an annuitant for the purpose of subpart S of 5 CFR part 831.

### Returning to Regular Employment Status

#### § 831.1721 Ending phased retirement status to return to regular employment status.

(a) *Election to end phased retirement status to return to regular employment status.* (1) A phased retiree may elect, with the permission of an authorized agency official, to end phased employment at any time to return to regular employment status. The election is deemed to meet the requirements of 5 U.S.C. 8336a(g) regardless of the employee's work schedule. The employee is not subject to any working percentage limitation (i.e., full-time, 50 percent of full-time, or any other working percentage) upon electing to end phased retirement status.

(2) To elect to end phased retirement status to return to regular employment status, a phased retiree must—

(i) Submit to the authorized agency official, on a form prescribed by OPM, a written and signed request to end phased retirement status to return to regular employment status; and

(ii) Obtain the signed written approval of the authorized agency official for the request.

(3) An employee may cancel an approved election to end phased retirement status to return to regular employment status by submitting a signed written request to the agency and obtaining the approval of an authorized agency official before the effective date of return to regular employment status.

(4) The employing agency must notify OPM that the employee's phased retirement status has ended by submitting to OPM a copy of the completed election to end phased retirement status to return to regular employment status within 15 days of its approval.

(b) *Mandated return to regular employment status.* A phased retiree may be returned to regular employment status as provided under § 831.1715(h)(6).

(c) *Bar on reelection of phased retirement.* Once an election to end phased retirement status to return to regular employment status is effective, the employee may not reelect phased retirement status.

#### § 831.1722 Effective date of end of phased retirement status to return to regular employment status.

(a)(1) Except as provided in paragraph (b) of this section, if a request to end phased retirement status to return to regular employment status is approved by an authorized agency official under § 831.1721 on any date on or after the first day of a month through the fifteenth day of a month, the phased retiree's resumption of regular employment status is effective the first day of the first full pay period of the month following the month in which the election to end phased retirement status to return to regular employment status is approved.

(2) If a request to end phased retirement status to return to regular employment status is approved by an authorized agency official under § 831.1721 on any date on or after the sixteenth day of a month through the last day of a month, the phased retiree's resumption of regular employment status is effective on the first day of the first full pay period of the second month following the month in which the election to end phased retirement status to return to regular employment status is approved.

(3) The phased retirement annuity terminates on the date determined under paragraph (a)(1) or (2) of this section.

(b) When a phased retiree moves from the agency that approved his or her

phased employment and phased retirement status to another agency and the authorizing official at the agency to which the phased retiree moves does not approve a continuation of phased employment and phased retirement status, phased employment and phased retirement status terminates when employment ends at the current employing agency.

#### § 831.1723 Effect of ending phased retirement status to return to regular employment status.

(a) After phased retirement status ends under § 831.1722, the employee's rights under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, are determined based on the law in effect at the time of any subsequent separation from service.

(b) After an individual ends phased retirement status to return to regular employment status, for the purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code, at the time of the subsequent separation from service, the phased retirement period will be treated as if it had been a period of part-time employment with the work schedule described in § 831.1712(a)(1) and (b). The part-time proration adjustment for the phased retirement period will be based upon the individual's officially established part-time work schedule, with no credit for extra hours worked. In determining the individual's deemed rate of basic pay during the phased retirement period, only basic pay for hours within the individual's officially established part-time work schedule may be considered. No pay received for other hours during the phased retirement period may be included as part of basic pay for the purpose of computing retirement benefits, notwithstanding the normally applicable rules.

(c) The restrictions in §§ 831.1751 and 831.1752 regarding when an individual must complete a deposit for civilian service, a redeposit for civilian service that ended on or after March 1, 1991, or a deposit for military service do not apply when a phased retiree ends phased retirement status to return to regular employment status under this section.

(d) When a phased retiree whose phased retirement annuity was subject to an actuarial reduction for unpaid redeposit service, in accordance with § 831.303(c) and (d), ends phased retirement status to return to regular employment status, the annuity the individual becomes entitled to at retirement is subject to the actuarial reduction, increased by cost-of-living adjustments under § 831.1743(d). For

the purpose of applying the provisions of § 831.1743(d) under this paragraph, cost-of-living adjustments are applied through the annuity commencing date.

#### Entering Full Retirement Status

##### § 831.1731 Application for full retirement status.

(a) *Election of full retirement.* (1) A phased retiree may elect to enter full retirement status at any time by submitting to OPM an application for full retirement in accordance with § 831.104. This includes an election made under § 831.1715(h)(6) in lieu of a mandated return to regular employment status. Upon making such an election, a phased retiree is entitled to a composite retirement annuity.

(2) A phased retiree may cancel an election of full retirement status and withdraw an application for full retirement by submitting a signed written request with the agency and obtaining the approval of an authorized agency official before the commencing date of the composite retirement annuity.

(b) *Deemed election of full retirement.* A phased retiree who is separated from phased employment for more than 3 days enters full retirement status. The individual's composite retirement annuity will begin to accrue on the commencing date of the composite annuity as provided in § 831.1732, and payment will be made after he or she submits an application in accordance with § 831.104 for the composite retirement annuity.

(c) *Survivor election provisions.* An individual applying for full retirement status under this section is subject to the survivor election provisions of subpart F of this part.

##### § 831.1732 Commencing date of composite retirement annuity.

(a) The commencing date of the composite retirement annuity of a phased retiree who enters full retirement status is the day after separation.

(b) A phased retirement annuity terminates upon separation from service.

#### Computation of Phased Retirement Annuity at Phased Retirement and Composite Retirement Annuity at Full Retirement

##### § 831.1741 Computation of phased retirement annuity.

(a) Subject to adjustments described in paragraphs (b) and (c) of this section, a phased retiree's phased retirement annuity equals the product obtained by multiplying—

(1) The amount of annuity computed under 5 U.S.C. 8339, including any reduction for any unpaid deposit for non-deduction service performed before October 1, 1982, but excluding reduction for survivor annuity, that would have been payable to the phased retiree if, on the date on which the phased retiree enters phased retirement status, the phased retiree had separated from service and retired under 5 U.S.C. 8336(a) or (b); by

(2) The phased retirement percentage for the phased retiree.

(b)(1) The monthly installment of annuity derived from the computation of the annuity under paragraph (a) of this section is reduced by any actuarial reduction for unpaid redeposit service in accordance with § 831.303(c) and (d).

(2) For the purpose of applying § 831.303(c) and (d) in paragraph (b)(1) of this section, the term "time of retirement" in § 831.303(c)(2) and (d)(2)(i) means the commencing date of the phased retiree's phased retirement annuity.

(c) The monthly installment of annuity derived from the computation of the annuity under paragraph (a) of this section is also subject to any offset under § 831.1005, adjusted by multiplying the offset that would otherwise apply had the phased retiree fully retired under 5 U.S.C. 8336(a) or (b) by the phased retirement percentage.

##### § 831.1742 Computation of composite annuity at final retirement.

(a) Subject to the adjustment described in paragraph (c) of this section, a phased retiree's composite retirement annuity at final retirement equals the sum obtained by adding—

(1) The amount computed under § 831.1741(a) without adjustment under § 831.1741(b) and (c), increased by cost-of-living adjustments under § 831.1743(c); and

(2) The "fully retired phased component" computed under paragraph (b) of this section.

(b)(1) Subject to the requirements described in paragraphs (b)(2) and (b)(3) of this section, a "fully retired phased component" equals the product obtained by multiplying—

(i) The working percentage; by

(ii) The amount of an annuity computed under 5 U.S.C. 8339 that would have been payable at the time of full retirement if the individual had not elected phased retirement status and as if the individual was employed on a full-time basis in the position occupied during the phased retirement period and before any reduction for survivor annuity.

(2) In applying paragraph (b)(1)(ii) of this section, the individual must be deemed to have a full-time schedule during the period of phased retirement. The deemed full-time schedule will consist of five 8-hour workdays each workweek, resulting in a 40-hour workweek. In determining the individual's deemed rate of basic pay during phased retirement, only basic pay for hours within the deemed full-time schedule will be considered, consistent with the definition of "full-time" in § 831.1702. Any premium pay creditable as basic pay for retirement purposes for overtime work or hours outside the full-time schedule that an employee was receiving before phased retirement, such as standby duty pay under 5 U.S.C. 5545(c)(1) or customs officer overtime pay under 19 U.S.C. 267(a), may not be considered in determining a phased retiree's deemed rate of basic pay during phased retirement.

(3) In computing the annuity amount under paragraph (b)(1) of this section—

(i) The amount of unused sick leave equals the result of dividing the days of unused sick leave to the individual's credit at separation for full retirement by the working percentage; and

(ii) The reduction for any unpaid deposit for non-deduction service performed before October 1, 1982, is based on the amount of unpaid deposit, with interest computed to the commencing date of the composite annuity.

(c) The composite retirement annuity computed under paragraph (a) of this section is adjusted by applying any reduction for any survivor annuity benefit.

(d) The monthly installment derived from a composite retirement annuity computed under paragraph (a) of this section and adjusted under paragraph (c) is adjusted by any—

(1) Actuarial reduction applied to the phased retirement annuity under § 831.1741(b), increased by cost-of-living adjustments under § 831.1743(d); and

(2) Offset under § 831.1005 (i.e., the offset based on all service, including service during the phased retirement period, performed by the individual that was subject to mandatory Social Security coverage).

##### § 831.1743 Cost-of-living adjustments.

(a) The phased retirement annuity under § 831.1741 is increased by cost-of-living adjustments in accordance with 5 U.S.C. 8340.

(b) A composite retirement annuity under § 831.1742 is increased by cost-of-living adjustments in accordance with 5

U.S.C. 8340, except that 5 U.S.C. 8340(c)(1) does not apply.

(c)(1) For the purpose of computing the amount of phased retirement annuity used in the computation under § 831.1742(a)(1), the initial cost-of-living adjustment applied is prorated in accordance with 5 U.S.C. 8340(c)(1).

(2) If the individual enters full retirement status on the same day as the effective date of a cost-of-living adjustment (usually December 1st), that cost-of-living adjustment is applied to increase the phased retirement annuity used in the computation under § 831.1742(a)(1).

(d)(1) For the purpose of computing the actuarial reduction used in the computation under § 831.1742(d)(1), the initial cost-of-living adjustment applied is prorated in accordance with 5 U.S.C. 8340(c)(1).

