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Part III

## Office of Personnel Management

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5 CFR Parts 581, 582, 831, *et al.*  
Phased Retirement; Proposed Rule

## 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:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is proposing to implement phased retirement, a new human resources tool that allows full-time employees to work a part-time schedule while beginning to draw retirement benefits. Section 100121 of the “Moving Ahead for Progress in the 21st Century Act,” or “MAP-21,” authorizes phased retirement under the Civil Service Retirement System and the Federal Employees’ Retirement System and requires OPM to publish regulations implementing phased retirement. The purpose of phased retirement is to allow the Federal Government to continue to benefit from the services of experienced employees who might otherwise choose to retire. These proposed regulations inform agencies and employees about who may elect phased retirement, what benefits are provided in phased retirement, how an annuity is computed during and after phased retirement, and how employees fully retire from phased retirement.

**DATES:** We must receive your comments by August 5, 2013.

**ADDRESSES:** You may submit comments, identified by docket number and/or RIN number 3206-AM71 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* [combox@opm.gov](mailto:combox@opm.gov). Include RIN number 3206-AM71 in the subject line of the message.
- *Mail:* Kristine Prentice, Retirement Policy, Retirement Services, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415-3200.

**FOR FURTHER INFORMATION CONTACT:** Kristine Prentice, (202) 606-0299.

**SUPPLEMENTARY INFORMATION:** OPM proposes to amend parts 581, 582, 831, 838, 841, 842, 843, 870 and 890, and add a new 5 CFR part 848 to implement phased retirement as required by section 100121, the “Moving Ahead for Progress in the 21st Century Act,” or “MAP-21,” Public Law 112-141.

### Background

Phased retirement is a new human resources management tool made

possible by section 100121 of MAP-21, which amended chapters 83 and 84 of title 5, United States Code, by adding provisions, at 5 U.S.C. 8336a and 8412a, for phased retirement. The phased retirement provisions of law require OPM to publish final regulations to implement phased retirement.

Phased retirement will in essence permit an individual to retire from part of his or her employment, while continuing employment on a part-time basis and continuing to earn additional retirement benefits proportionately based upon the additional part-time employment. An eligible employee who enters phased retirement, which requires the approval of an authorized agency official, will work half-time and will receive one half of what his or her annuity would have been had the individual retired completely from Federal service. During phased retirement, he or she is a part-time employee, not a reemployed annuitant.

Phased retirement will encourage the most experienced Federal employees to extend their contributions to the Nation, and will operate as a tool to ensure continuity of operations and to facilitate knowledge management. The main purpose of phased retirement is to enhance mentoring and training of the employees who will be filling the positions of more experienced employees who are preparing for full retirement. It is intended to encourage experienced employees to remain, in at least a part-time capacity, while less experienced employees are preparing to assume the duties of the employees who are planning to retire.

An effective phased retirement plan has been a long-sought goal. However, under prior law, the problem was that an individual who was retirement eligible but wished to continue employment on a part-time basis generally had little economic incentive to do so because an employee’s potential retirement benefits would often be equal to or greater than his or her salary would be for part-time employment.

A person who enters phased retirement (hereafter a “phased retiree,”) would receive more income than he or she would earn by simply changing to a part-time work schedule or by simply retiring, while continuing to share knowledge and expertise with the next generation of Federal leaders via mentoring and role-modeling. Once these individuals fully retire, they will be entitled to a greater annuity than if they had fully retired at the time of transition to phased retirement, but less than if they had continued employment on a full-time basis.

### Eligibility

Participation is entirely voluntary, and requires the mutual consent of both the employee and employing agency. An employee does not have an entitlement to phased retirement. In order to participate, an individual must have been employed on a full-time basis for the preceding three years. Under the Civil Service Retirement System (CSRS), the individual must be eligible for immediate retirement with at least 30 years of service at age 55, or with 20 years of service at age 60. Under the Federal Employees’ Retirement System (FERS), the individual must be eligible for immediate retirement with at least 30 years of service at MRA (minimum retirement age, which ranges between age 55 and 57 depending upon year of birth), or with 20 years of service at age 60.

The law provides that employees subject to mandatory retirement (including Law Enforcement Officers, Firefighters, Nuclear Materials Couriers, Air Traffic Controllers, Customs and Border Protection Officers, or members of the Capitol Police or Supreme Court Police) may not participate. However, certain employees who are exempt from mandatory separation and retirement (such as Customs and Border Protection Officers exempted from mandatory retirement when special retirement provisions for Customs and Border Protection Officers were first enacted) may participate. This exemption does not apply to individuals for whom mandatory retirement has been waived, but only to individuals not subject to mandatory retirement by statute.

