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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.

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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 849—REPRESENTATIVE PAYEES

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AUTHORITY: 5 U.S.C. 8331; 5 U.S.C. 8345(e)–(f); 5 U.S.C. 8345a; 5 U.S.C. 8401; 5 U.S.C. 8461; 5 U.S.C. 8466(c)–(d); 5 U.S.C. 8466a.

SOURCE: 86 FR 57012, Oct. 14, 2021, unless otherwise noted.

Subpart A—General Provisions

§ 849.101 Applicability and purpose.

This part contains regulations of the Office of Personnel Management (OPM) to implement the provisions 5 U.S.C. 8345(e)–(f), 8345a, 8466(c)–(d), and 8466a regarding payment of an annuity to a representative payee. This part establishes the criteria OPM uses to determine if representative payments are appropriate, the information OPM uses to select a representative payee, the responsibilities of a representative payee, the accountability of a representative payee, the limitations on the appointment of a representative payee, and the definition of and penalty for misuse of benefits by the representative payee.

§ 849.102 Definitions.

As used in this part:

Agency means the Office of Personnel Management (OPM).

CSRS means the Civil Service Retirement System as described in subchapter III of chapter 83 of title 5, United States Code.

FERS means the Federal Employees' Retirement System as described in chapter 84 of title 5, United States Code.

Misuse of benefits means the embezzlement or conversion of all or any

part of the amount received by the representative payee for a use other than for the use and benefit of the minor or individual on whose behalf such payments were received.

Physician and *practitioner* have the same meaning given these terms in § 339.104 of this chapter.

Representative payee means a person, who is at least 18 years of age, or an organization designated to receive annuity payments on behalf of a minor or an individual mentally incompetent or under other legal disability.

§ 849.103 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 part.

Subpart B—Determining Whether or Not Representative Payment is Appropriate

§ 849.201 When to make payment to a representative payee.

The agency will make payment to a representative payee—

- (a) If payments are due to a minor under the age of 18; or
- (b) If payments are due to an annuitant or survivor who is mentally incompetent or under other legal disability; or
- (c) If payments are due to an annuitant when the annuitant is physically or mentally incapable of managing or directing the management of his or her benefit.

§ 849.202 Payment of annuity while finding a suitable representative payee.

(a) Annuity payments will be made directly to the annuitant or survivor annuitant while a suitable representative payee is located, unless the agency determines that direct payment would cause substantial harm to the individual.

(b) Substantial harm exists if both of the following conditions exist:

- (1) Direct payment of benefits can be expected to cause serious physical or mental injury to the individual; and

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(2) The potential effect of the injury outweighs the effect of having no income to meet the basic needs of the individual.

(c) If the agency determines that direct payment of benefits would cause substantial harm to the annuitant, annuity payments may be deferred (in the case of initial entitlement to benefits) or suspended (in the case of existing entitlement to benefits) until such time as a representative payee is appointed.

(d) Annuity payments will commence or resume as soon as practicable and will include all retroactive payments due to be paid.

§ 849.203 Information considered in determining whether to appoint a representative payee.

In determining whether to appoint a representative payee, the agency will consider the following information:

(a) *Evidence of legal guardianship or other court determinations.* Evidence of the appointment of a legal guardian or other person legally vested with the care of the individual or estate of an incompetent or a minor shall be a certified copy of the court's determination.

(b) *Medical evidence.* The agency will use medical evidence to help determine whether an annuitant is capable of managing or directing the management of benefit payments. For example, a statement by a physician or other licensed health practitioner, based upon his or her recent examination of the annuitant and his or her knowledge of the annuitant's present condition, will be used in the agency's determination, if it includes information concerning the nature of the annuitant's illness or disability, the annuitant's chances for recovery, and the opinion of the physician or other licensed health practitioner as to whether the annuitant is able to manage or direct the management of benefit payments.

(c) *Other evidence.* The agency may also require statements of relatives, friends, or other people in a position to know and observe the annuitant, which contain information helpful to the agency in deciding whether the annu-

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itant is able to manage or direct the management of benefit payments.

Subpart C—Selection of a Representative Payee

§ 849.301 Information considered in selecting a representative payee.

