

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 842

[Docket ID: OPM-2024-0020]

RIN 3206-AO72

Civil Service Retirement System and Federal Employees' Retirement System: Secondary Position Definitions

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its retirement regulations to revise the definition of secondary position for law enforcement officers, firefighters, nuclear materials couriers, and customs and border protection officers. The changes remove the requirement that experience in a primary position is a mandatory prerequisite for an executive level position. This change will provide agencies with greater flexibility when recruiting for executive positions. Agencies retain the discretion to require experience in a primary position as a mandatory prerequisite to their secondary positions.

DATES: Comments must be received on or before March 6, 2026.

ADDRESSES: You may submit comments, identified by the Regulation Identifier Number (RIN) "3206-AO72" using the following method:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for sending comments.

The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at <https://www.regulations.gov> without change, including any personal identifiers or contact information. This rule is limited to the definition of secondary positions. Comments on other matters are out of scope and will not be considered. Before finalizing this rule, OPM will consider all comments within the scope of the

rule received on or before the closing date for comments. OPM may make changes to the final rule after considering the comments received.

In accordance with 5 U.S.C. 553(b)(4), a summary of this rulemaking may be found in the docket for this rulemaking at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:
Cynthia Reinhold, (202) 606-0299.
Email: RetirementPolicy@opm.gov, with
Attn: Secondary Position Definition
Regulations in the subject line.

SUPPLEMENTARY INFORMATION:

Background

OPM has government-wide responsibility and oversight for two federal employment retirement systems: the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS). These systems provide retirement and disability benefits to the majority of the civilian federal workforce. Retirement plan participation (or coverage) is generally determined by the employee's date of entrance into federal service. Most federal employees who entered federal service prior to January 1, 1984, are covered under the CSRS, while employees who entered federal service on and after January 1, 1984, are covered under the FERS. OPM and its predecessor, the Civil Service Commission, have the statutory authority to prescribe the necessary regulations to administer the CSRS and FERS retirement programs.

Federal civilians who participate in CSRS and FERS contribute 7% for CSRS and between 0.8% and 4.4% for FERS and, with 5 years of service, are eligible to receive their retirement annuity benefit beginning at age 62. Retiring earlier is possible, but the retirement benefit may be reduced if the employee is under age 62 and/or has less than 30 years of service. The annuity benefit is based on a percentage of the high-three average salary multiplied by the years of service.

Enhanced Retirement Benefits for Certain Employee Groups

The Civil Service Retirement Act was amended in 1947 to permit agents of the Federal Bureau of Investigation to retire earlier with a more generous retirement benefit. Over the years, these enhanced retirement benefit provisions were modified to expand to other federal law

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enforcement officers and other employee groups. Currently, under both CSRS and FERS an employee who is considered a law enforcement officer for retirement benefits purposes is eligible to retire at the age of 50 after serving at least 20 years as a law enforcement officer. Under FERS, a law enforcement officer can retire at age 50 with 20 years, but also at any age after serving at least 25 years as a law enforcement officer. This is earlier than the age at which most Federal employees can qualify for voluntary immediate retirement benefits and is based on shorter service requirements. However, law enforcement officers, unlike most Federal employees, are subject to mandatory age separation requirements. In addition to earlier and mandatory retirement, law enforcement officers receive a larger retirement benefit through a more generous calculation formula. Law enforcement officers contribute a larger employee retirement deduction during employment, half a percent more than other employees. The agency share of the cost of the enhanced retirement benefit is much greater.

The enhanced benefit provisions for law enforcement officers were enacted to enable the Government to retain employees in physically challenging occupations while also providing retirement before the demands of the job became too physically strenuous for continued employment. Comparable retirement benefit provisions exist for firefighters, air traffic controllers, and other demanding occupations that require career service from young and vigorous employees. The enhanced annuity calculation makes it economically feasible for employees in these occupations to retire earlier with less service.

The current statutory definition of law enforcement officer was enacted in 1974 and covers both an employee whose duties are primarily the investigation, apprehension, or detention of individuals suspected of criminal offenses (primary or rigorous positions) and employees engaged in those activities for at least 3 years who transfer directly to a supervisory or administrative position (secondary positions). For retirement benefit purposes, the definition of law enforcement officer has a narrow meaning. In general, police officers, building guards, and inspectors are

excluded from the definition of law enforcement officer because their primary duties involve maintaining law and order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than persons who are suspected or convicted of criminal offenses.

To administer the enhanced retirement benefits, OPM prescribed detailed regulations that define the various duties law enforcement officers may perform and how the enhanced retirement coverage applies to primary and secondary positions. Because enhanced retirement benefits are more costly to the government and advantageous to the employees who receive them, OPM's regulations reserve the enhanced retirement benefits to only those employees in the designated field, *i.e.*, law enforcement or firefighting.

Primary and Secondary Positions

By regulation, a primary position is one in which the duties are primarily the investigation, apprehension, or detention of individuals suspected of federal criminal offenses. These duties must also be sufficiently rigorous that employment is limited to young and physically vigorous individuals. A secondary position is a position that: (1) is clearly in the law enforcement field; (2) is in an organization having a law enforcement mission; and (3) is either supervisory, such as a position whose primary duties are as a first-level supervisor of other law enforcement officers, or administrative, such as an executive, managerial position for which experience in a rigorous primary position is a mandatory prerequisite. The primary position experience requirement may be met with equivalent experience outside the federal government. The employee is considered a law enforcement officer in a secondary position if he or she transfers directly to the secondary position after performing duties in a primary position for at least 3 years. The break in service between primary and secondary positions may not exceed 3 days and the law enforcement officer's federal service must be continuous after transfer to the secondary position. The mandatory experience requirement for secondary positions corresponds to the statutory requirement that enhanced retirement benefits apply only if the employee in the primary position transfers directly to a secondary position and reserves the enhanced retirement benefits for employees engaged in a specified field of work.