It is noteworthy that while the statutory provisions concerning employees subject to mandatory retirement could have been more clearly drafted, the legislative history makes the intent both clear and specific. The language was taken directly from a different free-standing phased retirement bill, H.R. 4363, reported out of the House of Representatives Committee on Oversight and Government Reform on June 15, 2012. That report, H.R. Rep. No. 535, 112th Congress, 2nd Sess. 4 (2012), discussed this provision, with this explanation in the section-by-section analysis:

*Subsection (a) of 5 U.S.C. 8336a defines the terms that are used in the new section. Individuals subject to mandatory retirement, such as law enforcement, firefighters, nuclear materials couriers, air traffic controllers, customs and border protection officers, or members of the Capitol Police or Supreme Court Police, may not elect phased retirement.*

Moreover, the Conference Report, H.R. Rep. No. 557, 112th Congress, 2nd Sess. 667 (2012), further describes details of the provisions including the exemption:

The Senate amendment excludes from eligibility law enforcement officers, firefighters, nuclear materials couriers, air traffic controllers, customs and border protection officers, or members of the Capital Police or Supreme Court Police.

\* \* \* \* \*

Second, the provision provides that certain law enforcement officers such as Customs and Border Protection Officers hired before 2008 (when they were granted law-enforcement type status which makes them ineligible for phased retirement under the Senate Amendment because they are subject to mandatory retirement) are eligible for phased retirement.

#### **Withdrawing From Phased Retirement To Resume Regular Employee Status**

After entering phased retirement, a phased retiree can end his or her phased retirement to return to being a regular full-time employee, if the employing agency agrees to the change. The phased retirement annuity will then terminate. Upon later full retirement, the individual's retirement will be calculated under the laws then in effect, with the period of phased retirement treated as part-time service. Once an individual has gone back to being a full-time employee, the individual cannot elect to go back into phased retirement.

#### **Transition From Phased Retirement to Full Retirement**

A phased retiree may voluntarily apply for full retirement in the same manner as other employees. The employee does not have to obtain the permission of his or her agency to fully retire.

#### **Benefits and Computation**

Eligible employees who enter phased retirement will work half-time and will receive additional credit for that service toward their full retirement. While 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, divided by the "phased retirement percentage" (i.e., 50 percent).

Deposits and redeposits for service credit (including for military service) must be satisfied (either by payments or annuity reduction as applicable) prior to entry into phased retirement status; however, if an individual ends phased retirement status to return to regular employee status, deposits and redeposits for service credit would again

be permitted. Any reduction in annuity or loss of service credit at the time of entry into phased retirement will be permanent for the employee, unless the individual ends phased retirement status by returning to full-time employment and has a new opportunity to make deposits or redeposits for service credit. Employees wishing to make a deposit or redeposit for civilian service may submit a request to make the service credit payment with their applications for phased retirement. They will then be given a final opportunity to pay the deposit or redeposit before processing of the phased retirement benefit is completed. No deposits or redeposits can be made by the employee after the phased retirement application has been processed (unless the employee elects to opt out of phased retirement status and return to regular employment). If a phased retiree dies while in phased employment status, the survivors can make deposits or redeposits on the same basis as if the decedent had not been a phased retiree.

Phased retirement annuities will be subject to court orders providing for division, allotment, assignment, execution, levy, attachment, garnishment, or other legal process on the same basis as other annuities. At the same time, phased retirees' pay from their half-time employment is subject to garnishment and other legal process on the same basis as other Federal employee pay.

During phased retirement, Federal Employee Health Benefits (FEHB) and Federal Employees' Group Life Insurance (FEGLI) enrollment will stay with the employing agency. FEGLI benefit coverage amounts will be based upon the full-time salary for the position. The FEHB employer contribution will be the same as for full-time employees.

When the phased retiree fully retires immediately after the phased retirement period, the individual will receive a "composite retirement annuity." The composite retirement annuity will be the amount of phased retirement annuity as of the commencing date of full retirement, plus one-half of the amount of annuity that would have been payable at the time of full retirement if the individual had not elected phased retirement and as if the individual was employed on a full-time basis in the position occupied during the phased retirement period. If, at the time of full retirement, the employee meets the participation requirements to continue FEHB and FEGLI during retirement, his or her FEHB and FEGLI enrollments

will transfer to OPM when the phased retiree enters full retirement.

No unused sick leave can be used in the computation of the phased retirement annuity. However, at full retirement the unused sick leave will be taken into account. While the computational provisions are somewhat complex, the value of the sick leave in that computation will be the same as for an individual retiring from a full-time position.

#### **Survivor Benefits**

No survivor benefits can be based upon a phased retirement annuity. If the phased retiree dies prior to full retirement, survivor benefits will be those applicable for an employee who died in service, with provision for minor computational adjustments necessitated by the unique nature of phased retirement. If the individual dies during phased retirement, the period of phased retirement will be treated as a period of part-time service in the computation of the survivor annuity. However, the FERS Basic Employee Death Benefit will be based upon the full-time salary of the position.

#### **Garnishment and Phased Retirees**

Garnishment orders for phased retirees will be treated much the same way as those for reemployed annuitants. The rules that typically apply to garnishment of annuities will continue to apply to the phased retirement annuity a phased retiree receives, and the rules that typically apply to pay will continue to apply to the salary a phased retiree receives during phased employment. For instance, phased retirement annuities, like regular Federal annuities, will not be subject to commercial garnishments under 5 CFR part 582, but the part-time pay received during phased employment will continue to be subject to commercial garnishment.

