

**§ 842.212**

**5 CFR Ch. I (1–1–01 Edition)**

(2) After becoming age 50 and completing 20 years of service.

(b) *Removed for less than fully successful executive performance* means (1) with respect to a member of the Senior Executive Service, removal in accordance with procedures in subpart E of part 359 of this chapter; and (2) with respect to a member of the Defense Intelligence Senior Executive Service or the Senior Cryptologic Executive Service, a certification by the head of the Defense Intelligence Agency or National Security Agency (or their designees) that the employee has been removed for less than fully successful executive performance.

(c) *Removed for failure to be recertified as a senior executive* means (1) With respect to a member of the Senior Executive Service, removal in accordance with the procedures in subpart C of part 359 of this chapter, and (2) with respect to a member of the Defense Intelligence Senior Executive Service or the Senior Cryptologic Executive Service, a certification by the head of the Defense Intelligence Agency or National Security Agency (or their designees) that the employee has been removed for failure to be recertified under 10 U.S.C. 1601(a) or section 12(a)(1) of the National Security Agency Act, respectively.

(d) An annuity payable under paragraph (a) of this section commences on the day after separation from service.

[52 FR 4473, Feb. 11, 1987, as amended at 56 FR 173, Jan. 3, 1991]

**§ 842.212 Deferred retirement.**

(a) An employee or Member who, after completing 5 years of service, separates from service or transfers to a position not covered by FERS is entitled to a deferred annuity beginning on the first day of the month after the individual attains age 62.

(b)(1) Except as provided in paragraphs (b)(3) and (c) of this section, an employee or Member who has not attained the minimum retirement age, and who, after completing 10 years of service, is separated or transferred to a position in which the individual is no longer covered by FERS, is entitled to a deferred annuity commencing—

(i) The first day of the month following the date on which the indi-

vidual attains the minimum retirement age or, if later,

(ii) A date the individual designates that follows the date on which the designation is filed.

(2) The election of a commencing date may be filed no more than 90 days before that commencing date, and must be elected in a form prescribed by OPM. A written election that is not in the prescribed form, but which designates a specific commencing date, will be accepted for as an informal election, subject to ratification in the prescribed form.

(3) An employee or Member is not entitled to a deferred annuity under paragraph (b)(1) of this section if the individual is eligible for an annuity under §§ 842.205 through 842.211 or will, within 31 days after filing the election of a commencing date, attain age 62.

(4) The election of a commencing date becomes irrevocable on the date OPM authorizes the first annuity payment.

(c)(1) If an employee or Member separates from service after completing 10 years of service but before attaining the minimum retirement age, and is reemployed before filing an application for retirement based on that separation, that individual may not elect an annuity commencing date that precedes separation from the reemployment service.

(2) In the case of an employee or Member who separates from service after completing 10 years of service but before attaining the minimum retirement age, and is reemployed after filing an application for retirement based on that separation, that individual may not elect an annuity commencing date that precedes separation from the reemployment service if he or she is reemployed prior to a postponed commencing date elected under paragraph (b).

[51 FR 47197, Dec. 31, 1986, as amended at 56 FR 65418, Dec. 17, 1991]

**§ 842.213 Early retirement—major reorganization, major reduction in force, or major transfer of function.**

(a) Upon an agency's request, as described in paragraph (c) of this section, OPM may make a determination as provided in 5 U.S.C. 8414(b)(1)(B), that:

(1) The agency is undergoing a major reduction in force, major reorganization, or major transfer of function; and

(2) A significant percentage of the employees serving in the employing agency will be involuntarily separated, or subject to a reduction in basic pay.

(b)(1) Based on a determination by OPM under paragraph (a) of this section, OPM will provide to the agency the authority to offer voluntary early retirements to its employees.

(2) Under an OPM approved authority, the agency may offer voluntary early retirements to its employees based on:

- (i) Organizational unit(s);
- (ii) Occupational series or level(s);
- (iii) Geographic area(s);
- (iv) Specific window period(s);
- (v) Any similar nonpersonal and objective factors; or
- (vi) Any combination of factors under this paragraph (b)(2) that the agency determines to be appropriate and necessary to accomplish the reductions which formed the basis for OPM's determination under paragraph (a) of this section.

(3) An employee who separates from the service voluntarily under authority of 5 U.S.C. 8414(b)(1)(B) after completing 25 years of service, or becoming age 50 and completing 20 years of service, is entitled to an annuity if, on the date of separation, the employee:

- (i) Is serving in a position covered by an offer by the agency as described in paragraph (b)(2) of this section;
- (ii) Has been employed in the requesting agency at least 31 days prior to the date the agency requested an OPM determination under paragraph (a) of this section;
- (iii) Is not serving under a time-limited appointment; and
- (iv) Is not in receipt of a decision of involuntary separation for misconduct or unacceptable performance.