The goal in selecting a payee is to select the person, organization, or institution that will best serve the interest of the annuitant. In making the selection, the agency considers—

(a) The age of the representative payee applicant. An individual must be over the age of 18 to serve as a representative payee, except as listed in § 849.303(a);

(b) The relationship of the person, organization, or institution to the annuitant;

(c) Legal authority, in the form of conservatorship or guardianship, that the person, organization, or institution has to act on behalf of the annuitant;

(d) The amount of concern that the person or organization shows in the annuitant;

(e) Whether the potential payee has custody of the annuitant;

(f) Whether the potential payee is in a position to know of and look after the needs of the annuitant;

(g) Whether the representative payee applicant is currently serving, or has previously served, as a representative payee for other annuitants; and

(h) The potential representative payee's criminal history.

§ 849.302 Order of preference in selecting a representative payee.

As a guide in selecting a representative payee, categories of preferred payees are set out in paragraphs (a) through (e) of this section. The primary concern of the agency is to select the payee who will best serve the annuitant's interest. The preferences, in descending order of importance, are:

(a) A legal conservator, guardian, spouse, or other relative who has custody or guardianship of the annuitant or who demonstrates strong concern for the personal welfare of the annuitant;

(b) A friend or neighbor who has custody or guardianship of the annuitant

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or demonstrates strong concern for the personal welfare of the annuitant;

(c) A public or nonprofit agency or institution having custody or guardianship of the annuitant;

(d) A private institution operated for profit and licensed under State law, which has custody or guardianship of the annuitant; and

(e) Persons other than those listed in paragraphs (a) through (d) of this section who are qualified to carry out the responsibilities of a representative payee and who are able and willing to serve as a payee for an annuitant; *e.g.*, members of community groups or organizations who volunteer to serve as representative payee for an annuitant.

§ 849.303 Individuals who may not serve as a representative payee.

A representative payee applicant may not serve as a representative payee if he or she:

(a) Is under the age of 18, unless he or she is the custodial parent of the minor child applying for or receiving the annuity;

(b) Is found by a court to be incompetent or receives benefits under title II or title XVI of the Social Security Act through a representative payee or receives a retirement annuity pursuant to CSRS or FERS through a representative payee;

(c) Has previously served as a representative payee and has been found by a court of competent jurisdiction to have misused benefits;

(d) Has been convicted of a violation of:

(1) 5 U.S.C. 8345a or 8466a;

(2) Section 208 or 1632 of the Social Security Act (42 U.S.C. 408, 1383a); or

(3) 38 U.S.C. 6101; or

(e) Has been convicted of an offense resulting in imprisonment for more than one year. The agency may make exception to the prohibition in this paragraph (e) if the nature of the conviction is such that selection of the applicant poses no risk to the annuitant and the exception is in the best interest of the annuitant.

§ 849.304 Selecting a representative payee.

Before selecting an individual or organization to serve as a representative

payee, the agency will conduct an investigation. The investigation will:

(a) Require the applicant to submit documented proof of identity.

(b) Verify the applicant's social security number.

(c) Conduct a background check on the applicant to determine if the applicant has been convicted of any crimes as defined in § 849.303(d) or (e).

(d) Determine if the applicant has previously served as a representative payee and if any previous appointments as representative payee were revoked or terminated due to misuse.

§ 849.305 Notice of the determination to select a representative payee.

(a) If the agency determines that the annuitant requires a representative payee due to mental incompetence or other legal disability or is physically or mentally unable to manage or direct the management of his or her annuity payments, the agency will issue a written decision to the annuitant. The decision will include a statement of the findings and determinations; specifically, the individual or organization named as the representative payee, and an explanation of the right to appeal the decision under §§ 831.110 and 841.307 of this chapter. If the annuitant appeals the decision, the agency will continue to make direct payments to the annuitant until the due process rights have been exhausted.

(b) A decision by the agency to *not* select an individual or organization as a representative payee is not subject to the due process procedures described in 5 U.S.C. 8347(d) and 8461(e).

Subpart D—Responsibility and Accountability of a Representative Payee

§ 849.401 Responsibilities of a representative payee.

(a) A representative payee shall, subject to review by the agency and subject to such requirements as it may periodically prescribe, apply the payments made on behalf of the annuitant only for the use and benefit of such annuitant, and in a manner or purpose that is in the best interest of the annuitant.