These statutory and regulatory requirements work together to meet

Congress' objectives in enacting the enhanced retirement benefits for employees performing rigorous duties and positions that are directly related. That objective is to provide a retirement benefits structure that makes it possible for the Government to maintain a young and vigorous workforce through youthful career entry, continuous service, and early separation. The statutory and regulatory provisions work in combination to accomplish these goals. Since the early and enhanced retirement program is more costly to the government than the basic retirement programs, the coverage is limited to a small group of employees to meet the objectives of the program.

In addition to employees across the Federal Government who meet the definition of law enforcement officer, comparable retirement benefits exist for firefighters, air traffic controllers, park police, uniformed Secret Service officers, Capitol police officers, nuclear materials couriers, Supreme Court police officers, and customs and border protection officers. The extension of enhanced retirement benefits to new employee groups required legislative amendments to the statutory retirement provisions. Although none of these additional employee groups meet the narrow definition of law enforcement officer for retirement purposes, the benefit structure is similar. Law enforcement officers, firefighters, nuclear material couriers, and customs and border protection officers share the primary and secondary position structure, and OPM's regulations apply the same procedure for agencies to follow in designating eligible employees.

Currently, OPM's regulations require that a secondary position requires previous experience in a primary position (including equivalent experience outside the Federal Government, where applicable) to qualify for the secondary position. There are many secondary positions in the Federal Government: first-line supervisors, upper-level supervisors (GS 13s/14s/15s), non-supervisory administrative positions, and senior management (GS 15/SES) positions. Enhanced retirement benefits are reserved for employees remaining in the same career track and many, if not most, supervisors, managers, and other administrative positions are promoted from the ranks of experienced employees in primary positions. The current benefits structure provides for continued enhanced retirement benefits as an employee is promoted within a specified field of work; however, an employee may encumber a secondary

position without enhanced retirement coverage. These would be employees who held primary positions in the past and were able to meet the mandatory prerequisite retirement, but either did not serve the required three years in the primary rigorous position, had a break in service between positions, or did not remain continuously employed in the secondary position. Employees may and do hold secondary positions without the enhanced retirement coverage.

Impact of Secondary Position Restrictions on Recruitment for Executive Positions

To balance the interests of employees and the Government, and in consideration of the increased cost of enhanced retirement benefits, OPM's existing regulations require that service as a primary law enforcement officer, firefighter, nuclear material courier or customs and border protection officer (including equivalent service outside the Federal Government, where applicable) be a mandatory prerequisite for a position to qualify as a secondary position. Compared to primary positions, secondary positions are not as physically demanding, and therefore, do not necessarily require a youthful workforce. However, if enhanced retirement benefits applied only to primary positions, then employees would have limited incentives for advancing beyond those primary positions. Furthermore, a benefits structure that excluded employees from retaining enhanced retirement benefits when promoted to a supervisory, managerial, or related administrative position would discourage employees from seeking other positions, a result that would be unfavorable to the concept of career service and to the interests of the employer.

While requiring service in a primary position before promotion to a managerial position encourages employees to remain on a career track and reserves enhanced retirement benefits for employees in the field, it also may limit an agency's ability to recruit candidates from varied backgrounds, experiences, and perspectives for senior leadership positions. Other experiences, skills and abilities could outweigh front-line experience when recruiting for executive leadership positions. Because recruiting critical talent is a driver of long-term organizational success, OPM was asked to re-evaluate its regulations against the statutory provisions.

The Department of Homeland Security, U.S. Customs and Border Protection (CBP) asked OPM to review its regulations that define secondary

positions for customs and border protection officers. CBP explained that they encounter challenges in recruiting candidates for senior leadership positions that bring desirable skills and experience because the candidate pool is limited to only employees with rigorous primary position experience. Due to existing statutory provisions, candidates for CBP's secondary leadership positions come primarily from one occupational series. While efforts are underway to attract candidates with varied professional experience to both primary and secondary positions, the current regulations make it challenging to recruit broadly for executive leadership positions.

Based on CBP's request, OPM reviewed the relevant statutory provisions and determined that revising the definition of secondary positions is within its authority to implement and could grant agencies greater flexibility in recruiting for leadership positions. Because the statutory and regulatory structure for enhanced retirement benefits for customs and border protection officers is the same as the structure for other groups with enhanced retirement benefits (*i.e.*, law enforcement officers, firefighters, and nuclear materials couriers), OPM proposes to make corresponding adjustments to the definition of secondary positions for each of these groups to allow the agencies that employ them the same hiring flexibility.

Specifically, this rulemaking proposes changes to the primary experience requirement for certain executive level, secondary positions for law enforcement officers, firefighters, nuclear materials couriers, and customs and border protection officers. If adopted, it will allow (but not require) impacted agencies to recruit more broadly for these senior leadership positions and possibly recruit candidates with the desired skills and experience but not necessarily primary position experience. A person recruited to a secondary position without primary experience would not qualify for enhanced retirement coverage. (Providing enhanced retirement benefits to individuals without primary experience would require legislative change.) However, if the agency does promote from within and an individual in a primary or secondary position with enhanced retirement benefits coverage is selected for the executive secondary position, they would retain their enhanced retirement coverage.