(2) If the individual enters full retirement status on the same day as the effective date of a cost-of-living adjustment (usually December 1st), that cost-of-living adjustment is applied to increase the actuarial reduction used in the computation under § 831.1742(d)(1).

(3) When applying each cost-of-living adjustment to the actuarial reduction used in the computation under § 831.1742(d)(1), the actuarial reduction is rounded up to the next highest dollar.

#### **Opportunity of a Phased Retiree To Pay a Deposit or Redeposit for Civilian or Military Service**

##### **§ 831.1751 Deposit for civilian service for which no retirement deductions were withheld and redeposit for civilian service for which retirement deductions were refunded to the individual.**

(a)(1) Any deposit an employee entering phased retirement status wishes to make for civilian service for which no retirement deductions were withheld (i.e., “non-deduction” service) must be paid within 30 days from the date OPM notifies the employee of the amount of the deposit, during the processing of the employee’s application for phased retirement. The deposit amount will include interest under § 831.105, computed to the effective date of phased retirement.

(2) No deposit payment may be made by the phased retiree when entering full retirement status.

(3) As provided under § 831.1741(a)(1), for the computation of phased retirement annuity, the amount of any unpaid deposit for non-deduction service performed before October 1, 1982, including interest computed to the effective date of phased retirement annuity, will be the basis for reduction of the phased retirement annuity for such unpaid deposit.

(4) As provided under § 831.1742(b)(2), the amount of any unpaid deposit for non-deduction service performed before October 1, 1982, including interest computed to the commencing date of the composite annuity, will be the basis for reduction of the “fully retired phased component” for such unpaid deposit.

(b)(1) Any redeposit an employee entering phased retirement status wishes to make for civilian service for which retirement deductions were refunded to the employee must be paid within 30 days from the date OPM notifies the employee of the amount of the redeposit, during the processing of the employee’s application for phased retirement. The redeposit amount will include interest under § 831.105 computed to the effective date of phased retirement.

(2) No redeposit payment may be made by the phased retiree when entering full retirement status.

(3) As provided under § 831.1741(b), for the computation of monthly installment of phased retirement annuity, the amount of any unpaid redeposit at phased retirement, or unpaid balance thereof, including interest computed to the effective date of phased retirement, will be the basis, along with the phased retiree’s age, for any actuarial reduction of the monthly installment of phased retirement annuity for such unpaid redeposit.

(4) As provided under § 831.1742(d)(1), any actuarial reduction for unpaid redeposit service applied to the monthly installment of phased retirement annuity, as described in paragraph (b)(3) of this section and § 831.1741(b), is increased by cost-of-living adjustments and applied to the monthly installment derived from the composite retirement annuity.

##### **§ 831.1752 Deposit for military service.**

(a) A phased retiree who wishes to make a military service credit deposit under § 831.2104(a) for military service performed prior to entering phased retirement status must complete such a deposit no later than the day before the effective date of his or her phased employment and the commencing date of the phased retirement annuity. A military service credit deposit for military service performed prior to an individual’s entry into phased retirement status cannot be made after the effective date of phased employment and the commencing date of phased retirement annuity.

(b) A phased retiree who wishes to make a military service credit deposit under § 831.2104(a) for military service performed after the effective date of

phased employment and the commencing date of the phased retirement annuity and before the effective date of the composite retirement annuity (e.g., due to the call-up of the employee for active military service) must complete such a deposit no later than the day before the effective date of his or her composite retirement annuity.

##### **§ 831.1753 Civilian and military service of an individual affected by an erroneous retirement coverage determination.**

(a) For the purpose of crediting service for which actuarial reduction of annuity is permitted under § 831.303(d) for an employee who enters phased retirement, the deposit amounts under § 831.303(d) form the basis, along with the phased retiree’s age, for any actuarial reduction of the phased retirement annuity for such unpaid deposits.

(b) No deposit payment for service described under § 831.303(d) may be made by the phased retiree when entering full retirement status.

(c) As provided under § 831.1741(b), the amount of any deposit under § 831.303(d) at the commencing date of the individual’s phased retirement annuity, or unpaid balance thereof, including interest computed to the effective date of phased retirement annuity, will be the basis, along with the phased retiree’s age, for any actuarial reduction of the phased retirement annuity for such unpaid deposit.

(d) As provided under § 831.1742(d)(1), any actuarial reduction for any unpaid deposit service under § 831.303(d) applied to the phased retirement annuity, as described in § 831.1741(b), is increased by cost-of-living adjustments and applied to the monthly installment derived from the composite retirement annuity.

#### **Death Benefits**

##### **§ 831.1761 Death of phased retiree during phased employment.**

(a) For the purpose of 5 U.S.C. 8341—  
(1) The death of a phased retiree is deemed to be a death in service of an employee; and

(2) The phased retirement period is deemed to have been a period of part-time employment with the work schedule described in § 831.1712(a)(1) and (b) for the purpose of determining survivor benefits. The part-time proration adjustment for the phased retirement period will be based upon the employee’s officially established part-time work schedule, with no credit for extra hours worked. In determining the employee’s deemed rate of basic pay

during the phased retirement period, only basic pay for hours within the employee's officially established part-time work schedule may be considered. No pay received for other hours during the phased retirement period may be included as part of basic pay for the purpose of computing retirement benefits, notwithstanding the normally applicable rules.

(b) If a phased retiree elects not to make a deposit described in 5 U.S.C. 8334(d)(1), such that his or her annuity is actuarially reduced under 5 U.S.C. 8334(d)(2) and § 831.1741(b), and that individual dies in service as a phased retiree, the amount of any deposit upon which such actuarial reduction was to have been based will be deemed to have been fully paid.

**§ 831.1762 Death of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.**

(a) For the purpose of 5 U.S.C. 8341, an individual who dies after separating from phased employment and before submitting an application for composite retirement annuity is deemed to have filed an application for full retirement status, and composite retirement annuity, with OPM.

(b) Unless an individual described in paragraph (a) of this section was reemployed with the Federal Government after separating from phased employment, the composite retirement annuity of an individual described in paragraph (a) of this section is deemed to have accrued from the day after separation through the date of death. Any composite annuity accrued during such period of time, minus any phased annuity paid during that period, will be paid as a lump-sum payment of accrued and unpaid annuity, in accordance with 5 U.S.C. 8342(c) and (f).

**§ 831.1763 Lump-sum credit.**

If an individual performs phased employment, the lump-sum credit will be reduced by any annuity that is paid or accrued during phased employment.

**Reemployment After Separation From Phased Retirement Status**

**§ 831.1771 Reemployment of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.**

(a) Unless eligibility for annuity terminates under 5 U.S.C. 8344, a phased retiree who has been separated from employment for more than 3 days and who has entered full retirement status, but who has not submitted an

application for composite retirement annuity, is deemed to be an annuitant receiving annuity from the Civil Service Retirement and Disability Fund during any period of employment in an appointive or elective position in the Federal Government.

(b) A phased retiree described in paragraph (a) whose entitlement to a composite retirement annuity terminates under 5 U.S.C. 8344 due to reemployment, is an employee effective upon reemployment. The individual is not entitled to a phased retirement annuity (i.e., phased retirement annuity does not resume) during the period of employment, and the individual's entitlement to a composite retirement annuity terminates effective on the date of employment.

**Mentoring**

**§ 831.1781 Mentoring.**

(a) A phased retiree, other than an employee of the United States Postal Service, must spend at least 20 percent of his or her working hours in mentoring activities as defined by an authorized agency official. For purposes of this section, mentoring need not be limited to mentoring of an employee who is expected to assume the phased retiree's duties when the phased retiree fully retires.

(b) An authorized agency official may waive the requirement under paragraph (a) of this section in the event of an emergency or other unusual circumstances (including active duty in the armed forces) that, in the authorized agency official's discretion, would make it impracticable for a phased retiree to fulfill the mentoring requirement.

**PART 838—COURT ORDERS AFFECTING RETIREMENT BENEFITS**

■ 14. The authority citation for part 838 continues to read as follows:

**Authority:** 5 U.S.C. 8347(a) and 8461(g). Subparts B, C, D, E, J, and K also issued under 5 U.S.C. 8345(j)(2) and 8467(b). Sections 838.221, 838.422, and 838.721 also issued under 5 U.S.C. 8347(b).

■ 15. Amend § 838.103 as follows:

■ a. Revise the definitions of "employee annuity", "employee annuity", "gross annuity", "net annuity", "retiree", and "self-only annuity";

■ b. Add the definitions of "composite retirement annuity", "phased retiree", "phased retirement annuity", "phased retirement status," and "retirement" in alphabetical order.

**§ 838.103 Definitions.**

\* \* \* \* \*

*Composite retirement annuity* means the annuity computed when a phased retiree attains full retirement status.

\* \* \* \* \*

*Employee* means an employee or Member covered by CSRS or FERS and a phased retiree as defined under this part.

*Employee annuity* means the recurring payments under CSRS or FERS made to a retiree, the recurring phased retirement annuity payments under CSRS or FERS made to a phased retiree in phased retirement status, and recurring composite retirement annuity payments under CSRS or FERS made to a phased retiree when he or she attains full retirement status. *Employee annuity* does not include payments of accrued and unpaid annuity after the death of a retiree or phased retiree under 5 U.S.C. 8342(g) or 8424(h).

\* \* \* \* \*

*Full retirement status* means that a phased retiree has ceased employment and is entitled, upon application, to a composite retirement annuity, as provided under subpart Q of 5 CFR 831 or 5 CFR 848.

*Gross annuity* means the amount of monthly annuity payable to a retiree or phased retiree after reducing the self-only annuity to provide survivor annuity benefits, if any, but before any other deduction. Unless the court order expressly provides otherwise, *gross annuity* also includes any lump-sum payments made to the retiree under 5 U.S.C. 8343a or 8420a.

\* \* \* \* \*

*Net annuity* means the amount of monthly annuity payable to a retiree or phased retiree after deducting from the gross annuity any amounts that are—

(1) Owed by the retiree to the United States;

(2) Deducted for health benefits premiums under 5 U.S.C. 8906 and 5 CFR 891.401 and 891.402;

(3) Deducted for life insurance premiums under 5 U.S.C. 8714a(d);

(4) Deducted for Medicare premiums;

(5) Properly withheld for Federal income tax purposes, if the amounts withheld are not greater than they would be if the retiree claimed all dependents he or she was entitled to claim;

(6) Properly withheld for State income tax purposes, if the amounts withheld are not greater than they would be if the retiree claimed all dependents he or she was entitled to claim; or

(7) Already payable to another person based on a court order acceptable for processing or a child abuse judgment enforcement order.