#### **Section-by-Section Description of Proposed Regulations**

##### *Part 581—Processing Garnishment Orders for Child Support And/Or Alimony*

Phased retirement annuities and pay are subject to the same rules for processing garnishment orders for child support and/or alimony as regular annuities and other Federal pay. Technical changes are made to add two definitions in § 581.102. Paragraph (l) adds a definition for "phased retirement status" and paragraph (m) adds a definition for "phased retirement annuity." Both terms are defined by cross-reference to § 838.103, which

provides new terms for processing court orders for phased retirees.

The current § 581.306 explains the obligation of governmental entities when in receipt of a garnishment order for child support and/or alimony and when there is not money due to the employee-obligor or when the obligor moves to a different governmental entity. Paragraph (d) is added to § 581.306 to account for employees who enter phased retirement status. Governmental entities will still be obligated to honor the garnishment order as it pertains to ongoing part-time pay. However, paragraph (d) imposes an additional obligation on the governmental entity, similar to current paragraph (c), 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 the Office of Personnel Management who is responsible for the disbursement of retirement benefits. The title of § 581.306 was also amended to add “transfer of service of legal process to another governmental entity” to account for the provisions in paragraphs (c) and (d).

#### *Part 582—Commercial Garnishment of Federal Employees’ Pay*

Phased retirees’ pay is treated the same way as other Federal pay for purposes of commercial garnishment orders. Technical changes are made to § 582.102, paragraph (2). In paragraph (2), the definition of “employee or employee-obligor” is amended to add “individuals engaged in phased employment.”

#### *Subpart Q of Part 831*

OPM is proposing to add subpart Q to part 831 to set out the requirements for entering, exiting, and retiring under the new phased retirement option under CSRS. Subpart Q establishes the eligibility requirements for making an election of phased retirement, the procedures for electing phased retirement, the requirements for agencies to notify OPM of phased retirement actions, and the methodology OPM intends to use to compute phased retirement annuities under 5 U.S.C. 8336a.

Sections 831.1701 through 831.1703 explain the purpose and scope of the regulations, define terms used in subpart Q, and provide that the Director of OPM may issue implementing directives regarding the phased retirement program. In particular, § 831.1702 provides a definition of “full-time.” This definition does not include certain categories of full-time

employees listed in the definition of “full-time service” in § 831.703—namely, certain firefighters compensated under 5 U.S.C. 5545b and certain employees with less-than-full-time schedules who are deemed to be full-time employees by express provision of law (e.g., nurses with special work schedules under 38 U.S.C. 7456 or 7456A). Employees with these special work schedules may not elect phased retirement, since regularly recurring part-time employment is not a possibility under the applicable law. (Almost all firefighters compensated under 5 U.S.C. 5545b would also be ineligible for phased retirement on the additional basis that they are eligible for an early and enhanced retirement with mandatory separation provisions.)

Section 831.1711 sets out the eligibility requirements for entering phased retirement. Eligibility for phased retirement is limited to employees who have been employed on a full-time basis for not less than the 3-year period ending on the effective date of the employee’s election of phased retirement. Under CSRS, these employees must also be eligible for immediate retirement with at least 30 years of service at age 55, or with 20 years of service at age 60. Employees who do not meet these requirements will be excluded from electing phased retirement.

For the purposes of phased retirement, a retirement-eligible employee is 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. As discussed above, a retirement-eligible employee in this context does not include an employee subject to mandatory retirement, with limited exceptions. There is no reason for such employees to wish to participate in phased retirement because 5 U.S.C. 8336a requires that the phased retirement computations are made using the general formula applicable to regular employee service.

In addition, since the phased retirement law requires that an employee be converted from full-time to part-time, § 831.1711 makes clear that phased retirement may not be elected by employees 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.

Section 831.1712 describes how “working percentage” would be defined. The law uses the term “working percentage” to refer to the percentage of a full-time schedule that

a phased retiree would be scheduled to work. The statute permits a working percentage of 50 percent (i.e., a half-time work schedule) and contemplates additional working percentages, at OPM’s discretion. Although a working percentage of 50 percent would be the only working percentage permitted under § 831.1712, the section has been drafted using general descriptive 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. Unless and until OPM evaluates the phased retirement program and publishes regulations permitting a different “working percentage,” a phased retiree will not be permitted to have a working percentage other than 50 percent. Section 831.1712 defines “working percentage” as 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 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. In other words, the number of hours per pay period in a phased retiree’s officially established part-time work schedule must equal one-half the number of hours the phased retiree would have worked had the phased retiree remained in a full-time work schedule and not elected to enter phased retirement status. The phased retiree’s officially established part-time work schedule excludes any additional (excess) hours worked under the special exception authority in § 831.1715(h) (discussed below).

Sections 831.1713 through 831.1715 set out the requirements for an employee to elect phased retirement, establish the commencing date of the phased annuity (and therefore the effective date of the half-time work schedule, or what we are calling “phased employment”), and state the effect of phased retirement. Section 831.1713 provides that an authorized agency official must give the potential phased retiree written approval for the change. Section 831.1713(d) allows an agency to establish a time limit on the phased retirement election of any employee as a condition of approving the election to phased retirement. To implement such a time limit, the agency and the employee requesting phased retirement must complete a written and signed agreement. The agency is responsible for drafting an agreement that meets the requirements enumerated

in § 831.1713(d)(3). The agency is also responsible for defending any challenges to an agreement made with an employee under § 831.1713(d). The election must be accompanied by a retirement application, in accordance with § 831.104.