Proposed Changes in This Rulemaking

Revised Definition of Secondary Position

OPM proposes to amend the definition of secondary position for law enforcement officers, firefighters, nuclear materials couriers, and customs and border protection officers to remove the mandatory prerequisite of service in a primary position for certain executive level secondary positions in §§ 831.802, 831.902, 831.1602, 842.802, 842.902, and 842.1002. An executive position is one whose principal duty is management of a Federal agency or any subdivision thereof (including the lowest recognized organizational unit within that Federal agency or subdivision). To qualify as a secondary position, the executive position must be within the direct chain of command of a lower-level operational unit whose primary mission is law enforcement, firefighting, nuclear materials transport, or a mission related to the arrival and departure of persons, conveyances and merchandise at ports of entry, and where the majority of employees within that lower-level operational unit are in primary or secondary positions. This definition continues to reserve enhanced retirement benefits to employees who continue to work in the specified field. An executive position is not limited to positions in the Senior Executive Service or the equivalent.

Currently, an employee in a primary or secondary position with enhanced retirement benefits may be promoted to an executive position with oversight over other employees in primary and secondary positions and retain enhanced retirement benefits in that executive level secondary position, provided all other requirements are met. That is, the employee moving to a secondary executive position must have:

1. worked at least 3 years in a primary position, and
2. moved without a break in service from a primary or secondary position to the executive level secondary position, and
3. have been continuously employed with no break in service since moving to a secondary position.

The definition revised by this proposed rule does not change the above requirements for employees currently in a primary or secondary position but would also permit an individual without experience in a primary position to occupy that secondary executive level position without enhanced retirement benefits coverage. This change allows for recruitment from other fields with relevant skills and experience.

This proposed change would provide agencies with additional flexibility to select candidates for executive positions who best meet their organizational needs. Agency heads may review their executive level secondary positions under 5 CFR 831.811, 831.911, 831.1611, 842.808, 842.910, or 842.1008 and determine whether to retain the mandatory requirement of experience in a primary position. This proposal does not require any particular executive level position to be designated as requiring primary position experience; agencies would retain discretion to designate qualifying executive positions as secondary positions.

For secondary positions for retirement purposes, an executive position is defined as one whose principal duty is management of a Federal agency or any subdivision thereof (including the lowest recognized organizational unit within that Federal agency or subdivision). The executive position must be within the direct chain of command of a lower-level operational unit whose primary mission is law enforcement, firefighting, nuclear material transport, or a mission related to the arrival and departure of persons, conveyances and merchandise at ports of entry, and where the majority of the employees within that lower-level operational unit are in primary or secondary positions.

“Executive” for secondary position designations is defined by the role, not the title of the position. This definition can include qualifying positions within the Senior Executive Service (SES), or SES equivalents, and include non-SES management positions such as division directors, branch chiefs (if the branch is the lowest recognized organization unit) and other managing positions whose duties are directing mission-related operations, supervising subordinate managers and staff, allocating resources, and ensuring mission execution and compliance with law and policy. Positions that exercise significant authority over programs, personnel and resources can meet the definition of “executive” for secondary position designations within these proposed rules.

Law enforcement officers, firefighters, nuclear materials couriers, and customs and border protection officers in primary or secondary positions who advance to a qualifying executive position do not lose their enhanced retirement benefits, provided all regulatory transfer requirements are met. Agency decisions on coverage under the new definition would continue to be appealable to the Merit Systems Protection Board.

If this proposal is adopted, agency heads may review their secondary position determinations and remove the mandatory prerequisite of service in a primary position from the position descriptions of qualifying executive level positions designated as secondary positions. If an individual in a primary position moves into an executive level secondary position, he or she may retain enhanced retirement benefits because the position is still a secondary position. Alternatively, the agency may select a candidate with a different background and skillset who would make a great leader without the primary experience; however, that individual would not have enhanced retirement benefits because they never served in a primary position and did not transfer from another primary or secondary position and meet all the transfer requirements.

The amended definition would not be retroactively applied to any occupied secondary position. Consider the following example. An individual has 10 years of experience in a primary position. In 2023, the individual transferred, without a break in service, into an executive position whose primary duty is management of a subdivision of a Federal agency in the direct chain of command of a lower-level organizational unit that has a primary mission of law enforcement and in which the majority of employees within that operational unit are in primary or secondary law enforcement officer positions; however, the position was *not* identified by the agency as a secondary position at that time because the position did not require experience in a primary position as a prerequisite. With this new flexibility, an agency may determine that, going forward, the executive position will be considered a secondary (executive) position. Nonetheless, the incumbent will not be entitled to enhanced benefits even though the individual has primary experience because the position was not designated as a secondary position at the time the individual moved into the executive position. In other words, the individual did not move into an executive position that was designated as a secondary position without a break in service because the position was not designated as a secondary position at the time of the movement.

Administrative Corrections and Clarifications

In §§ 831.811(a), 831.911(a), 831.1611(a), 842.808(a), 842.710(a) and 842.1008(a), OPM proposes to amend the text to provide that agency coverage determinations and required

documentation may be sent electronically to OPM.

In § 831.902, OPM proposes to revise the definition of *agency head* to reduce redundancy and clarify the meaning of the term.

In § 842.802, OPM proposes to correct the definition of *agency head* by removing an erroneous reference to the Secretary of State. The text would be corrected to refer to the Secretary of the Senate. The text would also be revised to reduce redundancy and clarify the meaning of the term.

In § 842.802, OPM is also republishing the definitions for *primary duties* and *rigorous position* without change to the text, changing only the paragraph levels for the current text and adding a paragraph level for an undesignated paragraph in each definition. For the convenience of the reader, these definitions are republished in their entirety.

OPM proposes to revise the Authority citations for parts 831 and 842 to comply with 1 CFR part 21, subpart B. OPM also proposes to remove redundant part 831 authority citations to individual sections within 5 U.S.C. Chapter 83, Subchapter III, as 5 U.S.C. 8347 provides the regulatory authority for the subchapter. Similarly, OPM proposes to remove redundant part 842 authority citations to individual sections within 5 U.S.C. chapter 84, as 5 U.S.C. 8461(g) provides the regulatory authority for the chapter.