Unless the court order expressly provides otherwise, *net annuity* also

includes any lump-sum payments made to the retiree under 5 U.S.C. 8343a or 8420a.

Phased employment means the less-than-full-time employment of a phased retiree, as provided under 5 CFR part 831, subpart Q, or part 848.

Phased retiree means a retirement-eligible employee who—

(1) With the concurrence of an authorized agency official, enters phased retirement status in accordance with 5 CFR part 831, subpart Q, or part 848; and

(2) Has not entered full retirement status;

For the purpose of this part, when the term employee is used it also refers to a phased retiree.

Phased retirement annuity means the annuity payable under 5 U.S.C. 8336a or 8412a, and 5 CFR part 831, subpart Q, or part 848, before full retirement.

Phased retirement status means that a phased retiree is concurrently employed in phased employment and eligible to receive a phased retirement annuity.

\* \* \* \* \*

Retiree means a former employee, including a phased retiree who has entered full retirement status, or a Member who is receiving recurring payments under CSRS or FERS based on his or her service as an employee or Member. Retiree does not include an employee receiving a phased retirement annuity or a person receiving an annuity only as a current spouse, former spouse, child, or person with an insurable interest.

Retirement means a retirement other than a phased retirement.

Retires means enters retirement other than a phased retirement.

Self-only annuity means the recurring unreduced payments under CSRS or FERS to a retiree with no survivor annuity payable to anyone. Self-only annuity also includes the recurring unreduced phased retirement annuity payments under CSRS or FERS to a phased retiree before any other deduction. Unless the court order expressly provides otherwise, self-only annuity also includes any lump-sum payments made to the retiree under 5 U.S.C. 8343a or 8420a.

\* \* \* \* \*

§ 838.136 [Removed]

■ 16. Remove § 838.136.

■ 17. Amend § 838.211 by revising paragraph (a)(1) introductory text, redesignating paragraph (b) as paragraph (a)(4), and by adding new paragraph (b) to read as follows:

§ 838.211 Amounts subject to court orders.

(a)(1) Employee annuities other than phased retirement annuities are subject to court orders acceptable for processing only if all of the conditions necessary for payment of the employee annuity to the former employee have been met, including, but not limited to—

\* \* \* \* \*

(b)(1) Phased retirement annuities are subject to court orders acceptable for processing only if all of the conditions necessary for payment of the phased retirement annuity to the phased retiree have been met, including, but not limited to—

(i) Entry of the employee into phased retirement status under 5 CFR part 831, subpart Q, or part 848 of this chapter, respectively;

(ii) Application for payment of the phased retirement annuity by the phased retiree; and

(iii) The phased retiree's entitlement to a phased retirement annuity.

(2) Money held by an employing agency or OPM that may be payable at some future date is not available for payment under court orders directed at phased retirement annuities.

(3) OPM cannot pay a former spouse a portion of a phased retirement annuity before the employee annuity begins to accrue.

(4) Payment to a former spouse under a court order may not exceed the phased retirement annuity.

■ 18. Amend § 838.222 by revising paragraph (a)(2) introductory text and paragraphs (b), (c)(1)(ii) and (c)(2) introductory text, and paragraph (d) introductory text to read as follows:

§ 838.222 OPM action on receipt of a court order acceptable for processing.

(a) \* \* \*

(2) The retiree or phased retiree—

\* \* \* \* \*

(b) If OPM receives a court order acceptable for processing that is directed at an employee annuity but the employee has died, or if a retiree or phased retiree dies after payments from the retiree or phased retiree to a former spouse have begun, OPM will inform the former spouse that the employee, or retiree, or phased retiree has died and that OPM can only honor court orders diverting employee annuities during the lifetime of the retiree or phased retiree.

(c) \* \* \*

(1) \* \* \*

(ii) That benefits cannot begin to accrue until the employee retires, or enters phased retirement status;

\* \* \* \* \*

(2) The employee, separated employee, retiree, or phased retiree—

\* \* \* \* \*

(d) The failure of OPM to provide, or of the employee, separated employee, retiree, phased retiree or the former spouse to receive, the information specified in this section prior to the commencing date of a reduction or accrual does not affect—

\* \* \* \* \*

■ 19. Revise § 838.232 to read as follows:

§ 838.232 Suspension of payments.

(a) Payments from employee annuities under this part will be discontinued whenever the employee annuity payments are suspended or terminated. If employee annuity payments to the retiree or phased retiree are restored, payments to the former spouse will also resume, subject to the terms of any court order acceptable for processing in effect at that time.

(b) Paragraph (a) of this section will not be applied to permit a retiree or phased retiree to deprive a former spouse of payment by causing suspension of payment of employee annuity.

■ 20. Amend § 838.233 by revising paragraph (d) to read as follows:

§ 838.233 Termination of payments.

\* \* \* \* \*

(d) The last day of the month immediately preceding the month in which the retiree or phased retiree dies; or

\* \* \* \* \*

■ 21. Amend § 838.237 by revising paragraphs (a) and (b)(4) to read as follows:

§ 838.237 Death of the former spouse.

(a) Unless the court order acceptable for processing expressly provides otherwise, the former spouse's share of an employee annuity terminates on the last day of the month immediately preceding the death of the former spouse, and the former spouse's share of employee annuity reverts to the retiree or phased retiree.

(b) \* \* \*

(4) One or more of the retiree's or phased retiree's children as defined in 5 U.S.C. 8342(c) or 8424(d).

■ 22. Amend § 838.242 by revising paragraph (b) to read as follows:

§ 838.242 Computing length of service.

\* \* \* \* \*

(b) Unused sick leave is counted as "creditable service" on the date of separation for an immediate CSRS or FERS annuity. The unused sick leave of

a phased retiree is counted as "creditable service" on the date of separation of the phased retiree to enter full retirement status. Unused sick leave is not apportioned over the time when earned.

■ 23. Amend § 838.305 by revising paragraph (e) introductory text to read as follows:

**§ 838.305 OPM computation of formulas.**

\* \* \* \* \*

(e) A court order directed at employee annuity is not a court order acceptable for processing if the court order directs OPM to determine a rate of employee annuity that would require OPM to determine a salary or average salary, other than a salary or average salary actually used in computing the employee annuity, as of a date prior to the date of the employee's entry into phased retirement or separation and to adjust that salary for use in computing the former spouse share unless the adjustment is by—

\* \* \* \* \*

■ 24. Revise § 838.306 to read as follows:

**§ 838.306 Specifying type of annuity for application of formula, percentage or fraction.**

(a) A court order directed at an employee annuity that states the former spouse's share of employee annuity as a formula, percentage, or fraction is not a court order acceptable for processing unless OPM can determine the type of annuity (i.e., phased retirement annuity, composite retirement annuity, net annuity, gross annuity, or self-only annuity) on which to apply the formula, percentage, or fraction.

(b) The standard types of annuity to which OPM can apply the formula, percentage, or fraction are phased retirement annuity of a phased retiree, or net annuity, gross annuity, or self-only annuity of a retiree. Unless the court order otherwise directs, OPM will apply to gross annuity the formula, percentage, or fraction directed at annuity payable to either a retiree or a phased retiree. Section 838.625 contains information on other methods of describing these types of annuity.

(c)(1) A court order may include provisions directed at:

(i) Phased retirement annuity payable to a phased retiree, to address the possibility that an employee will enter phased retirement status;

(ii) Composite retirement annuity payable to a phased retiree at entry into full retirement status, to address the possibility that an employee will enter phased retirement status and then enter full retirement status; and

(iii) Annuity payable to an employee who retires without having elected phased retirement status.

(2) To separately provide for division of phased retirement annuity or composite retirement annuity, a provision of a court order must expressly state that it is directed at "phased retirement annuity" or "composite retirement annuity," and must meet the requirements of paragraph (a). That is, it must state the type of annuity to be divided (e.g., "net phased retirement annuity"). If such a provision is unclear as to whether it is directed at gross, net, or self-only phased retirement annuity or composite retirement annuity, the provision will be applied to gross phased retirement annuity or gross composite retirement annuity, as described in paragraph (b) of this section.

(3) Unless a court order expressly states that phased retirement annuity or composite retirement annuity is not to be divided, a court order meeting the requirements of paragraph (a) of this section and that generally provides for division of annuity, without meeting the requirements of paragraph (c)(2) of this section, regarding the specific type of annuity being divided, will be applied to divide any employee annuity, including phased retirement annuity and composite retirement annuity.

■ 25. Revise § 838.612 to read as follows:

**§ 838.612 Distinguishing between annuities and contributions.**

(a) A court order that uses terms such as "annuities," "pensions," "retirement benefits," or similar terms, without distinguishing between phased retirement annuity payable to a phased retiree, or composite retirement annuity payable to a phased retiree upon entry into full retirement status, and employee annuity payable to a retiree, satisfies the requirements of §§ 838.303(b)(2) and 838.502(b)(2) for purposes of dividing any employee annuity or a refund of employee contributions.

(b)(1) A court order using "contributions," "deductions," "deposits," "retirement accounts," "retirement fund," or similar terms satisfies the requirements of § 838.502(b)(2) and may be used only to divide the amount of contributions that the employee has paid into the Civil Service Retirement and Disability Fund.

(2) Unless the court order specifically states otherwise, when an employee annuity is payable, a court order using the terms specified in paragraph (b)(1) of this section satisfies the requirements of § 838.303(b)(2) and awards the former

spouse a benefit to be paid in equal monthly installments at 50 percent of the gross annuity beginning on the date the employee annuity commences or the date of the court order, whichever comes later, until the specific dollar amount is reached.

■ 26. Amend § 838.621 by revising paragraphs (a) and (c) to read as follows:

**§ 838.621 Pro rata share.**

(a) *Pro rata share* means one-half of the fraction whose numerator is the number of months of Federal civilian and military service that the employee performed during the marriage and whose denominator is the total number of months of Federal civilian and military service performed by the employee through the day before the effective date of phased retirement or separation for retirement, as applicable to the annuity calculation. In the computation of the division of phased retirement annuity and a composite retirement annuity, a pro rata share will be computed through the day before the effective date of an employee's phased retirement for the computation of the division of a phased retirement annuity and then recomputed for division of the composite retirement annuity under §§ 831.1742 and 848.502.

