

Proposed Rules

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 842, 870, and 890

RIN 3206-A112

Retirement and Insurance—Exemption From Continuity of Coverage Requirements for Certain Decennial Census Employees With Dual Appointments

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations to provide an exemption from continuity of coverage requirements for Federal retirement, health insurance, and life insurance benefits, for certain Federal employees who accept a second appointment to perform intermittent decennial census duties. The purpose of this exemption is to facilitate hiring Federal employees for the decennial census by eliminating administrative complexities that would otherwise result under current regulations. Employees will retain the retirement and insurance benefits to which they are entitled under their primary Federal jobs, while earning additional wages in their second jobs with the Census Bureau.

DATES: Comments must be received on or before January 23, 1998.

ADDRESSES: Send comments to Mary Ellen Wilson, Retirement Policy Division, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street, NW., Washington DC. Comments may also be submitted by electronic mail to combox@opm.gov.

FOR FURTHER INFORMATION CONTACT: For Parts 831 and 842: Robert Girouard, (202) 606-0299; and for Parts 870 and 890: Karen Leibach, (202) 606-0004.

SUPPLEMENTARY INFORMATION:

An individual who is hired into a Federal position from outside

Government under a temporary, intermittent appointment is excluded from retirement and insurance coverage under the Civil Service Retirement System (CSRS), the Federal Employees Retirement System (FERS), the Federal Employees' Group Life Insurance Program (FEGLI), and the Federal Employees Health Benefits Program (FEHB). However, by regulation, Federal employees in positions covered by retirement, health insurance, and life insurance, who move to Federal positions not covered by these benefits, can generally continue their benefit coverage if they have no break in Federal service. This continuity of coverage rule also applies when a Federal employee accepts a second, concurrent Federal job that would otherwise be excluded from coverage.

The Bureau of the Census, U.S. Department of Commerce ("Census Bureau") has asked OPM for an exemption from this continuity of coverage requirement, when a Federal employee is hired by the Census Bureau for a second job performing intermittent decennial census duties.

The Census Bureau anticipates evaluating 2.6 million applicants and hiring 260 thousand workers for peak operations of the year 2000 decennial census. The Census Bureau is placing a special emphasis on hiring current Federal employees for decennial census operations, because of the scale of hiring that must be carried out by the Census Bureau beginning in 1998; the special skills of Federal employees; and the low unemployment rate, which reduces the supply of labor readily available for temporary hiring.

It is anticipated that 95 to 98 percent of Federal employees hired for second jobs by the Census Bureau will be hired as intermittent, excepted-service appointees, under temporary appointments not to exceed one year. These appointments will generally be made under section 23(b) of title 13, United States Code, which allows Federal employees to be compensated for second positions conducting census field work, without regard to the restrictions on dual compensation found in section 5533 of title 5, United States Code.

Continuity of coverage rules for retirement and insurance make it difficult for the Census Bureau to hire Federal employees for second

appointments. While each Federal employee retains benefit coverage under his or her primary position with little or no additional benefits accruing from the intermittent Census employment, the Census Bureau would be required to coordinate closely with each employee's agency to determine the amount of additional retirement deductions and insurance premiums that would have to be withheld as a result of continuity of coverage. The administrative complexities resulting from week by week coordination with the employee's primary agency would be highly susceptible to error and would make large-scale hiring from the pool of Federal employees administratively prohibitive. Placing Federal employees hired to perform short term decennial census service on the same benefit footing as persons hired from outside the Government will significantly reduce the coordination burden, and assist the Census Bureau in meeting its unique staffing requirements.

For these reasons, the Office of Personnel Management is proposing to amend the continuity of coverage rules to exempt Federal employees hired by the Census Bureau under temporary, intermittent appointments to perform decennial census duties. OPM's authority to make this exemption is in sections 8347(g), 8402(c)(1), 8716(b), and 8913(b) of title 5, United States Code.

In order for these regulations to meet their stated purpose of providing timely relief, they must take effect by the Spring of 1998, when the Census Bureau will begin hiring Federal employees for decennial census rehearsal activities. Therefore, the Office of Personnel Management is issuing the proposed regulations with a 30-day comment period.

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 and insurance benefits of retired Government employees and their survivors.

Executive Order 12866, Regulatory Review

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

List of Subjects

5 CFR Parts 831 and 842

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

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, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Janice R. Lachance,
Director.

Accordingly, OPM proposed to amend Parts 831, 842, 870, and 890 of Title 5 of the Code of Federal Regulations as follows:

PART 831—RETIREMENT

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

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(1) also issued under 5 U.S.C. 8347(g); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.201(g) also issued under sections 11202(f), 11232(e), and 11246(b) of title XI of Pub. L. 105–33, 111 Stat. 251; § 831.204 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp. p. 317; § 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); §§ 831.663 and 831.664 also issued under Pub. L. 103–66, 107 Stat. 412; § 831.682 also issued under section 201(d) of the Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388–328.

Subpart B—Coverage

2. In § 831.201, paragraph (b)(1) is revised to read as follows:

§ 831.201 Exclusions from retirement coverage.

* * * * *

(b) * * *

(1) Employment in an excluded category follows employment subject to subchapter III of chapter 83 of title 5, United States Code, without a break in service or after a separation from service of 3 days or less, except in the case of:

(i) An alien employee whose duty station is located in a foreign country; or

(ii) An employee hired by the Census Bureau under a temporary, intermittent appointment to perform decennial census duties.

* * * * *

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

3. The authority citation for section 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 102(e) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; § 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of the National Capital Revitalization and Self-Government Improvement Act of 1997, title XI of Pub. L. 105–33, 111 Stat. 251; §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; § 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; § 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

Subpart A—Coverage

4. In § 842.105, paragraph (b) is revised to read as follows:

§ 842.105 Regulatory exclusions.

* * * * *

(b) When an employee who is covered by FERS moves to a position listed in paragraph (a) of this section without a

break in service or after a separation of 3 days or less, his or her FERS coverage will continue, except in the case of an employee hired by the Census Bureau under a temporary, intermittent appointment to perform decennial census duties.

* * * * *

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

5. The authority citation for part 870 is revised to read as follows:

Authority: 5 U.S.C. 8716; subpart J also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 870.302 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251.

6. In § 870.301, add paragraph (d) to read as follows:

§ 870.301 Eligibility for life insurance.

* * * * *

(d) Notwithstanding any other provision in this part, the hiring of a Federal employee, whether in pay status or nonpay status, for a temporary, intermittent position with the decennial census has no effect on the amount of his/her Basic or Option B insurance, the withholdings or Government contribution for his/her insurance, or the determination of when 12 months in nonpay status ends.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

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

Authority: 5 U.S.C. 8913; § 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; § 890.102 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251.

8. In § 890.102, paragraph (g) is added to read as follows:

§ 890.102 Coverage

* * * * *

(g) Notwithstanding any other provision in this part, the hiring of a Federal employee, whether in pay status or nonpay status, for a temporary, intermittent position with the decennial census has no effect on the withholding or Government contribution for his/her coverage or the determination of when 365 days in nonpay status ends.

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