Denied Rulemaking Petition

On August 15, 2024, OPM received a petition for rulemaking requesting formal review of OPM's regulations that implemented the retirement eligibility and calculation provisions for Customs and Border Protection Officers (CBPO). See 76 FR 41993 (July 18, 2011). The petitioner noted that CBPO retirement coverage provisions do not apply to primary CBPO (GS-1895 series) service performed prior to July 6, 2008. This effective date was set by statute. See sec. 535(e)(2)(B) of Public Law 110-161, 121 Stat. 2077 (2007). As a result of the effective date, some senior CBPO do not meet the years of primary service requirement while younger CBPO do.

Congress explicitly provided that enhanced benefits do not "apply with respect to any service performed as a customs and border protection officer before the effective date," which Congress set as July 6, 2008. The petitioner noted that Congress has allowed "retroactive buy backs" through supplemental legislation for a variety of other types of law enforcement positions; however, Congress has not done so with respect to CBPO.

Accordingly, OPM lacks authority to modify its regulations to address the concern raised by the petitioner.

Expected Impact of This Rulemaking Statement of Need

Senior management positions for law enforcement officers, firefighters, nuclear materials couriers, and customs and border protection officers have long required front-line experience as a prerequisite. As a result, executives in these fields typically have similar professional experiences since, in accordance with OPM's existing retirement regulations, they are required to have the same or similar backgrounds. OPM's retrospective review of the existing regulations suggests that the requirements for secondary positions are more restrictive than the law intended and unintentionally limited recruitment options for senior positions with law enforcement, firefighting, nuclear materials transport, and border patrol missions. Some agencies have indicated that their organizations would benefit from senior leaders with more varied professional backgrounds and work experiences and, thus, are hampered by the requirement to hire only from a pool of individuals with experience in primary positions. Removing the primary experience restrictions, as proposed, would allow agencies to recruit from a broader applicant pool for executive level positions, permitting selection of Federal executives from varied professional experiences to meet their needs, while continuing to provide the enhanced retirement benefits to promote career advancement for those with primary experience.

Impact

This proposed rule would apply only to applicants for certain executive level positions designated as secondary positions after this rulemaking becomes effective. Primary and secondary position designations apply only to agencies that employ individuals whose duties meet the statutory definition of law enforcement officer, firefighter, nuclear materials courier, or customs and border protection officer. We anticipate that this rulemaking will allow agencies with law enforcement, firefighting, nuclear materials transport, or border patrol missions to consider individuals for executive level positions from a broader pool of eligible candidates, while simultaneously preserving enhanced retirement benefits for current employees who are promoted through the chain of command. This proposed rule does not

extend enhanced retirement benefits to a new class of employees.

This rulemaking would affect Federal agencies that employ law enforcement officers, firefighters, nuclear materials couriers, and customs and border protection officers. Most department-level and independent agencies employ a small number of criminal investigators who perform law enforcement officer duties in Inspector General offices and are also covered in this rulemaking. The Departments of Defense, Justice, and Homeland Security employ the largest number of law enforcement officers or customs and border protection officers. The Departments of Agriculture and Interior employ the largest number of firefighters. Nuclear materials couriers work in the Department of Energy.

As of October 2020, there are approximately 3,206 employees serving in GS-15 or above positions in the Executive branch with enhanced retirement coverage. We estimate that these are the positions potentially affected by this rulemaking. This rulemaking removes the restrictions on who can qualify for executive level secondary positions. Agencies may, based on their organizational needs, review the position descriptions for qualifying senior management positions and determine if experience in a primary position is a mandatory requirement to encumber the position. Prior experience is only one of the criteria agencies evaluate when filling positions and agencies, as a matter of practice, typically review and revise position descriptions before recruitment actions. This means that agencies may, at the time they prepare to recruit for an executive position, determine if experience in a primary position should continue to be a mandatory prerequisite and amend the position description accordingly.

Costs

Agencies impacted by this rulemaking would be allowed to modify the position description for qualifying executive level positions designated as secondary positions. We estimate that the costs associated with this proposed rule are minimal and include: the costs associated with the resources needed to review position descriptions in instances where the agency would not have otherwise reviewed the position description before recruiting for the position; and the costs associated with the resources needed to process a potentially higher volume of job applicants. Most agencies review a position description prior to recruiting for a position, so OPM estimates that any change in cost associated with

review would be de minimis. The decision to modify the requirements of a secondary position would be left to the agencies if this rulemaking is finalized. This means that agencies may retain the mandatory requirement of service in a primary position, resulting in no change to recruiting efforts.

Because the potential volume of increased applicants could vary for the agencies that remove the mandatory requirement of service in a primary position, OPM cannot estimate the total monetary cost of this proposed rule; however, we do not believe this proposed rule will substantially increase the ongoing administrative costs to agencies. For example, assuming an announcement for a supervisory criminal investigator position in the Senior Executive Service (SES) on average receives 75 applicants and this proposed rule generates a 20 percent increase in the total resumes/applications received, this rule could result in 15 more resumes. Those resumes/applications would typically be reviewed by a Human Resources Specialist at a GS-12 or GS-13 level. In the Washington, DC metro area, the average yearly salary for a GS-12 or GS-13 is \$126,000 or \$60.37 per hour. We assume the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of \$120.74 per hour.

Assuming a review rate of 4–5 resumes per hour, it will take an average of 3.375 hours to review 15 additional resumes/applications at a cost of \$407.50. If an agency advertises four SES secondary position vacancies per year, this rulemaking could potentially increase the average cost of reviewing the additional resumes/applications generated by \$1,630 per year (3.375 hours × 120.74/hr. × 4 vacancy announcements). OPM welcomes comments on this analysis and other potential monetary costs not included in this analysis.