\* \* \* \* \*

(c) A court order that awards a portion of an employee annuity as of a specified date before the employee's phased retirement or retirement awards the former spouse a pro rata share as defined in paragraph (a) of this section.

\* \* \* \* \*

■ 27. Amend § 838.622 by revising paragraphs (a) and (c)(2) to read as follows:

**§ 838.622 Cost-of-living and salary adjustments.**

(a)(1) A court order that awards adjustments to a former spouse's portion of an employee annuity stated in terms such as "cost-of-living adjustments" or "Cola's" occurring after the date of the decree but before the date of phased retirement or retirement provides increases equal to the adjustments described in or effected under 5 U.S.C. 8340 or 8462.

(2) A court order that awards adjustments to a former spouse's portion of an employee annuity stated in terms such as "salary adjustments" or "pay adjustments" occurring after the date of the decree provides increases equal to the adjustments described in or effected under 5 U.S.C. 5303, until the date the individual enters phased retirement status or retires.

\* \* \* \* \*

(c) \* \* \*

(2)(i) Except as provided in paragraph (b) of this section, a court order that requires OPM to compute a benefit as of a specified date before the employee's phased retirement or retirement, and specifically instructs OPM not to apply salary adjustments after the specified date in computing the former spouse's share of an employee annuity, provides that the former spouse is entitled to the application of cost-of-living adjustments after the date the individual enters phased retirement status or retires (if the employee does not enter phased retirement status first), in the manner described in § 838.241.

(ii) To award cost-of-living adjustments between a specified date and the employee's phased retirement or retirement, the court order must specifically instruct OPM to adjust the former spouse's share of the employee annuity by any cost-of-living adjustments occurring between the specified date and the date the employee enters phased retirement status or retires (if the employee does not enter phased retirement status first).

(iii) To prevent the application of cost-of-living adjustments that occur after the employee annuity begins to accrue to the former spouse's share of the employee annuity, the decree must either state the exact dollar amount of the award to the former spouse or specifically instruct OPM not to apply cost-of-living adjustments occurring after the date the employee enters phased retirement status or retires (if the employee does not enter phased retirement status first).

■ 28. Amend § 838.623 by revising paragraphs (c)(1), (c)(2) introductory text, (d)(1), and (d)(2) introductory text, and by adding paragraph (e) to read as follows:

**§ 838.623 Computing lengths of service.**

\* \* \* \* \*

(c)(1) When a court order directed at employee annuity (other than a phased retirement annuity or a composite retirement annuity) contains a formula for dividing employee annuity that requires a computation of service worked as of a date prior to separation and using terms such as "years of service," "total service," "service performed," or similar terms, the time attributable to unused sick leave will not be included.

(2) When a court order directed at employee annuity other than a phased retirement annuity or a composite retirement annuity contains a formula for dividing employee annuity that requires a computation of "creditable service" (or some other phrase using

"credit" or its equivalent) as of a date prior to retirement, unused sick leave will be included in the computation as follows:

\* \* \* \* \*

(d)(1) General language such as "benefits earned as an employee with the U.S. Postal Service \* \* \*" provides only that CSRS or FERS retirement benefits are subject to division and does not limit the period of service included in the computation (i.e., service performed with other Government agencies will be included).

(2) To limit the computation of benefits other than a phased retirement annuity or a composite retirement annuity to a particular period of employment, the court order must—

\* \* \* \* \*

(e) A court order directed at a phased retirement annuity or a composite retirement annuity cannot limit the computation and division of a phased retirement annuity or composite retirement annuity to a particular period of employment or service. A phased retirement annuity is based on an employee's service as of phased retirement and a "fully retired phased component," described in §§ 831.1742 and 848.502, of a composite retirement annuity is based on a phased retiree's service as of his or her full retirement. A court order that attempts to limit the computation of a phased retirement annuity or a composite retirement annuity to a particular period of employment or service is not a court order acceptable for processing. If the former spouse's award of a portion of phased retirement annuity or a composite retirement annuity is to be limited, the limitation of the division must be accomplished in a manner other than by limiting the service to be used in the computation.

■ 29. Amend Appendix A to subpart F of 5 CFR part 838 by revising the table of contents, adding model paragraphs 212–217, and by revising model paragraph 232 and the introductory text for the 300 series paragraphs to read as follows:

**Model Paragraphs**

**Appendix A to Subpart F of Part 838—Recommended Language for Court Orders Dividing Employee Annuities**

\* \* \* \* \*

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\* \* \* \* \*

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¶¶ 201–211 General award of employee annuity.

¶ 201 \* \* \*

\* \* \* \* \*

**¶¶ 212–217 Award of phased retirement annuity or composite retirement annuity.**

A court order may include an award directed at (1) phased retirement annuity payable to a phased retiree, to address the possibility that an employee will enter phased retirement status; (2) composite retirement annuity payable to a phased retiree at entry into full retirement status, to address the possibility that an employee will enter phased retirement status and then enter full retirement status; or (3) annuity payable to an employee who retires without having elected phased retirement status.

A general non-specific award will apply to any employee annuity payable, including phased retirement annuity and composite retirement annuity (see ¶¶ 201–211). For example, an award dividing employee annuity that uses terms such as “annuities,” “pensions,” “retirement benefits,” or similar general terms, would apply to all types of employee annuity.

To separately provide for division of phased retirement annuity or composite retirement annuity, a provision of a court order must expressly state that it is directed at “phased retirement annuity” or “composite retirement annuity,” and must indicate the share of employee annuity as a formula, percentage, or fraction. That is, it must state the type of annuity to be divided (e.g., “net phased retirement annuity”). If such a provision is unclear as to whether it is directed at gross, net, or self-only phased retirement annuity or composite retirement annuity, the provision will be applied to gross phased retirement annuity or gross composite retirement annuity.

It should be noted that a former spouse survivor annuity cannot be awarded from a phased retirement annuity; therefore, a phased retirement annuity is not subject to reduction to

provide a former spouse survivor annuity. As a consequence, an award dividing either “self-only phased retirement annuity” or a “gross phased retirement annuity” would be directed at identical annuities. However, a former spouse survivor annuity can be awarded from a composite retirement annuity payable to a phased retiree at entry into full retirement status (i.e., when the “phased retiree” enters full retirement status and becomes a “retiree”); therefore, there would be a difference between an award of a share of “self-only composite retirement annuity” and an award of a share of “gross composite retirement annuity.”

Due to the complexity of the benefits, care should be taken in drafting separate awards of phased retirement annuity or composite retirement annuity. It should also be noted, for example, that an award directed only at the division of phased retirement annuity or composite retirement annuity payable to a phased retiree will not be effective to divide annuity payable to an employee who retires in the usual manner, without having entered phased retirement status first. If separate awards of phased retirement annuity or composite retirement annuity are to be provided, consideration should be given to including provisions in the paragraph addressing the possibility that the employee may retire in the usual manner without entering phased retirement status before fully retiring. Similarly, if employee annuity is only to be awarded in the event the employee retires in the usual manner, without entering phased retirement status before fully retiring, consideration should be given to including specific language to that effect.

**¶ 212 Award of phased retirement annuity and composite retirement annuity while providing for the possibility that the employee retires in the usual manner without entering phased retirement status before fully retiring.**

Using the following paragraph will award phased retirement annuity and composite retirement annuity and provides for the possibility that the employee retires in the usual manner without entering phased retirement status:

“[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. If [employee] enters phased retirement status, the [former spouse] is entitled to a [insert description of percentage, fraction, formula, or insert term ‘pro rata share’]

of [employee]’s [insert ‘gross,’ ‘net,’ or ‘self-only’] monthly phased retirement annuity under the Civil Service Retirement System. When [employee] enters full retirement status and receives a composite retirement annuity, [former spouse] is awarded [insert language awarding fraction, formula, or ‘pro rata share’] of [employee]’s monthly [insert “gross,” “net” or “self-only”] composite retirement annuity under the Civil Service Retirement System. If [employee] retires from employment with the United States Government without entering phased retirement status before fully retiring, [former spouse] is entitled to [insert appropriate language from 200 series or 300 series paragraphs] under the Civil Service Retirement System. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]’s share directly to [former spouse].”

**¶ 213 Award of composite retirement annuity while providing for the possibility that the employee retires in the usual manner without entering phased retirement status, but not providing for award of phased retirement annuity.**

Using the following will award composite retirement annuity when an employee enters phased retirement status and subsequently enters full retirement status, and provides for the possibility that the employee retires in the usual manner without having entered phased retirement status; however, the paragraph will not award a phased retirement annuity when the employee enters phased retirement status:

“[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. If [employee] enters phased retirement status and subsequently enters full retirement status, the [former spouse] is entitled to a [insert description of percentage, fraction, formula, or insert term ‘pro rata share’] of [employee]’s [insert ‘gross,’ ‘net,’ or ‘self-only’] monthly composite retirement annuity under the Civil Service Retirement System. If [employee] retires from employment with the United States Government without entering phased retirement status before fully retiring, [former spouse] is entitled to [insert appropriate language from 200 series or 300 series paragraphs] under the Civil Service Retirement System. The marriage began on [insert date]. The United States Office of Personnel Management is

directed to pay [former spouse]'s share directly to [former spouse]."