Section 831.1715(a)(1) provides, consistent with 5 U.S.C. 8336a(i), that a phased retiree is deemed to be a full-time employee for the purpose of the Federal Employees Health Benefits Program. Section 831.1715(a)(2) has provisions for determining the amount of deemed basic pay and the deemed full-time schedule for determining Federal Employees' Life Insurance benefits and premiums. Any premium pay normally creditable as basic pay under 5 CFR 870.204 for overtime work outside of a full-time schedule may not be considered in determining a phased retiree's deemed annual rate of basic pay for life insurance purposes. A conforming change is also being made to 5 CFR 870.204. Section 831.1715(h) describes the conditions under which a phased retiree may, in rare and exceptional circumstances, work hours in excess of officially established hours, as well as related agency responsibilities and OPM authorities. The limitations and controls on excess hours are necessary and proper to carry out the intent of the phased retirement law and ensure that phased retirees do not work significant hours beyond the working percentage used to compute the phased retirement annuity. In promulgating § 831.1715(h), we are relying on OPM's broad regulatory authority in 5 U.S.C. 8347(a), as well as the authority in 5 U.S.C. 8336a(b)(1) to prescribe regulations governing the phased retirement resulting from employee elections.

Sections 831.1721 through 831.1723 describe how a phased retiree may return to regular employment status, the effective date of the decision to end phased retirement, and what happens to the phased annuity as a result of returning to a regular employment status. Section 831.1721(a) provides that an authorized agency official must give the phased retiree written permission to return to regular employment on a form prescribed by OPM. With an authorized agency official's approval, the employee may enter into any type of work schedule after returning to regular employment. When an individual in phased retirement status returns to regular employment status, the phased retirement annuity terminates; therefore, agencies are required to immediately notify OPM of a phased retiree's return to regular employee status to prevent improper payments. Section 831.1721(b)

also includes provisions concerning the return of a phased retiree to regular employment status. For a phased retiree who returns to regular employment under § 831.1721(a) or (b), § 831.1723 provides that the period of phased employment will be treated as a period of part-time service under subchapter III, chapter 83, of title 5, United States Code. Consistent with 5 U.S.C. 8336a(g)(3), the phased retirement period will be deemed to have been a period of part-time employment with the work schedule described in § 831.1712. The part-time proration adjustment 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. A phased retiree who returns to regular employee status would not be entitled to a composite retirement annuity upon subsequent retirement; the employee's rights under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, would be determined based on the law in effect at the time of any subsequent separation from service.

Sections 831.1731 and 831.1732 describe how an employee may elect to fully retire and how OPM will determine the commencing date of the employee's composite retirement annuity. These sections also discuss how OPM will treat an employee who has separated from phased employment and the criteria by which OPM will either continue to pay a phased retirement annuity or terminate payment as required by law.

Sections 831.1741 through 831.1744 establish how OPM intends to compute the phased retirement annuity and the composite annuity payable at full retirement under CSRS. Section 831.1741 provides that, subject to any adjustments for unpaid deposits of retirement contributions and Social Security old-age benefits, the phased retirement annuity equals (1) the amount of annuity computed under 5 U.S.C. 8339 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, (2) adjusted by the phased retirement percentage for the phased

retiree. Phased retirement annuities will be increased by cost-of-living adjustments. Section 831.1742 establishes the computation of the composite retirement annuity. Subject to any reduction to provide a survivor annuity and adjustments for unpaid deposits of retirement contributions and Social Security old-age benefits, the composite retirement annuity consists of the phased retirement annuity, increased by cost-of-living adjustments, plus the "fully retired phased component." The "fully retired phased component" is (1) 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 multiplied by (2) the working percentage. Section 831.1742(b) establishes rules for deemed full-time and deemed basic pay for the purposes of computing the "fully retired phased component." The law requires phased retirees to be deemed to be full-time for the purpose of determining basic pay for life insurance and composite annuity, and also limits pay subject to retirement deductions based on the concept of full-time. For those purposes, we have taken a consistent approach of defining full-time to be 40 hours a week and to exclude overtime hours; thus, any pay for overtime hours (hours beyond the full-time schedule—which normally should not be worked by a phased retiree) is not considered basic pay for life insurance or retirement purposes. The deemed full-time schedule is five 8-hour workdays each workweek, resulting in a 40-hour workweek, consistent with other provisions in the regulations. 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 for the computation of the composite retirement annuity at full retirement. Similarly, §§ 831.1721 and 831.1761 include provisions concerning deemed part-time (see discussion of those sections).

Sections 831.1751 through 831.1753 describe how OPM intends to treat civilian deposits and redeposits, as well as military service deposits. Section 831.1751 outlines the process OPM will follow with regard to deposits for civilian service for which no retirement deductions were withheld and for redeposits owed for civilian service previously refunded to the employee.

Deposits and redeposits will not be possible at the point where a phased retiree elects to enter full retirement status. Section 831.1752 refers specifically to how OPM will treat military service deposits, whether for military service prior to phased retirement or military service after phased retirement begins. Section 831.1753 describes how OPM intends to treat civilian and military service of individual employees affected by erroneous retirement coverage determinations.