(b) A representative payee shall notify the agency of any event that will affect the amount of benefits the annuitant receives or the right of the annuitant to receive benefits.

(c) A representative payee shall notify the agency of any change in circumstances that would affect performance of the payee's responsibilities.

(d) A representative payee shall keep the annuity paid to him or her on behalf of the annuitant separate from his or her own money in an account that shows that the annuitant is still the owner of the funds. The applicant must show proof of this account when applying to be the representative payee and use this account for direct deposit. Exceptions to this paragraph (d) are joint accounts for spouses, when one spouse applies to be representative payee for the other spouse and they already have an existing joint account.

(e) Any interest earned on the annuity will be the annuitant's property.

(f) A representative payee shall respond to requests, regarding the use of annuity payments, from OPM within a specified period of time.

§ 849.402 Use of payments.

(a) *Current maintenance.* Payments certified to a representative payee on behalf of an annuitant shall be considered as having been applied for the use and benefit of the annuitant when they are used for the annuitant's current maintenance. Current maintenance includes costs incurred in obtaining food, shelter, clothing, medical care, and personal comfort items.

(b) *Institutional care.* If an annuitant is receiving care in a Federal, state, or private institution because of mental or physical incapacity, current maintenance includes the customary charges made by the institution in providing care and maintenance, as well as expenditures for those items which will aid in the annuitant's recovery or release from the institution or expenses for personal needs which will improve the annuitant's conditions while in the institution.

(c) *Support of legal dependents.* If the current maintenance needs of the annuitant are met, the representative payee may use part of the payments for

the support of the annuitant's legally dependent spouse, child, and/or parent.

(d) *Claims of creditors.* A representative payee may satisfy debts to creditors out of present benefit payments only if the current and reasonably foreseeable needs of the annuitant are met.

(e) *Conservation and investment.* After the representative payee has used the annuity payments consistent with the rules in paragraphs (a) through (d) of this section, any remaining annuity shall be conserved or invested on behalf of the annuitant. Any investment must show clearly that the representative payee holds the property in trust for the annuitant.

§ 849.403 Accountability of a representative payee.

(a) An individual, or institution, to whom payments are made as representative payee on behalf of an annuitant is accountable for the use of the payments and shall submit a written report in such form and at such times as the agency may require, accounting for the payments certified to him or her on behalf of the annuitant.

(b) If, however, such payee is a court-appointed fiduciary and, as such, is required to make an annual accounting to the court, a true copy of each such account filed with the court may be submitted in lieu of the accounting form prescribed by the agency.

(c) If any representative payee fails to submit the required accounting within the specified period of time after it is requested, no further payments shall be made to the representative payee on behalf of the annuitant unless for good cause shown, the default of the representative payee is excused by the agency and the required accounting is thereafter submitted.

(d) At any time after the agency has selected a representative payee, the agency may ask such payee to submit information showing a continuing relationship to the annuitant and a continuing responsibility for the care of the annuitant. If the representative payee does not give the agency the requested information within the specified period of time, the agency may stop paying such payee unless the agency determines that the payee had a good reason for not complying with

the request, and the agency receives the information requested.

Subpart E—Misuse of Annuity by a Representative Payee

§ 849.501 Misuse of benefits by a representative payee.

(a) It is unlawful for a representative payee to misuse the payments received on behalf of an annuitant. For purposes of this subpart, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment on behalf of an annuitant and embezzles or converts such payment, or any part thereof, to a use other than for the use and benefit of the annuitant.

(b) The penalty for a representative payee found to be in violation of paragraph (a) of this section is a fine, imprisonment for not more than 5 years, or both.

(c) If the agency determines that a representative payee has misused any payments as described in paragraph (a) of this section, the agency will promptly revoke the certification for payment of benefits to the representative payee, and will make payment to an alternative representative payee or, if the interest of the annuitant would be served thereby, to the annuitant.

(d) The agency will make the annuitant whole by repaying any annuity that was misused by the representative payee once the misused benefits have been repaid to the agency by the representative payee.

§ 849.502 Liability for misused funds.

(a) A representative payee who misuses benefits, as determined in § 849.501(a), is responsible for repayment of the misused benefits.

(b) OPM will seek restitution from the former representative payee.