**¶ 214 Award of employee annuity when the employee retires in the usual manner, without providing for the possibility that the employee enters phased retirement status and full retirement status.**

Use the following paragraph if the former spouse is only to be awarded a portion of the employee's annuity when the employee retires in the usual manner, without an award of a portion of the employee's phased retirement annuity or composite retirement annuity in the event that the employee enters phased retirement status. It should be noted, however, that if this conditional clause provided below is used in an appropriate 200 or 300 series paragraph without a conditional award of a portion of phased retirement annuity and composite retirement annuity, the former spouse will not receive a portion of the employee's annuity if the employee enters phased retirement status and then enters full retirement status:

"If [employee] retires from employment with the United States Government without entering phased retirement status before fully retiring, [former spouse] is awarded [insert remaining language for the paragraph from the appropriate 200 series or 300 series]. . . The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

**¶ 215 Award of phased retirement annuity and composite retirement annuity, without providing for the possibility that the employee retires in the usual manner without having entered phased retirement status and full retirement status.**

Use the following paragraph to award only phased retirement annuity and composite retirement annuity. This paragraph will not award benefits if the employee retires in the usual manner without entering phased retirement status:

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. If [employee] enters phased retirement status, the [former spouse] is entitled to a [insert description of percentage, fraction, formula, or insert term 'pro rata share'] of [employee]'s monthly [insert 'gross,' 'net,' or 'self-only'] phased retirement annuity under the Civil Service Retirement System. When [employee]

enters full retirement status and receives a composite retirement annuity, [former spouse] is awarded [insert language awarding percentage, fraction, formula, or pro rata share] of [employee]'s monthly [insert "gross," "net" or "self-only"] composite retirement annuity under the Civil Service Retirement System. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

**¶ 216 Award of only phased retirement annuity, but not awarding composite retirement annuity when the employee enters full retirement status or providing for the possibility that the employee retires in the usual manner without entering phased retirement status before fully retiring.**

Using the following will award only phased retirement annuity. This paragraph will not award composite retirement annuity when the employee enters full retirement status nor will it provide for the possibility that the employee retires in the usual manner without entering phased retirement status. It should be noted that if this paragraph is used, the former spouse will not receive a portion of the employee's annuity benefits if the employee retires in the usual manner without entering phased retirement status first:

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. If [employee] enters phased retirement status, the [former spouse] is entitled to a [insert description of percentage, fraction, formula, or insert term 'pro rata share'] of [employee]'s [insert 'gross,' 'net,' or 'self-only'] monthly phased retirement annuity under the Civil Service Retirement System. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

**¶ 217 Award of only composite retirement annuity when employee enters full retirement status following phased retirement, but not awarding phased retirement annuity when the employee enters phased retirement status or providing for the possibility that the employee retires in the usual manner without entering phased retirement status before fully retiring.**

Using the following will award only composite retirement annuity when the employee enters full retirement status following phased retirement. This

paragraph will not award phased retirement annuity when the employee enters phased retirement status nor will it provide for the possibility that the employee retires in the usual manner without entering phased retirement status. It should be noted that if this paragraph is used, the former spouse will not receive a portion of the employee's annuity benefits if the employee retires without entering full retirement status from phased retirement status:

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. If [employee] enters phased retirement status and enters full retirement status, the [former spouse] is entitled to a [insert description of percentage, fraction, formula, or insert term 'pro rata share'] of [employee]'s [insert 'gross,' 'net,' or 'self-only'] monthly composite retirement annuity under the Civil Service Retirement System. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

**¶ 218–230 [Reserved]**

**¶¶ 231–232 Awarding or excluding COLA's.**

\* \* \* \* \*

**¶ 232 Excluding COLA's on awards other than fixed monthly amounts.**

Using the following paragraph will prevent application of COLA's to a former spouse's share of an employee annuity in cases where the former spouse has been awarded a percentage, fraction or pro rata share of the employee annuity, rather than a fixed dollar amount.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Insert language for computing the former spouse's share from ¶ 202, ¶ 203, ¶ 204, ¶ 211, or ¶¶ 212–217 of this appendix.] The United States Office of Personnel Management is directed to determine the amount of [former spouse]'s share on the date [insert 'when [employee] retires or enters phased retirement status' or 'if the employee has not retired or entered phased retirement status, or 'of this order' if the employee is already retired or entered phased retirement status] and not to apply COLA's to that amount. The United States Office of Personnel Management is directed to

pay [former spouse]'s share directly to [former spouse]."

### 300 Series—Type of Annuity

Awards of employee annuity to a former spouse (other than awards of fixed dollar amounts) must specify whether OPM will use the "phased retirement annuity," "composite retirement annuity," "gross annuity," "net annuity," or "self-only annuity" as defined in § 838.103 (see also § 838.306) in determining the amount of the former spouse's entitlement. The court order may contain a formula that has the effect of creating other types of annuity, but the court order may only do this by providing a formula that starts from "phased retirement annuity," "composite retirement annuity," "gross annuity," "net annuity," or "self-only annuity" as defined in § 838.103.

\* \* \* \* \*

- 30. Amend § 838.803 by adding paragraph (c) to read as follows:

#### § 838.803 Language not acceptable for processing.

\* \* \* \* \*

(c) A court order that attempts to award a former spouse survivor annuity based on a phased retirement annuity or to reduce a phased retirement annuity to provide survivor benefits is not a court order acceptable for processing.

- 31. Amend § 838.806 by revising paragraph (d)(2) to read as follows:

#### § 838.806 Amended court orders.

\* \* \* \* \*

(d) \* \* \*

(2) The effective commencing date for the employee's annuity other than the commencing date of a phased retirement annuity.

\* \* \* \* \*

- 32. Amend § 838.807 by revising paragraphs (a), (b)(1), (b)(2), adding paragraph (b), and revising paragraph (c) to read as follows:

#### § 838.807 Cost must be paid by annuity reduction.

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing unless it permits OPM to collect the annuity reduction required by 5 U.S.C. 8339(j)(4) or 8419 from annuity paid by OPM to a retiree. OPM will not honor a court order that provides for the retiree or former spouse to pay OPM the amount of the annuity reduction by any other means.

(b) \* \* \*

(1) By reduction of the former spouse's entitlement under a court order acceptable for processing that is

directed at employee annuity payable to a retiree;

(2) Annuity payable to a retiree; or

(3) By actuarial reduction of the former spouse survivor annuity in the event the reduction of the employee annuity is not made for any reason prior to the death of the annuitant.

(c) Unless the court order otherwise directs, OPM will collect the annuity reduction required by 5 U.S.C. 8339(j)(4) or 8419 from the employee annuity payable to a retiree.

■ 33. Amend § 838.1111 by revising paragraph (a)(1) introductory text, redesignating paragraph (b) as paragraph (c), by and adding new paragraph (b) to read as follows:

#### § 838.1111 Amounts subject to child abuse judgment enforcement orders.

(a)(1) Employee annuities, other than phased retirement annuities, and refunds of employee contributions are subject to child abuse enforcement orders only if all of the conditions necessary for payment of the employee annuity or refund of employee contributions to the former employee have been met, including, but not limited to—

\* \* \* \* \*

(b)(1) Phased retirement annuities are subject to child abuse enforcement orders only if all of the conditions necessary for payment of the phased retirement annuity to the phased retiree have been met, including, but not limited to—

(i) Entry of the employee into phased retirement status under subpart Q of part 831 of this chapter or part 848 of this chapter, respectively;

(ii) Application for payment of the phased retirement annuity by the phased retiree; and

(iii) The phased retiree's immediate entitlement to a phased retirement annuity.

(2) Money held by an employing agency or OPM that may be payable at some future date is not available for payment under child abuse judgment enforcement orders.

(3) OPM cannot pay a child abuse creditor a portion of a phased retirement annuity before the employee annuity begins to accrue.

\* \* \* \* \*

### PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

- 34. The authority citation for part 841 continues to read as follows:

**Authority:** 5 U.S.C. 8461; Sec. 841.108 also issued under 5 U.S.C. 552a; Secs.

841.110 and 841.111 also issued under 5 U.S.C. 8470(a); subpart D also issued under 5 U.S.C. 8423; Sec. 841.504 also issued under 5 U.S.C. 8422; Sec. 841.507 also issued under section 505 of Pub. L. 99–335; subpart J also issued under 5 U.S.C. 8469; Sec. 841.506 also issued under 5 U.S.C. 7701(b)(2); Sec. 841.508 also issued under section 505 of Pub. L. 99–335; Sec. 841.604 also issued under Title II, Pub. L. 106–265, 114 Stat. 780.

- 35. Amend § 841.102 as follows:

■ a. Add paragraph (b)(6);

■ b. Redesignate paragraphs (c)(6) through (11) as paragraphs (c)(7) through (12), and

■ c. Add new paragraph (c)(6).

The additions read as follows:

#### § 841.102 Regulatory structure for the Federal Employees Retirement System.

\* \* \* \* \*

(b) \* \* \*

(6) Part 848 of this chapter contains information about phased retirement under FERS.

(c) \* \* \*

(6) Part 850 of this chapter contains information about CSRS and FERS electronic retirement processing.

\* \* \* \* \*

- 36. Amend § 838.104 by revising paragraph (a) and paragraph (b) introductory text to read as follows:

#### § 841.104 Special terms defined.

(a) Unless otherwise defined for use in any subpart, as used in connection with FERS (parts 841 through 850 of this chapter), terms defined in 5 U.S.C. 8401 have the same meanings assigned to them by that section.

(b) Unless otherwise defined for use in any subpart, as used in connection with FERS (parts 841 through 850 of this chapter)—

\* \* \* \* \*

### PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

- 37. 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 Secs. 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 Sec. 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104–134, 110 Stat. 1321–102; Sec. 842.107 also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251, and Sec. 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under Sec. 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.109 also issued under Sec. 1622(b) of Public Law 104–106, 110 Stat. 515; Sec. 842.208 also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat.

2042; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and Sec. 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Secs. 842.304 and 842.305 also issued under Sec. 321(f) of Pub. L. 107–228, 116 Stat. 1383, 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 Sec. 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under Sec. 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under Sec. 4005 of Pub. L. 101–239, 103 Stat. 2106 and Sec. 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 Sec. 636 of Appendix C to Pub. L. 106–554 at 114 Stat. 2763A–164; Sec. 842.811 also issued under Sec. 226(c)(2) of Public Law 108–176, 117 Stat. 2529; Subpart J also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042.

■ 38. Amend § 842.402 by revising the definition of “full-time service” to read as follows:

**§ 842.402 Definitions.**

In this subpart—  
*Full-time service* means service performed by an employee who has—  
(1) An officially established recurring basic workweek consisting of 40 hours within the employee’s administrative workweek (as established under § 610.111 of this chapter or similar authority);

(2) An officially established recurring basic work requirement of 80 hours per biweekly pay period (as established for employees with a flexible or compressed work schedule under 5 U.S.C. chapter 61, subchapter II, or similar authority);

(3) For a firefighter covered by 5 U.S.C. 5545b(b) who does not have a 40-hour basic workweek, a regular tour of duty averaging at least 106 hours per biweekly pay period; or

(4) A work schedule that is considered to be full-time by express provision of law, including a work schedule established for certain nurses under 38 U.S.C. 7456 or 7456A that is considered by law to be a full-time schedule for all purposes.

\* \* \* \* \*

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

■ 39. 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.

