

## § 842.702

## 5 CFR Ch. I (1–1–03 Edition)

under section 8420a of title 5, United States Code.

### § 842.702 Definitions.

In this subpart—

*Alternative form of annuity* means the benefit elected under § 842.705.

*Current spouse annuity* has the same meaning as in § 842.602.

*Date of final adjudication* means the date 30 days after the date of the first regular monthly payment as defined in § 831.603.

*Former spouse annuity* has the same meaning as in § 842.602.

*Present value factor* represents the amount of money (earning interest at an assumed rate) required at the time of retirement to fund an annuity that (a) starts out at the rate of \$1 a month and is payable in monthly installments for the annuitant's lifetime based on mortality rates for non-disability annuitants; and (b) increases each year at an assumed rate of inflation. Interest, mortality, and inflation rates used in computing the present value are those used by the Board of Actuaries for valuation of the System, based on dynamic assumptions. The present value factors are unisex factors obtained by averaging sex-distinct present value factors, weighted by the total dollar value of annuities typically paid to new retirees at each age.

*Time of retirement* has the same meaning as in § 842.602.

[52 FR 2067, Jan. 16, 1987, as amended at 53 FR 11635, Apr. 8, 1988]

### § 842.703 Eligibility.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, an employee or Member who retires under any provision of subchapter II of chapter 84 of title 5, United States Code, may elect an alternative form of annuity instead of any other benefits under the subchapter.

(b) An employee or Member who, at the time of retirement has a former spouse who is entitled to a portion of the employee's or Member's retirement benefits or a former spouse annuity under a court order acceptable for processing as defined by § 838.103 of this chapter or a qualifying court order as defined in § 838.1003 of this chapter may

not elect an alternative form of annuity.

(c) An employee or Member who is married at the time of retirement may not elect an alternative form of annuity unless the employee's or Member's spouse specifically consents to the election. OPM may waive spousal consent only under the conditions prescribed by § 842.607.

(d)(1)(i) An individual whose annuity commences after December 1, 1990, and before October 1, 1994, may elect an alternative form of annuity only if that individual is—

(A) An employee or Member who meets the conditions and fulfills the requirements described in § 842.707(c) (2) and (3); or

(B) An employee who is separated involuntarily other than for cause on charges of misconduct or delinquency;

(ii) An individual whose annuity commences on or after October 1, 1994, may elect an alternative form of annuity only if that individual is an employee or Member who meets the conditions and fulfills the requirements described in § 842.707(c) (2) and (3).

(2) For the purpose of paragraph (d)(1)(i)(B) of this section, the term "employee" does not include—

(i) Members of Congress;

(ii) Individuals in positions in the Executive Schedule under sections 5312 through 5317 of title 5, United States Code;

(iii) Presidential appointees under section 105(a)(1), 106(a)(1), or 107 (a)(1) or (b)(1) of title 3, United States Code, if the maximum basic pay for such positions is at or above the rate for Executive Schedule, level V;

(iv) Noncareer appointees in the Senior Executive Service or noncareer members of the Senior Foreign Service; and

(v) Any individual in a position that is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character.

(3) Notwithstanding paragraph (d)(1) of this section, an employee whose annuity commences after December 1, 1990, and before December 2, 1991, may elect an alternative form of annuity if that individual—

(i)(A) Was ordered to active military duty (other than for training) before December 1, 1990, in connection with Operation Desert Shield; or

(B) Is an employee of the Department of Defense who is certified by the Secretary of Defense to have performed, after November 30, 1990, duties essential to support Operation Desert Shield, and the certification is submitted to OPM in a form prescribed by OPM; and

(ii) Would have been eligible, as of November 30, 1990, to elect an alternative form of annuity under paragraph (a) of this section.

[52 FR 2067, Jan. 16, 1987, as amended at 56 FR 6551, Feb. 19, 1991; 56 FR 43866, Sept. 5, 1991; 57 FR 33598, July 29, 1992; 60 FR 54587, Oct. 25, 1995]

#### § 842.704 Election requirements.

(a) The election of an alternative form of annuity and evidence of spousal consent must be filed on a form prescribed by OPM within the time limit prescribed in paragraph (b)(2) of this section. The form will require that a notary public or other official authorized to administer oaths certify that the current spouse presented identification, gave consent to the specific election as executed by the retiree, signed or marked the form, and acknowledged that the consent was given freely in the notary's or official's presence.

(b) An election of the alternative form of annuity must be in writing and received by OPM on or before the date of final adjudication. After the date of final adjudication, an election of the alternative form of annuity is irrevocable.

(c) Except as provided in paragraph (d), an annuitant who dies before the time limit prescribed in paragraph (b)(2) of this section is deemed to have made an affirmative election under § 842.703(a) with a reduced annuity to provide a current spouse annuity, regardless of any election completed under § 842.606, and the lump-sum credit will be paid in accordance with the order of precedence described in section 8424 of title 5, United States Code.

(d) If an annuitant described in paragraph (c) has completed an election under § 842.604 (a) or (b)—

(1) The lump-sum credit will be paid in accordance with the order of precedence described in section 8424 of title 5, United States Code; and

(2) The election under § 842.604 (a) or (b) will be honored.

[53 FR 11635, Apr. 8, 1988, as amended at 56 FR 6552, Feb. 19, 1991; 60 FR 54587, Oct. 25, 1995]

#### § 842.705 Alternative forms of annuities available.

(a) An employee or Member who is eligible to make an election under § 842.703 may elect to receive his or her lump-sum credit, excluding interest, plus an annuity computed in accordance with sections 8415 and 8421 of title 5, United States Code, for which they qualify (including any reduction for survivor benefits) and reduced under § 842.706.

(b) A retired employee or Member who elected an alternative form of annuity is subject to all provisions of subchapters II and IV of chapter 84 of title 5, United States Code, as would otherwise apply to a retired employee or Member who did not elect an alternative form of annuity. An individual who has elected an alternative form of annuity is not eligible to apply for disability annuity under subchapter V of such chapter.

[52 FR 2067, Jan. 16, 1987, as amended at 53 FR 11635, Apr. 8, 1988]

#### § 842.706 Computation of alternative form of annuity.

(a) To compute the beginning rate of annuity payable to a retiree who elects an alternative form of annuity, OPM will first compute the monthly rate of annuity (and annuity supplement, if any), otherwise payable under subchapter II of chapter 84 of title 5, United States Code, including all reductions provided under the subchapter other than those in section 8420a of that title. That monthly rate is then reduced by an amount equal to the retiree's lump-sum credit, excluding interest, divided by the applicable present value factor for the retiree's attained age (in full years) at the time of retirement. The reduced monthly rate is then rounded to the next lowest dollar and becomes the rate of annuity payable.