Sections 831.1761 through 831.1763 set out how OPM plans to administer death benefits for employees who die while in phased retirement and for employees who die after separation from phased employment without having submitted an application for a composite retirement annuity. Consistent with 5 U.S.C. 8336a(h)(2), § 831.1761(a)(2) provides that when a phased retiree dies in service, the phased retiree is deemed to have had a part-time schedule consistent with the working percentage. Any hours beyond that part-time schedule and any pay associated with such hours would not be creditable for retirement purposes.

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

Section 831.1781, as provided by MAP-21, requires a phased retiree (other than an employee of the U.S. Postal Service) to spend at least 20 percent of his or her working hours in mentoring activities. It is up to the phased retiree's employing agency to determine what types of mentoring activities satisfy this requirement and how to ensure this requirement is being fulfilled. The phased retiree may mentor one or more employees of the agency and need not mentor the same employees throughout the period of phased retirement. Although it would clearly be desirable in many instances for the phased retiree to mentor the employee or employees who are expected to assume his or her duties when the phased retiree fully retires, the law does not provide that this is the only way to implement the mentoring requirement. An authorized agency official may waive the mentoring requirement in the event of an emergency or other unusual circumstances that would make it impracticable, such as when the individual is called to active-duty military service. OPM expects waivers of the mentoring requirement to be very rare.

#### *Part 848—Federal Employees' Retirement System*

Part 848 is being added to 5 CFR, to set out the requirements for entering, exiting, and retiring under the new phased retirement option under the Federal Employees' Retirement System (FERS). Part 848 establishes the eligibility requirements for making an election of phased retirement, the procedures for electing phased retirement, the requirements for agencies to notify OPM of phased retirement actions, and the methodology OPM intends to use to compute phased retirement annuities under 5 U.S.C. 8412a.

Sections 848.101 through 848.103 explain the purpose and scope of the regulations, define terms used in part 848, and provide that the Director of OPM may issue implementing directives regarding the phased retirement program. In particular, § 848.102 provides a definition of "full-time." This definition does not include certain categories of full-time employees listed in the definition of "full-time service" in § 842.402—namely, certain firefighters compensated under 5 U.S.C. 5545b and certain employees with less-than-full-time schedules who are deemed to be full-time employees by express provision of law (e.g., nurses with special work schedules under 38 U.S.C. 7456 or 7456A). Employees with these special work schedules may not elect phased retirement, since regularly recurring part-time employment is not a possibility under the applicable law. (Almost all firefighters compensated under 5 U.S.C. 5545b would also be ineligible for phased retirement on the additional basis that they are eligible for an early and enhanced retirement with mandatory separation provisions.)

Section 848.201 sets out the eligibility requirements for entering phased retirement. Eligibility for phased retirement is limited to employees who have been employed on a full-time basis for not less than the 3-year period ending on the effective date of the employee's election of phased retirement. Under FERS, these employees must also be eligible for immediate retirement with at least 30 years of service at their minimum retirement age, or with 20 years of service at age 60. Employees who do not meet these requirements will be excluded from electing phased retirement.

For the purposes of phased retirement, a retirement-eligible employee is 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. As discussed above, a retirement-eligible employee will not include an employee subject to mandatory retirement, with limited exceptions. There is no reason for such employees to wish to participate in phased retirement because 5 U.S.C. 8412a requires that the phased retirement computations be made using the general formula applicable to regular employee service.

In addition, since the phased retirement law requires that an employee be converted from full-time to part-time, § 848.201 makes clear that phased retirement may not be elected by employees 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.

Section 848.202 describes how "working percentage" would be defined. The law uses the term "working percentage" to refer to the percentage of a full-time schedule that a phased retiree would be scheduled to work. The statute permits a working percentage of 50 percent—that is, a half-time work schedule—and contemplates additional working percentages, at OPM's discretion. Although a working percentage of 50 percent would be the only working percentage permitted under § 848.202, the section has been drafted using general descriptive 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. Unless and until OPM evaluates the phased retirement program and publishes regulations permitting a different "working percentage," a phased retiree will not be permitted to have a working percentage other than 50 percent. Section 848.202 defines "working percentage" as 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 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. In other words, the number of hours per pay period in a phased retiree's officially established part-time work schedule must equal one-half the number of hours the phased retiree would have worked had the phased retiree remained in a full-time work schedule and not elected to enter phased retirement status. The phased retiree's officially established part-time work schedule excludes any additional

(excess) hours worked under the special exception authority in § 848.205(j).

Sections 848.203 through 848.205 set out the requirements for an employee to elect phased retirement, establish the effective date of phased employment and the commencing date of phased annuity, and state the effect of phased retirement. Section 848.203 provides that an authorized agency official must give the potential phased retiree written approval for the change. Section 848.203(d) allows an agency to establish a time limit on the phased retirement election of any employee as a condition of approving the election to phased retirement. To implement such a time limit, the agency and the employee requesting phased retirement must complete a written and signed agreement. The agency is responsible for drafting an agreement that meets the requirements enumerated in § 848.203(d)(3). The agency is also responsible for defending any challenges to an agreement made with an employee under § 848.203(d). The election must be accompanied by a retirement application, in accordance with § 841.202.