■ 40. Amend § 843.202 by revising paragraph (b) to read as follows:

**§ 843.202 Eligibility for payment of the unexpended balance to a separated employee.**

\* \* \* \* \*

(b)(1) For a retirement based on a separation before October 28, 2009, periods of service for which employee contributions have been refunded are not creditable service in determining whether the employee has sufficient service to have title to an annuity or for any other purpose.

(2) For a retirement based on a separation on or after October 28, 2009, periods of service for which employee contributions have been refunded are—

(i) Creditable service in determining whether the employee has sufficient service to have title to an annuity; and

(ii) Not creditable without deposit for any other purpose, except for average pay computation purposes.

■ 41. Add part 848 to read as follows:

**PART 848—PHASED RETIREMENT**

**Subpart A—General Provisions**

Sec.

848.101 Applicability and purpose.

848.102 Definitions.

848.103 Implementing directives.

**Subpart B—Entering Phased Retirement**

848.201 Eligibility.

848.202 Working percentage and officially established hours for phased employment.

848.203 Application for phased retirement.

848.204 Effective date of phased employment and phased retirement annuity commencing date.

848.205 Effect of phased retirement.

**Subpart C—Returning to Regular Employment Status**

848.301 Ending phased retirement status to return to regular employment status.

848.302 Effective date of end of phased retirement status to return to regular employment status.

848.303 Effect of ending phased retirement status to return to regular employment status.

**Subpart D—Entering Full Retirement Status**

848.401 Application for full retirement status.

848.402 Commencing date of composite retirement annuity.

**Subpart E—Computation of Phased Retirement Annuity at Phased Retirement and Composite Retirement Annuity at Full Retirement**

848.501 Computation of phased retirement annuity.

848.502 Computation of composite annuity at final retirement.

848.503 Cost-of-living adjustments.

848.503 Non-eligibility for annuity supplement.

**Subpart F—Opportunity of a Phased Retiree to Pay Deposit or Redeposit for Civilian or Military Service**

848.601 Deposit for civilian service for which no retirement deductions were withheld and redeposit for civilian service for which retirement deductions were refunded to the individual.

848.602 Deposit for military service.

**Subpart G—Death Benefits**

848.701 Death of a phased retiree during phased employment.

848.702 Death of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.

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848.801 Reemployment of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.

**Subpart I—Mentoring**

848.901 Mentoring.

**Authority:** 5 U.S.C. 8461; 5 U.S.C. 8412a.

**Subpart A—General Provisions**

**§ 848.101 Applicability and purpose.**

This subpart contains the regulations implementing provisions of 5 U.S.C. 8412a authorizing phased retirement. This subpart establishes the eligibility requirements for making an election to enter phased retirement status, the procedures for making an election, the record-keeping requirements, and the methods to be used for certain computations not addressed elsewhere in parts 841–843 and 845.

**§ 848.102 Definitions.**

In this subpart—

*Authorized agency official* means—

(1) For the executive branch agencies, the head of an Executive agency as defined in 5 U.S.C. 105;

(2) For the legislative branch, the Secretary of the Senate, the Clerk of the House of Representatives, or the head of any other legislative branch agency;

(3) For the judicial branch, the Director of the Administrative Office of the U.S. Courts;

(4) For the Postal Service, the Postmaster General;

(5) For any other independent establishment that is an entity of the Federal Government, the head of the establishment; or

(6) An official who is authorized to act for an official named in paragraphs (1)–(5) in the matter concerned.

*Composite retirement annuity* means the annuity computed when a phased retiree attains full retirement status.

*Director* means the Director of the Office of Personnel Management.

*Full retirement status* means that a phased retiree has ceased employment and is entitled, upon application, to a composite retirement annuity.

*Full-time* means—

(1) An officially established recurring basic workweek consisting of 40 hours within the employee's administrative workweek (as established under § 610.111 of this chapter or similar authority); or

(2) An officially established recurring basic work requirement of 80 hours per biweekly pay period (as established for employees with a flexible or compressed work schedule under 5 U.S.C. chapter 61, subchapter II, or similar authority).

*Phased employment* means the less-than-full-time employment of a phased retiree.

*Phased retiree* means a retirement-eligible employee who—

(1) With the concurrence of an authorized agency official, enters phased retirement status; and

(2) Has not entered full retirement status;

*Phased retirement annuity* means the annuity payable under 5 U.S.C. 8412a before full retirement.

*Phased retirement percentage* means the percentage which, when added to the working percentage for a phased retiree, produces a sum of 100 percent.

*Phased retirement period* means the period beginning on the date on which an individual becomes entitled to receive a phased retirement annuity and ending on the date on which the individual dies or separates from phased employment.

*Phased retirement status* means that a phased retiree is concurrently employed in phased employment and eligible to receive a phased retirement annuity.

*Working percentage* has the meaning given that term in § 848.202(a).

#### **§ 848.103 Implementing directives.**

The Director may prescribe, in the form he or she deems appropriate, such detailed procedures as are necessary to carry out the purpose of this subpart.

### **Subpart B—Entering Phased Retirement**

#### **§ 848.201 Eligibility.**

(a) A retirement-eligible employee, as defined in paragraphs (b) and (c), may elect to enter phased retirement status if the employee has been employed on a full-time basis for not less than the 3-year period ending on the effective date of phased retirement status under § 848.203.

(b) Except as provided in paragraph (c) of this section, a retirement-eligible employee means an employee who, if separated from the service, would meet the requirements for retirement under subsection (a) or (b) of 5 U.S.C. 8412.

(c) A retirement-eligible employee does not include—

(1) A member of the Capitol Police or Supreme Court Police, or an employee occupying a law enforcement officer, firefighter, nuclear materials courier, air traffic controller, or customs and border protection officer position, except a customs and border protection officer who is exempt from mandatory separation and retirement under 5 U.S.C. 8325 pursuant to section 535(e)(2)(A) of Division E of the Consolidated Appropriations Act, 2008, Public Law 110–161;

(2) An individual eligible to retire under 5 U.S.C. 8412(d) or (e); or

(3) An employee covered by a special work schedule authority that does not allow for a regularly recurring part-time schedule, such as a firefighter covered by 5 U.S.C. 5545b or a nurse covered by 38 U.S.C. 7456 or 7456A.

#### **§ 848.202 Working percentage and officially established hours for phased employment.**

(a) For the purpose of this subpart, *working percentage* means the percentage of full-time equivalent employment equal to the quotient obtained by dividing—

(1) The number of officially established hours per pay period to be worked by a phased retiree, as described in paragraph (b) of this section; by

(2) The number of hours per pay period to be worked by an employee serving in a comparable position on a full-time basis.

(b) The number of officially established hours per pay period to be worked by an employee in phased retirement status must equal one-half the number of hours the phased retiree would have been scheduled to work had the phased retiree remained in a full-time work schedule and not elected to enter phased retirement status. These hours make up the officially established part-time work schedule of the phased retiree and exclude any additional hours worked under § 848.205(j).

#### **§ 848.203 Application for phased retirement.**

(a) To elect to enter phased retirement status, a retirement-eligible employee covered by § 848.201 must—

(1) Submit to an authorized agency official a written and signed request to enter phased employment, on a form prescribed by OPM;

(2) Obtain the signed written approval of an authorized agency official to enter phased employment; and

(3) File an application for phased retirement, in accordance with § 841.202.

(b) Except as provided in paragraph (c) of this section, an applicant for phased retirement may withdraw his or her application any time before the election becomes effective, but not thereafter.

(c) An applicant for phased retirement may not withdraw his or her application after OPM has received a certified copy of a court order (under part 581 or part 838 of this chapter) affecting the benefits.

(d)(1) An employee and an agency approving official may agree to a time limit to the employee's period of phased employment as a condition of approval of the employee's request to enter phased employment and phased retirement, or by mutual agreement after the employee enters phased employment status.

(2) To enter into such an agreement, the employee and the approving official must complete a written and signed agreement.

(3) The written agreement must include the following:

(i) The date the employee's period of phased employment will terminate;

(ii) A statement that the employee can request the approving official's permission to return to regular employment status at any time or within three days after the expiration of the agreement as provided in § 848.301. The agreement must also explain how returning to regular employment status would affect the employee, as described in §§ 848.301–302.

(iii) A statement that the employee has a right to elect to fully retire at any time as provided in § 848.401;

(iv) A statement that the employee may accept a new appointment at another agency, with or without the new agency's approval of phased employment, at any time before the expiration of the agreement or within 3 days of the expiration of the agreement; the agreement must also explain how accepting an appointment at a new agency as a regular employee would affect the employee, as described in §§ 848.301–302;

(v) An explanation that when the agreed term of phased employment ends, the employee will be separated from employment and that such separation will be considered voluntary, based on the written agreement; and

(vi) An explanation that if the employee is separated from phased employment and is not employed

within 3 days (i.e., the employee has a break in service of greater than 3 days), the employee will be deemed to have elected full retirement.

(4) The agency approving official and the employee may rescind an existing agreement, or enter into a new agreement to extend or reduce the term of phased employment agreed to in an existing agreement, by entering into a new written agreement meeting the requirements of this paragraph, before the expiration of the agreement currently in effect.

(e) An agency must establish written criteria that will be used to approve or deny applications for phased retirement before approving or denying applications for phased retirement.

**§ 848.204 Effective date of phased employment and phased retirement annuity commencing date.**

(a) Phased employment is effective the first day of the first pay period beginning after phased employment is approved by an authorized agency official under § 848.203(a), or the first day of a later pay period specified by the employee with the authorized agency official's concurrence.

(b) The commencing date of a phased retirement annuity (i.e., the beginning date of the phased retirement period) is the first day of the first pay period beginning after phased employment is approved by an authorized agency official under § 848.203(a), or the first day of a later pay period specified by the employee with the authorized agency official's concurrence.

**§ 848.205 Effect of phased retirement.**

(a)(1) A phased retiree is deemed to be a full-time employee for the purpose of 5 U.S.C. chapter 89 and 5 CFR part 890 (related to health benefits), as required by 5 U.S.C. 8412a(i). The normal rules governing health benefits premiums for part-time employees in 5 U.S.C. 8906(b)(3) do not apply.

