

§ 842.809 Transitional provisions.

(a) Any service as an air traffic controller, within the meaning of this term under 5 U.S.C. 2109 as in effect on or after January 1, 1987—even if performed before that date—is included in determining an employee's length of air traffic controller service under 5 U.S.C. 8412(e) for the purposes of retirement eligibility and for mandatory separation under 5 U.S.C. 8425(a) as long as the annuity is based on a separation from service occurring after 1986.

(b) Any service as a law enforcement officer or firefighter, within the meaning of these terms under 5 U.S.C. 8331 (20) and (21), that was performed before the date on which an employee becomes subject to chapter 84 of title 5, United States Code, is included in determining the employee's length of law enforcement officer and firefighter service under 5 U.S.C. 8412(d) for the purposes of retirement eligibility and mandatory separation under 5 U.S.C. 8425(b). Service performed as a law enforcement officer or firefighter within the meaning of 5 U.S.C. 8331, other than service in a supervisory or administrative position, is considered to be service in a rigorous position for the purpose of the 3-year requirement of § 842.803(b)(1)(ii). The FERS definitions of firefighter under 5 U.S.C. 8401(14) and law enforcement officer under 5 U.S.C. 8401(17) are not applicable to service performed—

(1) Before 1987; or

(2) After 1986 and before an employee first becomes subject to chapter 84 (that is, subject to FERS deductions), unless that service was neither subject to CSRS deductions nor creditable in a CSRS component as described in § 846.304(b).

(c)(1) An individual who—

(i) Is covered as a law enforcement officer or firefighter under 5 U.S.C. 8336(c) in a supervisory or administrative position, having already met the transfer requirement of subpart I of part 831 of this chapter; and

(ii) Elects under section 301 of Pub. L. 99–335 to become subject to chapter 84 of such title and begins service in a secondary position with no break in service is considered to have met the transfer and 3-year requirements of

§§ 842.803(b)(1)(i) and (ii) for coverage in a secondary position upon the effective date of the election.

(2) An individual who—

(i) Is covered as a law enforcement officer or firefighter under 5 U.S.C. 8336(c) in a supervisory or administrative position, having already met the transfer requirement of subpart I of part 831 of this chapter; and

(ii) Automatically becomes subject to chapter 84 of title 5 of the United States Code (not by election under section 301 of Pub. L. 99–335) serving in a secondary position is considered to have met the 3-year requirement of § 842.803(b)(1)(ii) for coverage in a secondary position. The employee is not covered as a law enforcement officer or firefighter in a secondary position if he or she had a break in coverage as a law enforcement officer or firefighter (within the meaning of 5 U.S.C. 8331) exceeding 3 days immediately before becoming subject to chapter 84 of title 5 of United States Code. However, a break in coverage in supervisory or administrative positions occurring before the individual becomes subject to such chapter 84 that began with an involuntary separation (not for cause), within the meaning of 5 U.S.C. 8414(b)(1)(A), is not considered to be a break in service for this purpose.

(d) (1) The CSRS definitions of law enforcement officer under 5 U.S.C. 8331(20) and firefighter under 5 U.S.C. 8331(21) are applicable to service performed before an employee became subject to chapter 84 if the service was—

(i) Subject to CSRS deductions at the time it was performed (including service that becomes creditable under FERS annuity computation rules);

(ii) Performed before 1987 and not subject to retirement deductions; or

(iii) Performed after 1986 and not subject to retirement deductions but is creditable in a CSRS component as described in § 846.304(b).

(2) The determination of whether any service meets the CSRS definitions of law enforcement officer under 5 U.S.C. 8331 (20) or firefighter under 5 U.S.C. 8331(21) must be made in accordance with the provisions of subpart I of part 831 of this chapter.

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