Section 848.205(a)(1) provides, consistent with 5 U.S.C. 8412a(i), that a phased retiree is deemed to be a full-time employee for the purpose of the Federal Employees Health Benefits Program. Section 848.205(a)(2) has provisions for determining the amount of deemed basic pay and the deemed full-time schedule for determining Federal Employees' Life Insurance benefits and premiums. Any premium pay normally creditable as basic pay under 5 CFR 870.204 for overtime work outside of a full-time schedule may not be considered in determining a phased retiree's deemed annual rate of basic pay for life insurance purposes. A conforming change is also being made to 5 CFR 870.204. Section 848.205(j) describes the conditions under which a phased retiree may, in rare and exceptional circumstances, work hours in excess of officially established hours, as well as related agency responsibilities and OPM authorities. The limitations and controls on excess hours are necessary and proper to carry out the intent of the phased retirement law and ensure that phased retirees do not work significant hours beyond the working percentage used to compute the phased retirement annuity. In promulgating § 848.205(j), we are relying on OPM's broad regulatory authority in 5 U.S.C. 8461(g), as well as the authority in 5 U.S.C. 8412a(b)(1) to prescribe regulations governing the phased retirement resulting from employee elections.

Sections 848.301 through 848.303 describe how a phased retiree may return to regular employment status, the effective date of the decision to end phased retirement, and what happens to the phased annuity as a result of returning to a regular employment status. Section 848.301(a) provides that an authorized agency official must give the phased retiree written permission to return to regular employment on a form prescribed by OPM. With an authorized agency official's approval, the employee may enter into any type of work schedule after returning to regular employment. When an individual in phased retirement status returns to regular employment status, the phased retirement annuity terminates; therefore, agencies are required to immediately notify OPM of these changes to prevent improper payments. Section 848.301(b) also includes provisions concerning the return of a phased retiree to regular employment status. For a phased retiree who returns to regular employment under § 848.301(a) and (b), § 848.303 provides that the period of phased employment will be treated as a period of part-time service under chapter 84 of title 5, United States Code. Consistent with 5 U.S.C. 8412a(g)(3), the phased retirement period will be deemed to have been a period of part-time employment with the work schedule described in § 848.202. The part-time proration adjustment 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. A phased retiree who returns to regular employee status would not be entitled to a composite retirement annuity upon subsequent retirement; the employee's rights under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, would be determined based on the law in effect at the time of any subsequent separation from service.

Sections 848.401 and 848.402 describe how an employee may elect to fully retire and how OPM will determine the commencing date of the employee's composite retirement annuity. These sections also discuss how OPM will treat an employee who has separated from phased employment

and the criteria by which OPM will either continue to pay a phased retirement annuity or terminate payment as required by law.

Sections 848.501 through 848.503 cover how OPM intends to compute the phased retirement annuity and the composite annuity payable at full retirement under FERS. Section 848.501 provides that the phased retirement annuity equals (1) the amount of annuity computed under 5 U.S.C. 8412 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, (2) adjusted by the phased retirement percentage for the phased retiree. Phased retirement annuities will be subject to FERS cost-of-living adjustment provisions. Section 848.502 establishes the computation of the composite retirement annuity. Subject to any reduction to provide a survivor annuity, the composite retirement annuity consists of the phased retirement annuity, increased by cost-of-living adjustments, plus the "fully retired phased component." The "fully retired phased component" is (1) the amount of an annuity computed under 5 U.S.C. 8412 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 multiplied by (2) the working percentage. Section 831.502(b) establishes rules for deemed full-time and deemed basic pay for the purposes of computing the "fully retired phased component." The law requires phased retirees to be deemed to be full-time for the purpose of determining basic pay for life insurance and composite annuity, and also limits pay subject to retirement deductions based on the concept of full-time. For those purposes, we have taken a consistent approach of defining full-time to be 40 hours a week and to exclude overtime hours; thus, any pay for overtime hours (hours beyond the full-time schedule—which normally should not be worked by a phased retiree) is not considered basic pay for life insurance or retirement purposes. The deemed full-time schedule is five 8-hour workdays each workweek, resulting in a 40-hour workweek, consistent with other provisions in the regulations. 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 for the computation of the composite retirement annuity at full retirement. Similarly, §§ 848.301 and 848.701 include provisions concerning deemed part-time (see discussion of those sections).

Section 848.504 specifically states that FERS phased retirees will not receive an annuity supplement under 5 U.S.C. 8421.

Sections 848.601 and 848.602 describe how OPM intends to treat civilian deposits and redeposits as well as military service deposits. Section 848.601 states that deposits for civilian service for which no retirement deductions were withheld and redeposits owed for civilian service previously refunded to the employee must be paid within 30 days of the employee receiving OPM's notice. Deposits and redeposits will not be possible at the point where a phased retiree elects to enter full retirement status. Section 848.602 refers specifically to how OPM will treat military service deposits, whether for military service prior to phased retirement or military service after phased retirement begins.