(2) A phased retiree is deemed to be receiving basic pay at the rate applicable to a full-time employee holding the same position for the purpose of determining a phased retiree's annual rate of basic pay used in calculating premiums (employee withholdings and agency contributions) and benefits under 5 U.S.C. chapter 87 and 5 CFR part 870 (dealing with life insurance), as required by 5 U.S.C. 8412a(o). The deemed full-time schedule will consist of five 8-hour workdays each workweek, resulting in a 40-hour workweek. Only basic pay for hours within the deemed full-time schedule will be considered, consistent with 5 U.S.C. 8412a(o) and the definition of "full-time" in

§ 848.102. Any premium pay creditable as basic pay for life insurance purposes under 5 CFR 870.204 for overtime work or hours outside the full-time schedule that an employee was receiving before phased retirement, such as standby duty pay under 5 U.S.C. 5545(c)(1) or customs officer overtime pay under 19 U.S.C. 267(a), may not be considered in determining a phased retiree's deemed annual rate of basic pay under this paragraph.

(b) A phased retiree may not be appointed to more than one position at the same time.

(c) A phased retiree may move to another position in the agency or another agency during phased retirement status only if the change would not result in a change in the working percentage. To move to another agency during phased retirement status and continue phased employment and phased retirement status, the phased retiree must submit a written and signed request and obtain the signed written approval, in accordance with § 848.203(a)(1) and (2), of the authorized agency official to which the phased retiree is moving. Notwithstanding the provisions of § 848.204, if the authorized agency official approves the request, the phased retiree's phased employment and phased retirement status will continue without interruption at the agency to which the phased retiree moves. If the authorized agency official at the agency to which the phased retiree moves does not approve the request, phased employment and phased retirement status terminates in accordance with § 848.302(b).

(d) A phased retiree may be detailed to another position or agency if the working percentage of the position to which detailed is the same as the working percentage of the phased retiree's position of record.

(e) A retirement-eligible employee who makes an election under this subpart may not elect an alternative annuity under 5 U.S.C. 8420a.

(f) If the employee's election of phased retirement status becomes effective, the employee is barred from electing phased retirement status again. Ending phased retirement status or entering full retirement status does not create a new opportunity for the individual to elect phased retirement status.

(g) With the exception of § 841.803(f), a phased retiree is deemed to be an annuitant for the purpose of subpart H of 5 CFR part 841.

(h) A phased retiree is deemed to be an annuitant for the purpose of subpart J of 5 CFR part 841.

(i) Except as otherwise expressly provided by law or regulation, a phased retiree is treated as any other employee on a part-time tour of duty for all other purposes.

(j)(1) A phased retiree may not be assigned hours of work in excess of the officially established part-time schedule (reflecting the working percentage), except under the conditions specified in paragraph (j)(2) of this section.

(2) An authorized agency official may order or approve a phased retiree to perform hours of work in excess of the officially established part-time schedule only in rare and exceptional circumstances meeting all of the following conditions:

(i) The work is necessary to respond to an emergency posing a significant, immediate, and direct threat to life or property;

(ii) The authorized agency official determines that no other qualified employee is available to perform the required work;

(iii) The phased retiree is relieved from performing excess work as soon as reasonably possible (e.g., by management assignment of work to other employees); and

(iv) When an emergency situation can be anticipated in advance, agency management made advance plans to minimize any necessary excess work by the phased retiree.

(3) Employing agencies must inform each phased retiree and his or her supervisor of—

(i) The limitations on hours worked in excess of the officially established part-time schedule;

(ii) The requirement to maintain records documenting that the exceptions met all required conditions;

(iii) The fact that, by law and regulation, any basic pay received for hours outside the employee's officially established part-time work schedule (as described in § 848.202(a)(1) and (b)) is subject to retirement deductions and agency contributions, in accordance with 5 U.S.C. 8412a(d), but is not used in computing retirement benefits; and

(iv) The fact that, by law and regulation, any premium pay received for overtime work or hours outside the full-time schedule that would otherwise be basic pay for retirement, such as customs officer overtime pay under 19 U.S.C. 267(a), will not be subject to retirement deductions or agency contributions, in accordance with 5 U.S.C. 8412a(d), and that any such premium pay received will not be included in computing retirement benefits.

(4) Employing agencies must maintain records documenting that exceptions

granted under paragraph (j)(2) of this section meet the required conditions. These records must be retained for at least 6 years and be readily available to auditors. OPM may require periodic agency reports on the granting of exceptions and of any audit findings.

(5) If OPM finds that an agency (or subcomponent) is granting exceptions that are not in accordance with the requirements of this paragraph (j), OPM may administratively withdraw the agency's (or subcomponent's) authority to grant exceptions and require OPM approval of any exception.

(6) If OPM finds that a phased retiree has been working a significant amount of excess hours beyond the officially established part-time schedule to the degree that the intent of the phased retirement law is being undermined, OPM may require that the agency end the individual's phased retirement by unilateral action, notwithstanding the normally established methods of ending phased retirement. This finding does not need to be based on a determination that the granted exceptions failed to meet the required conditions in paragraph (j)(2) of this section. With the ending of an individual's phased retirement, that individual must be returned to regular employment status on the same basis as a person making an election under § 848.301—unless that individual elects to fully retire as provided under § 848.401.

(7) A phased retiree must be compensated for excess hours of work in accordance with the normally applicable pay rules.

(8) Any premium pay received for overtime work or hours outside the full-time schedule that would otherwise be basic pay for retirement, such as customs officer overtime pay under 19 U.S.C. 267(a), is not subject to retirement deductions or agency contributions, in accordance with 5 U.S.C. 8412a(d).

### Subpart C—Returning to Regular Employment Status

#### § 848.301 Ending phased retirement status to return to regular employment status.

(a) *Election to end phased retirement status to return to regular employment status.* (1) A phased retiree may elect, with the permission of an authorized agency official, to end phased employment at any time to return to regular employment status. The election is deemed to meet the requirements of 5 U.S.C. 8412a(g) regardless of the employee's work schedule. The employee is not subject to any working percentage limitation (i.e., full-time, 50 percent of full-time, or any other

working percentage) upon electing to end phased retirement status.

(2) To elect to end phased retirement status to return to regular employment status, a phased retiree must—

(i) Submit to an authorized agency official, on a form prescribed by OPM, a written and signed request to end phased retirement status to return to regular employment status; and

(ii) Obtain the signed written approval of an authorized agency official for the request.

(3) An employee may cancel an approved election to end phased retirement status to return to regular employment status by submitting a signed written request to the agency and obtaining the approval of an authorized agency official before the effective date of return to regular employment status.

(4) The employing agency must notify OPM that the employee's phased retirement status has ended by submitting to OPM a copy of the completed election to end phased retirement status to return to regular employment status within 15 days of its approval.

(b) *Mandated return to regular employment status.* A phased retiree may be returned to regular employment status as provided under § 848.205(j)(6).

(c) *Bar on reelection of phased retirement.* Once an election to end phased retirement status to return to regular employment status is effective, the employee may not reelect phased retirement status.

#### § 848.302 Effective date of end of phased retirement status to return to regular employment status.

(a)(1) Except as provided in paragraph (b) of this section, if a request to end phased retirement status to return to regular employment status is approved by an authorized agency official under § 848.301 on any date on or after the first day of a month through the fifteenth day of a month, the phased retiree's resumption of regular employment status is effective the first day of the first full pay period of the month following the month in which the election to end phased retirement status to return to regular employment status is approved.

(2) If a request to end phased retirement status to return to regular employment status is approved by an authorized agency official under § 848.301 on any date on or after the sixteenth day of a month through the last day of a month, the phased retiree's resumption of regular employment status is effective on the first day of the first full pay period of the second month following the month in which the

election to end phased retirement status to return to regular employment status is approved.

(3) The phased retirement annuity terminates on the date determined under paragraph (a)(1) or (2) of this section.

(b) When a phased retiree moves from the agency that approved his or her phased employment and phased retirement status to another agency and the authorizing official at the agency to which the phased retiree moves does not approve a continuation of phased employment and phased retirement status, phased employment and phased retirement status terminates when employment ends at the current employing agency.

#### § 848.303 Effect of ending phased retirement status to return to regular employment status.

(a) After phased retirement status ends under § 848.302, the employee's rights under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, are determined based on the law in effect at the time of any subsequent separation from service.

(b) After an individual ends phased retirement status to return to regular employment status, for the purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code, at the time of the subsequent separation from service, the phased retirement period will be treated as if it had been a period of part-time employment with the work schedule described in § 848.202(a)(1) and (b). The part-time proration adjustment for the phased retirement period will be based upon the individual's officially established part-time work schedule, with no credit for extra hours worked. In determining the individual's deemed rate of basic pay during the phased retirement period, only basic pay for hours within the individual's officially established part-time work schedule may be considered. No pay received for other hours during the phased retirement period may be included as part of basic pay for the purpose of computing retirement benefits, notwithstanding the normally applicable rules.

(c) The restrictions in §§ 848.601 and 848.602 regarding when an individual must complete a deposit for civilian service, a redeposit for civilian service, or a deposit for military service do not apply when a phased retiree ends phased retirement status to return to regular employment status under this section.

## Subpart D—Entering Full Retirement Status

### § 848.401 Application for full retirement status.

(a) *Election of full retirement.* (1) A phased retiree may elect to enter full retirement status at any time by submitting to OPM an application for full retirement in accordance with § 841.202. This includes an election made under § 848.205(j)(6) in lieu of a mandated return to regular employment status. Upon making such an election, a phased retiree is entitled to a composite retirement annuity.

(2) A phased retiree may cancel an election of full retirement status and withdraw an application for full retirement by submitting a signed written request with the agency and obtaining the approval of an authorized agency official before the commencing date of the composite retirement annuity.

(b) *Deemed election of full retirement.* A phased retiree who is separated from phased employment for more than 3 days enters full retirement status. The individual's composite retirement annuity will begin to accrue on the commencing date of the composite annuity, as provided in § 848.402, and payment will be made after he or she submits an application in accordance with § 841.202 for the composite retirement annuity.

(c) *Survivor election provisions.* An individual applying for full retirement status under this section is subject to the survivor election provisions of subpart F of 5 CFR 842.

### § 848.402 Commencing date of composite retirement annuity.

(a) The commencing date of the composite retirement annuity of a phased retiree who enters full retirement status is the day after separation.

(b) A phased retirement annuity terminates upon separation from service.