OPM also considered the potential impact of this rulemaking on employees in primary positions. Since removing the restrictions on secondary positions may increase competition for senior-level positions, the odds of employees in primary positions being selected for an opening would decrease. This, in turn, could have an impact on employee morale. While OPM acknowledges these concerns, we believe that an agency would more likely choose to remove the restrictions based on its organizational needs. If an agency determines that it needs senior leaders with more varied professional experiences in senior management, it can choose to widen the

pool of candidates for secondary positions. It can also increase the future competitiveness of current employees in primary positions by providing training and/or rotational assignments in the competencies that it needs.

Benefits

This proposed rule would enable the agencies with a law enforcement, firefighting, nuclear materials transport, or border patrol mission to recruit from a wider pool of applicants for senior leadership positions. If implemented, agencies will have more flexibility to build high-performing and effective senior leadership teams by looking beyond traditional talent pools for skilled candidates. By removing the requirement that a candidate must have primary experience in the field, agencies may consider candidates with varying professional backgrounds and skillsets and select the best qualified individuals.

This proposed change would also provide additional opportunities for current Senior Executive Service members to transfer to positions previously unavailable to them. The Senior Executive Service is a national asset and is intended to encompass a mobile corps of executives. Mobility involves using a full range of assignment authorities to leverage the skills of executives for greater mission accomplishment and to prepare them for higher-levels of service, whether within the agency, or elsewhere in Government. These newly available positions would enable current or new Senior Executive Service members to build their career development and enable agile agency response to critical staffing requirements and demands.

Alternatives

OPM's current regulations implement the enhanced retirement benefits for law enforcement officers, firefighters, nuclear materials couriers, and customs and border protection officers employed under the CSRS and FERS. One alternative would be to retain the existing mandatory requirement that all incumbents in executive level secondary positions have experience in a primary position (including relevant non-federal experience) to qualify for the position. This would continue to limit an agency's ability to consider other potentially qualified candidates for executive level positions.

Another regulatory alternative is to address this issue through OPM-issued guidance. Because the current regulation states that primary experience is a mandatory prerequisite,

OPM could not provide guidance that is contrary to its regulatory requirements.

OPM could repeal its regulations that define secondary positions. Sections 8347(a) and 8461(b) of title 5, United States Code, require OPM to prescribe regulations that are necessary and proper to carry out CSRS and FERS provisions, which Congress clearly intended to apply to both frontline, primary positions and, when certain criteria are met, to secondary positions to provide career ladder opportunities for these vital roles. OPM's existing regulations set out our interpretation of the statute. If OPM is to continue to implement the enhanced retirement provisions and limit the enhanced coverage to those employees Congress intended to receive the enhanced benefit, OPM must provide clear regulations defining the scope of those enhanced benefits.

Finally, CBP could revoke the secondary position designations for its executive level positions. If CBP were to make these positions ineligible for enhanced retirement benefits coverage without a corresponding significant change to the duties of the positions, it would jeopardize the enhanced retirement benefits coverage of the employees encumbering those positions since 2008. OPM's regulations require that secondary position determinations be based on the official position description and any other evidence deemed appropriate by the agency head. Unless the primary duties of the position change to duties that no longer qualify for secondary position coverage, it would be inappropriate for the agency head to change the designation of the position to one that is not eligible for enhanced retirement benefits coverage.

Regulatory Review

OPM has examined the impact of this rulemaking as required by Executive Orders 12866 (Sept. 30, 1993) and 13563 (Jan. 18, 2011), which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. A regulatory impact analysis must be prepared for major rules with effects of \$100 million or more in any one year. This rulemaking does not reach that threshold but has otherwise been designated as a "significant regulatory action" under section 3(f) of Executive Order 12866, as supplemented by Executive Order 13563. This rule is not expected to be an Executive Order 14192 regulatory action because it imposes no more than de minimis costs.

Regulatory Flexibility Act

The Director of the Office of Personnel Management certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities because it applies only to Federal agencies and employees.

Federalism

This rulemaking will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, this rulemaking does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Civil Justice Reform

OPM has reviewed this rulemaking and has determined that this action conforms to the applicable standards set forth in section 3(a) and (b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

This regulatory action will not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

5 CFR Part 831

Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 842

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

The Director of OPM, Scott Kupor, reviewed and approved this document and has authorized the undersigned to electronically sign and submit this document to the Office of the Federal Register for publication.

Office of Personnel Management.

Jerson Matias,
Federal Register Liaison.

For reasons stated in the preamble, OPM proposes to amend 5 CFR parts 831 and 842 as follows:

PART 831—RETIREMENT

■ 1. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347. Sec. 831.106 also issued under 5 U.S.C. 552a. Sec. 831.114 also issued under sec. 1313(b)(5), Pub. L. 107-296, 116 Stat. 2296. 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), Pub. L. 105-33, 111 Stat. 251; sec. 7(e), Pub. L. 105-274, 112 Stat. 2427. Sec. 831.201(i) also issued under secs. 3 and 7(c), Pub. L. 105-274, 112 Stat. 2419. Sec. 831.202 also issued under sec. 111, Pub. L. 99-500, 100 Stat. 1783; sec. 1, Pub. L. 110-279, 122 Stat. 2604. Sec. 831.204 also issued under sec. 102(e), Pub. L. 104-8, 109 Stat. 102, as amended by sec. 153, Pub. L. 104-134, 110 Stat. 1321. Sec. 831.205 also issued under sec. 2207, Pub. L. 106-265, 114 Stat. 784. Sec. 831.206 also issued under sec. 1622(b), Pub. L. 104-106, 110 Stat. 521. Sec. 831.301 also issued under sec. 2203, Pub. L. 106-265, 114 Stat. 780. Sec. 831.303 also issued under sec. 2203, Pub. L. 106-235, 114 Stat. 780. Sec. 831.502 also issued under E.O. 11228, 78 FR 7739, 3 CFR, 1965 Comp. p. 317. Sec. 831.682 also issued under sec. 201(d), Pub. L. 99-251, 100 Stat. 23. Sec. 831.912 also issued under app. C, tit. VI, sec. 636, Pub. L. 106-554, 114 Stat. 2763A-164. Subpart P also issued under div. E, title V, sec. 535, Pub. L. 110-161, 121 Stat. 2075. Subpart V also issued under tit. VI, sec. 6001, Pub. L. 100-203, 101 Stat. 1330-275. Sec. 831.2203 also issued under sec. 7001(a)(4), Pub. L. 101-508, 104 Stat. 1388-328.