Sections 848.701 through 848.703 set out how OPM plans to administer death benefits for employees who die while in phased retirement and for employees who die after separation from phased employment without having submitted an application for a composite retirement annuity. Consistent with 5 U.S.C. 8412a(h)(2), § 848.701(a)(2) provides that when a phased retiree dies in service, the phased retiree is deemed to have had a part-time schedule consistent with the working percentage. Any hours beyond that part-time schedule and any pay associated with such hours would not be creditable for retirement purposes.

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

Section 848.901, as provided by MAP-21, requires a FERS phased retiree (other than an employee of the U.S. Postal Service) to spend at least 20 percent of his or her working hours in mentoring activities. It is up to the phased retiree's employing agency to determine what types of mentoring activities satisfy this requirement and how to ensure this requirement is being fulfilled. The phased retiree may mentor one or more employees of the agency and need not mentor the same employees throughout the period of phased retirement. Although it would

clearly be desirable in many instances for the phased retiree to mentor the employee or employees who are expected to assume his or her duties when the phased retiree fully retires, the law does not provide that this is the only way to implement the mentoring requirement. An authorized agency official may waive the mentoring requirement in the event of an emergency or other unusual circumstances that would make it impracticable (such as when the phased retiree is called to active duty military service). OPM expects waivers of the mentoring requirement to be very rare.

#### **Other Technical Conforming Amendments to Existing Regulations**

Because a phased retiree is both an annuitant and an employee, and is treated as an annuitant for some purposes, but an employee for others, certain regulatory changes are necessary to inform agencies and employees about how phased retirement is structured, how the phased retirement annuity and the composite annuity will be computed, and how certain benefits and obligations will be treated during and after phased retirement.

#### **Part 831**

The Civil Service Retirement System (CSRS) regulations located in part 831 are being updated where specific references to phased retirement are necessary as a result of the passage of MAP-21. The authority to update part 831 is found in title 5, United States Code, section 8336a. Therefore, OPM is updating certain definitions and cross-references to the new phased retirement provisions which will be located in subpart Q.

In § 831.402 we propose to revise the definition of "applicant for retirement" and add a definition of "phased retiree." Section 831.501, pertaining to the time for filing applications for retirement, is amended to include a reference to subpart Q for employees and agencies considering phased retirement. We also are inserting in § 831.701 a cross-reference regarding the effective date of an annuity with a phased retirement component. In § 831.703, under which we compute part-time service, we propose to clarify the definition of "full-time service" by specifically describing categories of full-time employees. While this definition is outside the phased retirement area, we are taking this opportunity to make applicable paragraphs consistent with the clearer language in the definition of "full-time" in the phased retirement regulations in subpart Q. (See § 831.1702.)

#### **Part 838**

OPM is proposing amendments to 5 CFR part 838, concerning court orders affecting retirement benefits, to allow a court order acceptable for processing that is directed at employee annuity to apportion phased retirement annuity or composite retirement annuity between an employee and his or her former spouse.

Section 838.103 would be amended by changing and adding definitions relating to phased retirement. These changes include (1) defining "employee annuity" to include recurring payments of phased retirement annuity and composite retirement annuity; (2) defining "gross annuity," "net annuity," and "self-only annuity" as including phased retirement annuity amounts paid to phased retirees; and (3) defining "retiree" to include a phased retiree who has entered full retirement status.

Section 838.211 would be amended by adding paragraph (b), which would subject phased retirement annuity to division by a court order acceptable for processing.

Sections 838.222, 838.232, 838.233, and 838.237 are being amended by including references to phased retirees and phased retirement.

Section 838.242(b) would be amended to conform to the rule at §§ 831.1742 and 848.502 concerning crediting unused sick leave in the computation of a composite retirement annuity.

Section 838.305(e) would be amended by adding language providing that a court order directed at the division of phased retirement annuity or composite retirement annuity is not a court order acceptable for processing if it includes unacceptable instructions concerning the computation of an employee's salary or average salary.

Section 838.306 would be revised to allow a court order to include express provisions specifically directed at division of phased retirement annuity, composite retirement annuity, or annuity payable to an employee who retires without having elected phased retirement status. Paragraph (b) of § 838.306 would be amended to provide that, unless a court order otherwise directs, OPM will apply to gross annuity a formula, percentage, or fraction directed at annuity payable to either a retiree or a phased retiree. Paragraph (c)(2) of § 838.306 would provide that for a court order 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



should 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 § 838.306(b). Paragraph (c)(3) of § 838.306 would provide that 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 § 838.306(a) and that generally provides for division of annuity without meeting the requirements of paragraph (c)(2), regarding the specific type of annuity being divided, will be applied to divide any employee annuity, including phased retirement annuity and composite retirement annuity. Thus, paragraph (c)(3) of § 838.306 would allow OPM to honor provisions in court orders on file with OPM, which were issued before MAP-21 was enacted. Parties to a divorce could also submit a new court order providing for a different apportionment of annuity than provided under § 838.306(c)(3).

Sections 838.612, 838.621, and 838.622 would be amended to add references to phased retirement annuity and composite retirement annuity.