Subpart F—Changes of the Representative Payee

§ 849.601 When a new representative payee will be selected.

(a) When the agency learns that the interests of the annuitant are not served by continuing payment to the present representative payee or that

the present representative payee is no longer able or willing to carry out the payee responsibilities, the agency will undertake to find a new representative payee.

(b) The agency will select a new representative payee if the agency finds a preferred payee or if the present payee:

(1) Has been found by the agency or a court of competent jurisdiction to have misused the benefits;

(2) Has not used the benefit payments on the annuitant's behalf in accordance with the rules in this part;

(3) Has not carried out the other responsibilities described in this subpart;

(4) Dies;

(5) No longer wishes to be the representative payee;

(6) Is unable to manage the benefit payments; or

(7) Fails to cooperate, within a reasonable time, in providing evidence, accounting, or other information requested by the agency.

(c) The agency may suspend payment as explained in § 849.202(c) if we determine that making direct payment to the annuitant would cause substantial harm. Payments, including all retroactive amounts due, will resume once a representative payee is located.

§ 849.602 When representative payments will be stopped.

If an annuitant demonstrates that he or she is mentally and physically able to manage or direct the management of benefit payments, the agency will make direct payment to the annuitant. Information which the annuitant may give to the agency to support his or her request for direct payment includes, but is not limited to, the following:

(a) A physician's or other licensed health practitioner's statement regarding the annuitant's condition, or a statement by a medical officer of the institution where the annuitant is or was confined, showing that the annuitant is able to manage or direct the management of his or her funds;

(b) A certified copy of a court order restoring the annuitant's rights in a case where an annuitant was adjudged legally incompetent; or

(c) Other evidence which establishes the annuitant's ability to manage or direct the management of benefits.

§ 849.603 Transfer of conserved or accumulated funds.

A representative payee who has conserved or invested annuity payments shall transfer these funds and any interest earned from the invested funds to either a successor payee, to the annuitant, or to the agency as we will specify. If the funds and the earned interest are returned to the agency, we will recertify them to the successor representative payee or to the annuitant.

PART 850—ELECTRONIC RETIREMENT PROCESSING

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AUTHORITY: 5 U.S.C. 8347; 5 U.S.C. 8461; 5 U.S.C. 8716; 5 U.S.C. 8913; section 9 of Pub. L. 86–724, 74 Stat. 849, 851–52 (September 8, 1960) as amended by section 102 of Reorganization Plan No. 2 of 1978, 92 Stat. 3781, 3783 (February 23, 1978).

SOURCE: 72 FR 73576, Dec. 28, 2007, unless otherwise noted.

Subpart A—General Provisions

§ 850.101 Purpose and scope.

(a) The purpose of this part is to enable changes to OPM’s retirement and insurance processing systems to im-

prove the quality and timeliness of services to employees and annuitants covered by CSRS and FERS by using contemporary, automated business processes and supporting accessible technologies. By utilizing these automated processes, OPM will employ more efficient and effective business systems to respond to increased customer demand for higher levels of customer service and online self-service tools.

(b) The provisions of this part authorize exceptions from regulatory provisions that would otherwise apply to CSRS and FERS annuities and FEGLI, FEHB, and RFEHB benefits processed by or at the direction of OPM. Those regulatory provisions that would otherwise apply were established for a hardcopy based retirement and insurance benefits processing system that may eventually be phased out but which will continue to operate concurrently with OPM’s modernization efforts. During the phased transition to electronic retirement and insurance processing, certain regulations that were not designed with information technology needs in mind, and which are incompatible with electronic business processes, must be set aside with respect to electronic retirement and insurance processing. The regulations set forth in this part make the transition to electronic processing possible.

(c) The provisions of this part do not affect retirement and insurance eligibility and annuity computation provisions. The provisions for capturing retirement and insurance data in an electronic format, however, may support, in some instances, more precise calculations of annuity and insurance benefits than were possible using hardcopy records.

[78 FR 68981, Nov. 18, 2013]

§ 850.102 Applicability.

(a) The provisions of parts 831, 835, 837 through 839, 841 through 847, 870, 890, and 891 of this chapter remain in effect, as applicable, except to the extent that they are inconsistent with one or more provisions of this part or implementing directives prescribed by the Director under § 850.104.