■ 2. In § 831.802, revise and republish the definition of *secondary position* to read as follows:

§ 831.802 Definitions.

* * * * *

Secondary position means a position that—

(1) Is clearly in the nuclear materials transportation field;

(2) Is in an organization of the Department of Energy having a nuclear materials transportation mission; and

(3) Is either—

(i) Supervisory—a position whose primary duties are as a first-level supervisor of nuclear materials couriers in primary positions; or

(ii) Administrative—

(A) A managerial, technical, semiprofessional, or professional position for which experience in a primary nuclear materials courier position is a prerequisite; or

(B) An executive, whose principal duty is management of a Federal agency

or any subdivision thereof (including the lowest recognized organizational unit within that Federal agency or subdivision), and whose position is within the direct chain of command of a lower-level operational unit that has a primary mission related to nuclear materials transportation, and where the majority of employees within that lower-level operational unit are primary or secondary nuclear materials couriers.

■ 3. In § 831.811, revise paragraph (a) to read as follows:

(a) Upon deciding that a position is a nuclear materials courier position, the agency head must notify OPM electronically at *combox@opm.gov* stating the title of each position, the number of incumbents, and whether the position is primary or secondary. The Director of OPM retains the authority to revoke the agency head's determination that a position is a primary or secondary position, or that an individual's service in any other position is creditable under 5 U.S.C. 8336(c).

* * * * *

■ 4. In § 831.902, revise and republish the definitions of *agency head* and *secondary position* to read as follows:

§ 831.902 Definitions.

Agency head means, for the executive branch agencies, the head of an executive agency as defined in 5 U.S.C. 105; 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; for the judicial branch, the Director of the Administrative Office of the U.S. Courts; for the Postal Service, the Postmaster General. For the purpose of an approval of coverage under this subpart, *agency head* is also deemed to include the designated representative of the head of an executive department as defined in 5 U.S.C. 101, except that the designated representative must be a department headquarters-level official who reports directly to the executive department head, or to the deputy department head, and who is the sole such representative for the entire department. For the purpose of a denial of coverage under this subpart, *agency head* is also deemed to include the designated representative of the *agency head*, as defined in the first sentence of this definition, at any level within the agency.

* * * * *

Secondary position means a position that—

- (1) Is clearly in the law enforcement or firefighting field;
- (2) Is in an organization having a law enforcement or firefighting mission; and

(3) Is either—
 (i) Supervisory—a position whose primary duties are as a first-level supervisor of law enforcement officers or firefighters in primary positions; or
 (ii) Administrative—

(A) a managerial, technical, semiprofessional, or professional position for which experience in a primary law enforcement or firefighting position, or equivalent experience outside the Federal Government, is a prerequisite; or

(B) an executive, whose principal duty is management of a Federal agency or any subdivision thereof (including the lowest recognized organizational unit within that Federal agency or subdivision), and whose position is within the direct chain of command of a lower-level operational unit that has a primary mission or law enforcement or firefighting where the majority of employees within that lower-level operational unit are primary or secondary law enforcement officers or firefighters.

■ 5. In § 831.911, revise paragraph (a) to read as follows:

(a) Upon deciding that a position is a law enforcement officer or firefighter position, each agency head must notify OPM electronically at *combox@opm.gov* stating the title of each position, the number of incumbents, and whether the position is primary or secondary. The Director of OPM retains the authority to revoke an agency head's determination that a position is a primary or secondary position, or that an individual's service in any other position is creditable under 5 U.S.C. 8336(c).

■ 6. In § 831.1602, revise and republish the definition of *secondary position* to read as follows:

§ 831.1602 Definitions.

* * * * *

Secondary position means a position within the Department of Homeland Security that is either—

(1) Supervisory—a position whose primary duties are as a first-level supervisor of customs and border protection officers in primary positions; or

(2) Administrative—

(i) a managerial, technical, semiprofessional, or professional position for which experience in a primary customs and border protection officer position is a prerequisite; or

(ii) An executive, whose principal duty is management of a Federal agency or any subdivision thereof (including the lowest recognized organizational unit within that Federal agency or subdivision), and whose position is within the direct chain of command of

a lower-level operational unit that has a primary mission related to the arrival and departure of persons, conveyances and merchandise at ports of entry, and where the majority of employees within that lower-level operational unit are primary or secondary customs and border protection officer positions.