(4) OPM may approve an agency's request for voluntary early retirement authority to cover the entire period of the major reduction in force, major reorganization, or major transfer of function; or through the end of each fiscal year, whichever is less.

(c)(1) An agency's request for voluntary early retirement must be signed by the head of the agency or by a spe-

cific designee with delegated authority.

(2) The agency's request for voluntary early retirement must contain the following:

(i) Identification of the agency or organizational unit(s) for which a determination is requested;

(ii) Reasons why the voluntary early retirement authority is needed. This explanation must include a detailed summary of the agency's personnel and budgetary situation that will result in an excess of personnel because of a major reduction in force, major reorganization, or major transfer of function as well as the date on which the agency expects to involuntarily separate employees as a result of the major reduction in force, major reorganization, or major transfer of function;

(iii) The time period during which voluntary early retirement will be offered. At the agency's discretion, the agency may request voluntary early retirement authority to cover the entire period of the major reduction in force, major reorganization, or major transfer of function; or through the end of the fiscal year, whichever is less.

(iv) The total number of non-temporary employees in the agency;

(v) The total number of non-temporary employees in the agency who will be involuntarily separated or downgraded because of reduction in force or relocation during a major reduction in force, major reorganization, or major transfer of function;

(vi) The total number of employees in the agency who are eligible for voluntary early retirement; and

(vii) An estimate of the total number of employees in the agency who are expected to retire early during the period covered by the request for voluntary early retirement authority.

(d)(1) The agency may not expand the availability of voluntary early retirements or offer early retirements to employees who are not within the authority approved by OPM.

(2) Except as provided in paragraph (d)(3) of this section, the agency may limit voluntary early retirement offers during window periods under paragraph (b)(2)(iv) of this section only by:

## § 842.301

(i) An established opening and closing date which is announced to employees at the time of the initial offer; or

(ii) Receipt of a specified number of applications for retirement, provided that, at the time of the initial offer, the agency notified employees that the agency retained the right to limit voluntary early retirements on that basis.

(3) The agency may subsequently establish a revised closing date, or a revised number of applications, only when changes in the conditions that served as the basis for the approval of the voluntary early retirement authority have occurred. The revised closing date, or number of applications, may be applicable to the entire authority, or only to employees in specific organizational unit(s), occupational series or level(s), or geographic area(s).

(e) After approval of an authority, the agency is required to immediately notify OPM of any subsequent changes in the conditions that served as the basis for the approval of the voluntary early retirement authority.

(f) Agencies are required to provide OPM with interim and final reports on each voluntary early retirement authorization, as covered in OPM's approval letter to the agency. OPM may suspend an agency's early retirement authority if the agency is not in compliance with the reporting requirements or reporting schedule provided to the agency in the approval letter from OPM.

(g) Agencies are responsible for ensuring that employees are not coerced into voluntary early retirement. If an agency finds any instances of coercion, it must take appropriate corrective action.

(h) OPM may terminate an agency's authority at any time that OPM determines the agency is no longer undergoing the major reorganization, major reduction in force, or major transfer of function that formed the basis for OPM's approval of the authority. OPM may take steps to amend, limit, or terminate an authority in order to ensure that early retirement programs are operated in a manner which is consistent

## 5 CFR Ch. I (1-1-01 Edition)

with applicable laws or regulatory requirements.

[63 FR 32597, June 15, 1998, as amended at 64 FR 53582, Oct. 4, 1999; 64 FR 72257, Dec. 27, 1999]

### Subpart C—Credit for Service

SOURCE: 52 FR 18193, May 14, 1987, unless otherwise noted.

#### § 842.301 Purpose.

This subpart sets forth the provisions governing credit for service under the Federal Employees Retirement System (FERS), 5 U.S.C. 8411. Except as provided by section 302 of the Federal Employees' Retirement System Act of 1986, Pub. L. 99-335 (the special provisions for employees who elect to transfer to FERS), service not creditable under this subpart is not creditable either for the purposes of determining eligibility to an annuity or in computing the rate of an annuity benefit under subchapter II (basic annuity), IV (survivor annuity), or V (disability annuity) of chapter 84 of title 5 of the United States Code.

#### § 842.302 Definitions.

*Cadet Nurse Corps* means any training as a student or graduate nurse under a plan approved under section 2 of the Act of June 15, 1943 (57 Stat. 153).

*Employee* means an employee as defined by 5 U.S.C. 8401(11).

*FERS* means the Federal Employees Retirement System as established under chapter 84 of title 5, United States Code.

*Government* means the Federal Government and Gallaudet College.

*Member* means a Member of Congress as defined by 5 U.S.C. 8401(20).

*Military service* means honorable active service in the armed forces of the United States; in the commissioned corps of the Public Health Service after June 30, 1960; or in the commissioned corps of the National Oceanic and Atmospheric Administration, or a predecessor entity in function, after June 30, 1961. "Military service" does not include service in the National Guard except when ordered to active