Section 838.623 would be amended to add references to phased retirement annuity and composite retirement annuity. Paragraph (e) of § 838.623 would provide that a court order directed at 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. The amount of service that is included in the computation of phased retirement annuity and composite retirement annuity is established by statute. Any adjustment in a court order of the division of annuity will have to be accomplished through other means.

Appendix A to subpart F of 5 CFR part 838, has been amended by adding model paragraphs for dividing phased retirement annuity and composite retirement annuity.

Section 838.803 would be amended by adding paragraph (c), which would provide that 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.

Section 838.806(d)(2) would be amended to allow a former spouse

survivor annuity to be awarded or a change to an award of a former spouse survivor annuity during an employee's phased retirement status, before the commencing date of a composite retirement annuity.

Section 838.807 would be amended to make it clear that only employee annuity payable to a retiree and not a phased retiree is subject to reduction to provide a survivor annuity.

Sections 838.1111 would be amended to make phased retirement annuities subject to child abuse judgment enforcement orders.

#### *Part 841*

The Federal Employees' Retirement System (FERS) regulations located in parts 841, 842, and 843 are being updated where specific references to phased retirement are necessary as a result of the passage of MAP-21. The authority for these updates is found in title 5, United States Code, section 8412a. Therefore, OPM is updating certain definitions and cross-references to the new phased retirement provisions which will be located in part 848.

In § 841.102, we add references to parts 848 and part 850. In § 841.104 we revise how we define special terms throughout the regulations pertaining to FERS in parts 841 through 850.

#### *Part 842*

The definition of “full-time service” in § 842.402, under which we compute part-time service, would be clarified by specifically describing categories of full-time employees. While this definition is outside the phased retirement area, we are taking this opportunity to make applicable paragraphs consistent with the clearer language in the definition of “full-time” in the phased retirement regulations in part 848. (See § 848.102.)

#### *Part 843*

In § 843.202 we are revising paragraph (b) to reflect the change in law affecting the consequences of employee refunds.

#### *Part 870*

The change to § 870.101 clarifies that, for FEGLI purposes, the date of retirement for a phased retiree is the date the individual enters full retirement status.

The proposed rules provide in § 870.204, for a phased retiree, the annual rate of pay used to calculate Basic and Optional coverage amounts is the full-time basic pay rate as fixed by applicable law and regulation for the position in which the individual serves.

#### *Part 890*

The changes to § 890.101 provide that in the case of a phased retiree, a

composite retirement annuity is an immediate annuity for purposes of eligibility to continue FEHB into retirement. This clarifies that a phased retiree who retires on a composite retirement annuity must meet the requirement to retire on an immediate annuity in order to continue FEHB coverage into retirement.

The proposed rules provide that, for a phased retiree, the FEHB Government contribution amount is the full-time employer contribution as fixed by applicable law and regulation for the position in which the individual serves. These changes can be found in § 890.501(h).

#### **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 retirement payments to 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.

**Elaine Kaplan,**

*Acting Director.*

For the reasons discussed in the preamble, the Office of Personnel Management is proposing to amend 5 CFR parts 581, 582, 831, 838, 841, 842, 843, 870, and 890 and add 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 to add 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 by 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 to revise the definition of “applicant for retirement” and to add the definitions of “full

retirement status”, and “phased retiree” in alphabetical order as follows:

**§ 831.402 Definitions.**

\* \* \* \* \*

*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 paragraph (d).

**§ 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 to revise the definition of “full-time service” in paragraph (b) 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) through (5) of this definition 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 through 831.1723.

(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 through 831.1723;

(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.

**§ 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 this part.

## 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) of this section whose entitlement to a composite retirement annuity terminates under 5 U.S.C. 8344 due to the employment, is an employee effective upon employment. 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”, “employee annuity”, “gross annuity”, “net annuity”, “retiree”, and “self-only annuity”;
- b. Add the definitions of “composite retirement annuity”, “full retirement”, “phased employment”, “phased retiree”, “phased retirement annuity”, “phased retirement status,” “retirement” and “retires” 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 part 831 or 5 CFR part 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.* (1) *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—

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

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

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

(iv) Deducted for Medicare premiums;

(v) 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;

(vi) 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

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

(2) 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.* (1) *Phased retiree* means a retirement-eligible employee who—

(i) 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

(ii) Has not entered full retirement status;

(2) 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 a 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 dividing 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 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) of this section. 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 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:

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

\* \* \* \* \*

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\* \* \* \* \*

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

A court order may include an award directed at phased retirement annuity payable to a phased retiree, to address the possibility that an employee will enter phased retirement status; 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 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), and (c), and adding paragraph (b)(3) 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) By reduction of the employee 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 redesignating paragraph (b) as paragraph (c), by revising paragraph (a)(1) introductory text, and by 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), and

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

■ c. Add new paragraph (c)(6).

**§ 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 § 841.104 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 to revise the definition of “full-time service” as follows:

**§ 842.402 Definitions.**

\* \* \* \* \*

*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.

848.504 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 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.

848.703 Lump-sum credit.

**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.

**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 §§ 848.301–848.302.

(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 §§ 848.301–848.302;

(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.

**§ 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 of this chapter 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 part 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 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 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 of this chapter, 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 of this chapter 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 of this chapter 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.**

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

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

(b) 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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