■ 7. In § 831.1611, revise paragraph (a) to read as follows:

(a) Upon deciding that a position is a customs and border protection officer position, the agency head must notify OPM electronically at *combox@opm.gov* stating the title of each position, occupational series, position description number (or other unique identifier), the number of incumbents, and whether the position is primary or secondary. The Director of OPM retains the authority to revoke the agency head's determination that a position is a primary or secondary position.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

■ 8. The authority citation for part 842 is revised to read as follows:

Authority: 5 U.S.C. 8461(g), 4 Sec. 842.104 also issued under sec. 3, Pub. L. 105–274, 112 Stat. 2423. Sec. 842.105 also issued under 7701(b)(2). Sec. 842.106 also issued under sec. 102(e), Pub. L. 104–8, 109 Stat. 102, as amended by sec. 153, Pub. L. 104–134, 110 Stat. 1321–102. Sec. 842.107 also issued under secs. 11202(f), 11232(e), and 11246(b), Pub. L. 105–33, 111 Stat. 251; sec. 7(e), Pub. L. 105–274, 112 Stat. 2427. Sec. 842.108 also issued under sec. 7(e), Pub. L. 105–274, 112 Stat. 2427. Sec. 842.109 also issued under sec. 1622, Pub. L. 104–106, 110 Stat. 521. Sec. 842.110 also issued under tit. VIII, sec. 111, Pub. L. 99–500, 100 Stat. 1783–348; sec. 1, Pub. L. 110–279, 122 Stat. 2604. Sec. 842.208 also issued under div. E., title V, sec. 535, Pub. L. 110–161, 121 Stat. 2075. Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B). Secs. 842.304 and 842.305 also issued under div A, tit. III, sec. 321 of Pub. L. 107–228, 116 Stat. 1380. Sec. 842.707 also issued under tit. VI, sec. 6001, Pub. L. 100–203, 101 Stat. 1300–275. Sec. 842.703 also issued under sec. 7001 of Pub. L. 101–508, 104 Stat. 1388–328. Sec. 842.708 also issued under tit. IV, sec. 4005, Pub. L. 101–239, 103 Stat. 235, and sec. 7001 of Pub. L. 101–508, 104 Stat. 1388–328. Sec. 842.808 also issued under 5 U.S.C. 1104. Sec. 842.810 also issued under Appendix C, tit. VI, sec. 636, Pub. L. 106–554 at 114 Stat. 2763A–164. Sec. 842.811 also issued under tit. II, sec. 226(c)(2), Pub. Law 108–176, 117 Stat. 2530. Subpart J also issued under div. E, tit. V, sec. 535 Pub. L. 110–161, 121 Stat. 2075.

■ 9. In § 842.802, revise and republish the definitions of *agency head*, *primary duties*, *rigorous position*, and *secondary position* to read as follows:

§ 842.802 Definitions.

Agency head means, for the executive branch agencies, the head of an executive agency as defined in 5 U.S.C. 105; 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; for the judicial branch, the Director of the Administrative Office of the U.S. Courts; for the Postal Service, the Postmaster General. For the purpose of an approval of coverage under this subpart, agency head is also deemed to include the designated representative of the head of an executive department as defined in 5 U.S.C. 101, except that, for provisions dealing with law enforcement officers and firefighters, the designated representative must be a department headquarters-level official who reports directly to the executive department head, or to the deputy department head, and who is the sole such representative for the entire department. For the purpose of a denial of coverage under this subpart, agency head is also deemed to include the designated representative of the agency head, as defined in the first sentence of this definition, at any level within the agency.

* * * * *

Primary duties means (1) those duties of a position that—

- (i) Are paramount in influence or weight; that is, constitute the basic reasons for the existence of the position;
- (ii) Occupy a substantial portion of the individual's working time over a typical work cycle; and
- (iii) Are assigned on a regular and recurring basis.

(2) duties that are of an emergency, incidental, or temporary nature cannot be considered "primary" even if they meet the substantial portion of time criterion. In general, if an employee spends an average of at least 50 percent of his or her time performing a duty or group of duties, they are his or her primary duties.

Rigorous position means (1) a position the duties of which are so rigorous that employment opportunities should be limited (through establishment of a maximum entry age and physical qualifications) to young and physically vigorous individuals whose primary duties are—

- (i) To perform work directly connected with controlling and extinguishing fires; or
- (ii) Investigating, apprehending, or detaining individuals suspected or convicted of offenses against the criminal laws of the United States or protecting the personal safety of United States officials.

(2) The condition in this definition that employment opportunities be limited does not apply with respect to an employee who moves directly (*i.e.*, without a break in service exceeding 3 days) from one rigorous law enforcement officer position to another or from one rigorous firefighter position to another. Rigorous position is also deemed to include a position held by a law enforcement officer as identified in 5 U.S.C. 8401(17)(B) (related to certain employees in the Departments of the Interior and the Treasury). (*Note:* Certain affected Secret Service employees formerly employed by the Department of the Treasury are now employed by the Department of Homeland Security.)

Secondary position means a position that—

- (1) Is clearly in the law enforcement or firefighting field;
- (2) Is in an organization having a law enforcement or firefighting mission; and
- (3) Is either—
 - (i) Supervisory—a position whose primary duties are as a first-level supervisor of law enforcement officers or firefighters in rigorous positions; or
 - (ii) Administrative—
 - (A) a managerial, technical, semiprofessional, or professional position for which experience in a rigorous law enforcement or firefighting position, or equivalent experience outside the Federal Government, is a mandatory prerequisite; or
 - (B) An executive, whose principal duty is management of a Federal agency or any subdivision thereof (including the lowest recognized organizational unit within that Federal agency or subdivision), and whose position is within the direct chain of command of a lower-level operational unit that has a primary mission related to law enforcement and firefighting, and where the majority of employees within that lower-level operational unit are primary or secondary law enforcement officers or firefighters.

- 10. In § 842.808, revise paragraph (a) to read as follows:

(a) Upon deciding that a position is a law enforcement officer or firefighter position, each agency head must notify OPM electronically at *combox@opm.gov* stating the title of each position, the number of incumbents, whether the position is rigorous or secondary, and, if the position is rigorous, the established maximum entry age (or if no maximum entry age has yet been established, the date by which it will be established). The Director of OPM retains the authority to overrule an agency head's determination that a position is a rigorous or secondary

position, except such a determination under 5 U.S.C. 8401(17)(B) (concerning certain employees in the Departments of the Interior and the Treasury) (*Note:* Certain affected Secret Service employees formerly employed by the Department of the Treasury are now employed by the Department of Homeland Security.) or under 5 U.S.C. 8401(17)(D) (concerning certain positions primarily involved in detention activities).