## Subpart E—Computation of Phased Retirement Annuity at Phased Retirement and Composite Retirement Annuity at Full Retirement

### § 848.501 Computation of phased retirement annuity.

A phased retiree's phased retirement annuity equals the product obtained by multiplying (1) the amount of annuity computed under 5 U.S.C. 8415, excluding reduction for survivor annuity, that would have been payable to the phased retiree if, on the date on which the phased retiree enters phased retirement, the phased retiree had

separated from service and retired under 5 U.S.C. 8412(a) or (b), by (2) the phased retirement percentage for the phased retiree.

### § 848.502 Computation of composite annuity at final retirement.

(a) Subject to the adjustment described in paragraph (c) of this section, a phased retiree's composite retirement annuity at final retirement equals the sum obtained by adding—

(1) The amount computed under § 848.501(a), increased by cost-of-living adjustments under § 848.503(c); and

(2) The “fully retired phased component” computed under paragraph (b) of this section.

(b)(1) Subject to the requirements described in paragraphs (b)(2) and (b)(3) of this section, a “fully retired phased component” equals the product obtained by multiplying—

(i) The working percentage; by

(ii) The amount of an annuity computed under 5 U.S.C. 8415 that would have been payable at the time of full retirement if the individual had not elected phased retirement status and as if the individual was employed on a full-time basis in the position occupied during the phased retirement period and before any reduction for survivor annuity.

(2) In applying paragraph (b)(1)(ii) of this section, the individual must be deemed to have a full-time schedule during the period of phased retirement. The deemed full-time schedule will consist of five 8-hour workdays each workweek, resulting in a 40-hour workweek. In determining the individual's deemed rate of basic pay during phased retirement, only basic pay for hours within the deemed full-time schedule will be considered, consistent with the definition of “full-time” in § 848.102. Any premium pay creditable as basic pay for retirement purposes for overtime work or hours outside the full-time schedule that an employee was receiving before phased retirement, such as standby duty pay under 5 U.S.C. 5545(c)(1) or customs officer overtime pay under 19 U.S.C. 267(a), may not be considered in determining a phased retiree's deemed rate of basic pay during phased retirement.

(3) In computing the annuity amount under paragraph (b)(1) of this section, the amount of unused sick leave credit equals the result of dividing the applicable percentage under 5 U.S.C. 8415(l) of the days of unused sick leave to the employee's credit at separation for full retirement, by the working percentage.

(c) The composite retirement annuity computed under paragraph (a) of this section is adjusted by applying any reduction for any survivor annuity benefit.

### § 848.503 Cost-of-living adjustments.

(a) The phased retirement annuity under § 848.501 is increased by cost-of-living adjustments in accordance with 5 U.S.C. 8462.

(b) A composite retirement annuity under § 848.502 is increased by cost-of-living adjustments in accordance with 5 U.S.C. 8462, except that 5 U.S.C. 8462(c)(1) does not apply.

(c)(1) For the purpose of computing the amount of phased retirement annuity used in the computation under § 848.502(a)(1), the initial cost-of-living adjustment applied is prorated in accordance with 5 U.S.C. 8462(c)(1).

(2) If the individual enters full retirement status on the same day as the effective date of a cost-of-living adjustment (usually December 1st), that cost-of-living adjustment, if applicable under 5 U.S.C. 8462, is applied to increase the phased retirement annuity used in the computation under § 848.502(a)(1).

### § 848.504 Non-eligibility for annuity supplement.

A phased retiree is not eligible to receive an annuity supplement under 5 U.S.C. 8421.

## Subpart F—Opportunity of a Phased Retiree To Pay Deposit or Redeposit for Civilian or Military Service

### § 848.601 Deposit for civilian service for which no retirement deductions were withheld and redeposit for civilian service for which retirement deductions were refunded to the individual.

Any deposit under § 842.304 and § 842.305, or redeposit under 5 U.S.C. 8422(i), that an employee entering phased retirement wishes to make for civilian service must be paid within 30 days from the date OPM notifies the employee of the amount of the deposit or redeposit, during the processing of the employee's application for phased retirement. The deposit or redeposit amount will include interest, computed to the effective date of phased retirement. No deposit or redeposit payment may be made by the phased retiree when entering full retirement status.

### § 848.602 Deposit for military service.

(a) A phased retiree who wishes to make a military service credit deposit under § 842.307 for military service performed prior to entering phased retirement status must complete such a

deposit no later than the day before the effective date of his or her phased employment and the commencing date of the phased retirement annuity. A military service credit deposit for military service performed prior to an individual's entry into phased retirement status cannot be made after the effective date of phased employment and the commencing date of phased retirement annuity.

(b) A phased retiree who wishes to make a military service credit deposit under § 842.307 for military service performed after the effective date of phased employment and the commencing date of phased retirement annuity and before the effective date of the composite retirement annuity (e.g., due to the call-up of the employee for active military service) must complete such a deposit no later than the day before the effective date of his or her composite retirement annuity.

### Subpart G—Death Benefits

#### § 848.701 Death of phased retiree during phased employment.

(a) For the purpose of 5 U.S.C. chapter 84, subchapter IV—

(1) The death of a phased retiree is deemed to be a death in service of an employee; and

(2) The phased retirement period is deemed to have been a period of part-time employment with the work schedule described in § 848.202(a)(1) and (b) for the purpose of determining survivor benefits. The part-time proration adjustment for the phased retirement period will be based upon the employee's officially established part-time work schedule, with no credit for extra hours worked. In determining the employee's deemed rate of basic pay during the phased retirement period, only basic pay for hours within the employee's officially established part-time work schedule may be considered. No pay received for other hours during the phased retirement period may be included as part of basic pay for the purpose of computing retirement benefits, notwithstanding the normally applicable rules.

#### § 848.702 Death of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.

(a) For the purpose of 5 U.S.C. chapter 84, subchapter IV, an individual who dies after separating from phased employment and before submitting an application for composite retirement annuity is deemed to have filed an application for composite retirement annuity with OPM.

(b) The composite retirement annuity of a phased retiree described in paragraph (a) of this section is deemed to have accrued from the day after separation through the date of death. Any unpaid composite annuity accrued during such period, minus any phased retirement annuity paid during that period, will be paid as a lump-sum payment of accrued and unpaid annuity, in accordance with 5 U.S.C. 8424(d) and (g).

#### § 848.703 Lump-sum credit.

If an individual performs phased employment, the lump-sum credit as defined in 5 U.S.C. 8401(19) will be reduced by any annuity that is paid or accrued during phased employment.

### Subpart H—Reemployment After Separation from Phased Retirement Status

#### § 848.801 Reemployment of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.

A phased retiree who has been separated from employment for more than 3 days and who has entered full retirement status, but who has not submitted an application for composite retirement annuity, is deemed to be an annuitant receiving annuity from the Civil Service Retirement and Disability Fund during any period of employment in an appointive or elective position in the Federal Government.

### Subpart I—Mentoring

#### § 848.901 Mentoring.

(a) A phased retiree, other than an employee of the United States Postal Service, must spend at least 20 percent of his or her working hours in mentoring activities as defined by an authorized agency official. For purposes of this section, mentoring need not be limited to mentoring of an employee who is expected to assume the phased retiree's duties when the phased retiree fully retires.

(b) An authorized agency official may waive the requirement under paragraph (a) of this section in the event of an emergency or other unusual circumstances (including active duty in the armed forces) that, in the authorized agency official's discretion, would make it impracticable for a phased retiree to fulfill the mentoring requirement.

### PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

■ 42. The authority citation for part 870 continues to read as follows:

**Authority:** 5 U.S.C. 8716; Subpart J also issued under section 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 870.302(a)(3)(ii) also issued under section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251, and section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 870.302(a)(3) also issued under section 145 of Pub. L. 106–522, 114 Stat. 2472; Secs. 870.302(b)(8), 870.601(a), and 870.602(b) also issued under Pub. L. 110–279, 122 Stat. 2604; Subpart E also issued under 5 U.S.C. 8702(c); Sec. 870.601(d)(3) also issued under 5 U.S.C. 8706(d); Sec. 870.703(e)(1) also issued under section 502 of Pub. L. 110–177, 121 Stat. 2542; Sec. 870.705 also issued under 5 U.S.C. 8714b(c) and 8714c(c); Public Law 104–106, 110 Stat. 521;

■ 43. Amend § 870.101 by revising the definition of “date of retirement” to read as follows:

#### § 870.101 Definitions.

\* \* \* \* \*

*Date of retirement*, as used in 5 U.S.C. 8706(b)(1)(A), means the starting date of annuity. For phased retirees, as defined in 5 U.S.C. 8336a and 8412a, the date of retirement is the date the individual enters full retirement status.

\* \* \* \* \*

■ 44. Amend § 870.204 by adding paragraph (h) to read as follows:

#### § 870.204 Annual rates of pay.

\* \* \* \* \*

(h) Notwithstanding any other provision of this section, the annual pay for a phased retiree, as defined in 5 U.S.C. 8336a and 8412a, is deemed to be the rate of a full-time employee in the position to which the phased retiree is appointed, as determined under 5 CFR 831.1715(a)(2) or 848.205(a)(2), as applicable.

### PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 45. The authority citation for part 890 continues to read as follows:

**Authority:** 5 U.S.C. 8913; Sec. 890.301 also issued under sec. 311 of Pub. L. 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 890.102 also issued under sections 11202(f), 11232(e), 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

■ 46. Amend § 890.101 by revising the definition of “immediate annuity” to read as follows:

**§ 890.101 Definitions; time computations.**

\* \* \* \* \*

*Immediate annuity* means an annuity which begins to accrue not later than 1 month after the date enrollment under a health benefits plan would cease for an employee or member of family if he or she were not entitled to continue enrollment as an annuitant. Notwithstanding the foregoing, an annuity which commences on the birth of the posthumous child of an employee or annuitant is an immediate annuity.

For an individual who separates from service upon meeting the requirements for an annuity under § 842.204(a)(1) of this chapter, immediate annuity includes an annuity for which the commencing date is postponed under § 842.204(c). For phased retirees, as defined in 5 U.S.C. 8336a and 8412a, a composite retirement annuity is an immediate annuity.

\* \* \* \* \*

■ 47. Amend § 890.501 by adding paragraph (h) to read as follows:

**§ 890.501 Government contributions.**

\* \* \* \* \*

(h) Notwithstanding 5 U.S.C. 8906, the Government contribution for phased retirees, as defined in 5 U.S.C. 8336a and 8412a, is the same as that for employees and annuitants as fixed by paragraphs (a) and (b) of this section.

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