

(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.

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(b) OPM will publish a notice in the FEDERAL REGISTER announcing any proposed adjustments in present value factors at least 30 days before the effective date of the adjustments.

**§ 842.707 Partial deferred payment of the lump-sum credit if annuity commences after January 3, 1988, and before October 1, 1989.**

(a) Except as provided in paragraph (c) of this section, if the annuity of an employee or Member commences after January 3, 1988, and before October 1, 1989, the lump-sum credit payable under § 842.705 is payable to the individual, or his or her survivors, according to the following schedule:

(1) Sixty percent of the lump-sum credit is payable at the time of retirement, and

(2) Forty percent is payable, with interest determined under section 8334(e)(3) of title 5, United States Code, one year after the time of retirement.

(b) If an employee or Member whose annuity commences after January 3, 1988, and before October 1, 1989, dies before the time limit prescribed in § 842.704(b)(2), that individual is subject to § 842.704 (c) or (d), but the lump-sum credit will be paid in accordance with the schedule in paragraph (a) of this section.

(c) An annuitant is exempt from the deferred payment schedule under paragraph (a) of this section if the individual—

(1) Separates involuntarily, other than for cause on charges of delinquency or misconduct, or

(2) Has, at the time of retirement, a life-threatening affliction or other critical medical condition.

(3)(i) For the purpose of this section, *life-threatening affliction or other critical medical condition* means a medical condition so severe as to reasonably limit an individual's probable life expectancy to less than 2 years.

(ii) The existence of one of the following medical conditions is *prima facie* evidence of a life-threatening affliction or other critical medical condition:

(A) Metastatic and/or inoperable neoplasms.

(B) Aortic stenosis (severe).

(C) Class IV cardiac disease with congestive heart failure.

(D) Respiratory failure.

(E) Cor pulmonale with respiratory failure.

(F) Emphysema with respiratory failure.

(G) [Reserved]

(H) Severe cardiomyopathy—Class IV.

(I) Aplastic anemia.

(J) Uncontrolled hypertension with hypertensive encephalopathy.

(K) Cardiac aneurysm not amenable to surgical treatment.

(L) Agranulocytosis.

(M) Severe hepatic failure.

(N) Severe hypoxic brain damage.

(O) Severe portal hypertension with esophageal varices.

(P) AIDS (Active—Not AIDS Related Complex or only seropositivity).

(Q) Life-threatening infections (encephalitis, meningitis, rabies, etc.).

(R) Scleroderma with severe esophageal involvement.

(S) Amyotrophic lateral sclerosis (rapidly progressive).

(T) Hemiplegia with life threatening complications.

(U) Quadriplegia with life threatening complications.

(iii) Evidence of the existence of a life-threatening affliction or other critical medical condition must be certified by a physician and sent to OPM on or before the date the annuitant elects to receive an alternative form of annuity. For the purpose of this section, "physician" has the same meaning given that term in § 339.102 of this chapter.

(iv) If a medical condition other than those listed in paragraph (c)(3)(ii) of this section is claimed as a basis for exemption from the deferred payment schedule, OPM will review the physician's certification to determine whether the cited condition is life-threatening or critical.

(v) The cost of providing medical documentation under this paragraph rests with the employee or Member, unless OPM exercises its choice of physician.

[53 FR 11635, Apr. 8, 1988, as amended at 60 FR 54587, Oct. 25, 1995]