- 11. In § 842.902, revise and republish the definition of *secondary position* to read as follows:

§ 842.902 Definitions

* * * * *

Secondary position means a position that—

- (1) Is clearly in the nuclear materials transportation field;
- (2) Is in an organization of the

Department of Energy having a nuclear materials transportation mission; and

- (3) Is either—

(i) Supervisory—a position whose primary duties are as a first-level supervisor of nuclear materials couriers in primary positions; or

- (ii) Administrative—

(A) a managerial, technical, semiprofessional, or professional position for which experience in a primary nuclear materials courier position is a prerequisite; or

(B) An executive, whose principal duty is management of a Federal agency or any subdivision thereof (including the lowest recognized organizational unit within that Federal agency or subdivision), and whose position is within the direct chain of command of a lower-level operational unit that has a primary mission related to nuclear materials transportation, and where the majority of employees within that lower-level operational unit are primary or secondary nuclear materials couriers.

- 12. In § 842.910, revise paragraph (a) to read as follows:

(a) Upon deciding that a position is a nuclear materials courier position, the agency head must notify OPM electronically at *combox@opm.gov* stating the title of each position, the number of incumbents, and whether the position is primary or secondary. The Director of OPM retains the authority to revoke the agency head's determination that a position is a primary or secondary position, or that an individual's service in any other position is creditable under 5 U.S.C. 8412(d).

- 13. In § 842.1002, revise and republish the definition of *secondary position* to read as follows:

§ 842.1002 Definitions

* * * * *

Secondary position means a position within the Department of Homeland Security that is either—

(1) Supervisory—a position whose primary duties are as a first-level supervisor of customs and border protection officers in primary positions; or

(2) Administrative—

(i) a managerial, technical, semiprofessional, or professional position for which experience in a primary customs and border protection officer position is a prerequisite; or

(ii) An executive, whose principal duty is management of a Federal agency or any subdivision thereof (including the lowest recognized organizational unit within that Federal agency or subdivision), and whose position is within the direct chain of command of a lower-level operational unit that has a primary mission related to the arrival and departure of persons, conveyances and merchandise at ports of entry, and where the majority of employees within that lower-level operational unit are primary or secondary customs and border protection officer positions.

■ 14. In § 842.1008, revise paragraph (a) to read as follows:

(a) Upon deciding that a position is a customs and border protection officer, the Department of Homeland Security must notify OPM electronically at *combox@opm.gov* stating the title of each position, the occupational series of the position, the number of incumbents, whether the position is primary or secondary, and, if the position is a primary position, the established maximum entry age, if one has been established. The Director of OPM retains the authority to revoke the agency head's determination that a position is a primary or secondary position.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R8-ES-2024-0207; FXES1111090FEDR-267-FF09E21000]

RIN 1018-BI16

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Fish Lake Valley Tui Chub

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and announcement of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reopening the comment period on our May 21, 2025, proposed rule to list the Fish Lake Valley tui chub (*Siphateles obesus* ssp.), a fish found in Esmeralda County in southwestern Nevada, as an endangered species under the Endangered Species Act of 1973, as amended (Act). We are taking this action to conduct a public hearing and to allow all interested parties an additional opportunity to comment on the proposed rule. Comments previously submitted on the proposed rule need not be resubmitted and will be fully considered in our development of the final rule.

DATES:

Comment submission: The public comment period on the proposed rule that published May 21, 2025, at 90 FR 21720, is reopened. We will accept comments received on or before March 6, 2026. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date, and comments submitted by U.S. mail must be received by that date to ensure consideration.

Public hearing: On February 19, 2026, we will hold a public hearing on the proposed rule to list the Fish Lake Valley tui chub as an endangered species under the Act from 5 p.m. to 7 p.m. Pacific time, using the Zoom platform (for more information, see Public Hearing, below).

ADDRESSES:

Comment submission: You may submit comments by one of the following methods:

(1) **Electronically:** Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-R8-ES-2024-0207, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on "Comment."

(2) **By hard copy:** Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R8-ES-2024-0207, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

(3) **Verbally at public hearing:**

Interested parties may present verbal testimony (formal, oral comments) at the public hearing, which will be held virtually using the Zoom platform. See Public Hearing, below, for more information.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

Document availability: The May 21, 2025, proposed rule and its supporting documents, including the species status assessment report, are available at <https://www.regulations.gov> at Docket No. FWS-R8-ES-2024-0207.

FOR FURTHER INFORMATION CONTACT:

Kristen Jule, Field Supervisor, U.S. Fish and Wildlife Service, Reno Fish and Wildlife Office; 775-861-6337; rfwomail@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. Please see Docket No. FWS-R8-ES-2024-0207 on <https://www.regulations.gov> for a document that summarizes the May 21, 2025, proposed rule.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 2025, we published a proposed rule (90 FR 21720) to list the Fish Lake Valley tui chub as an endangered species under the Act (16 U.S.C. 1531 *et seq.*). The proposed rule opened a 60-day public comment period, ending on July 21, 2025. During the open comment period, we received a request for a public hearing on the proposed rule. Therefore, we are reopening the comment period on the proposal and announcing a public hearing (see **DATES**, above) to allow the public an additional opportunity to provide comments on the proposed rule to list the Fish Lake Valley tui chub.

For a description of previous Federal actions concerning the Fish Lake Valley tui chub and more information on the types of comments that would be helpful to us in promulgating this rulemaking action, please refer to the May 21, 2025, proposed rule (90 FR 21720).

Public Hearing

We are holding a public hearing to accept comments on our May 21, 2025, proposed rule (90 FR 21720) on the date and at the time listed above in **DATES**. We are holding the public hearing via the Zoom online video platform and via