



Billing Code 6325-38

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 841

RIN 3206-AO02

Federal Employees' Retirement System; Normal Cost Percentage for Certain Members of the Capitol Police

AGENCY: Office of Personnel Management.

ACTION: Proposed Rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to revise the categories of employees for computation of normal cost percentages for certain members of the Capitol Police who are covered by the Federal Employees' Retirement System (FERS) Act of 1986.

DATES: Send comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at

<http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Karla Yeakle, (202) 606-0299.

SUPPLEMENTARY INFORMATION: On April 6, 2020, OPM published notice 85 FR 19174 in the Federal Register to revise the normal cost percentages under the Federal Employees' Retirement System (FERS) Act of 1986, Pub. L. 99-335, 100 Stat. 514, as amended, based on economic assumptions and demographic factors adopted by the Board of Actuaries of the Civil Service Retirement System. As a result of new legislation enacted on December 20, 2019, under sec. 211 of title II, division E of Pub. L. 116-94, the Further Consolidated Appropriations Act, 2020, OPM was required to provide separate normal cost percentages for certain members of the Capitol Police as distinct from other Congressional Employees. Prior to the enactment of the Further Consolidated Appropriations Act, 2020, members of the Capitol Police were combined with Congressional Employees for the purpose of determining the normal cost percentages for those employee populations. This rule is necessary to ensure that the rules for computation of normal cost percentages are consistent with the categories of employees as provided under 5 U.S.C. 8423(a)(1)(B)(i), as amended by sec. 211 of title II, division E of Pub. L. 116-94, the Further Consolidated Appropriations Act, 2020.

The Middle Class Tax Relief and Jobs Creation Act of 2012, sec. 5001 of Pub. L. 112-96, 126 Stat. 157, and subsequently, sect. 401 of Pub. L. 113-67, 113 Stat. 1165, the Bipartisan Budget Act of 2013, increased the retirement contributions for certain FERS employees (Revised Annuity Employees (FERS-RAE) and Further Revised Annuity

Employees (FERS-FRAE)) and established separate FERS deduction rates for Congressional employees and members of the Capitol Police. These Acts reduced the retirement annuity accrual rates of new legislative (Congressional) branch employees (other than Capitol Police) equal to that of most regular federal employees, while the retirement accrual rates for new Capitol Police remained at an enhanced level. Despite the difference in annuity benefits, these Acts did not establish separate employee categories for the computation of normal cost percentages for Capitol Police versus other legislative branch employees. With the passage of the Further Consolidated Appropriations Act, 2020, members of the Capitol Police covered under 5 U.S.C. 8412(d) and 5 U.S.C. 8425(c), who receive enhanced retirement accrual rates similar to that of law enforcement officers under 5 U.S.C. 8415(e), have been removed from the Congressional employee normal cost category and now have their own normal cost category.

Section 841.403 of title 5, Code of Federal Regulations, regulates the categories of employees for computation of normal cost percentages that the government is required to pay for employees under 5 U.S.C. 8423. OPM's proposed rule would amend its regulation under 5 CFR 841.403 to eliminate the category of "Congressional employees, including members of the Capitol Police," and to establish separate normal cost percentages for certain members of the Capitol Police and for Congressional employees in compliance with sec. 211 of title II, division E of Pub. L. 116-94, the Further Consolidated Appropriations Act, 2020. In accordance with the Further Consolidated Appropriations Act, 2020, 5 CFR 841.403 must list members of the Capitol Police covered under 5 U.S.C. 8412(d) and 5 U.S.C. 8425(c) as separate categories. All other Capitol Police, who are not members covered under 5 U.S.C.

8412(d) and 5 U.S.C. 8425(c), will fall under the new category of “other Congressional employees.”

Regulatory Impact Analysis

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of \$100 million or more in any one year. This rule was not designated as a “significant regulatory action,” under Executive Order 12866.

Reducing Regulation and Controlling Regulatory Costs

This rule is not an EO 13771 regulatory action because this rule is related to agency organization, management, or personnel.

Regulatory Flexibility Act

The Office of Personnel Management certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a “rule” as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule involves an OMB approved collection of information subject to the PRA Application for Death Benefits (FERS)/Documentation and Elections in Support of Application for Death Benefits when Deceased was an Employee at the Time of Death (FERS), 3206-0172. The public reporting burden for this collection is estimated to average

60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden hour estimate for this form is 16,751 hours. The systems of record notice for this collection is: OPM SORN CENTRAL-1-Civil Service Retirement and Insurance Records.

List of Subjects in 5 CFR Part 841

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

Office of Personnel Management.

Alexys Stanley,
Regulatory Affairs Analyst.

For the reasons stated in the preamble, the Office of Personnel Management proposes to amend 5 CFR part 841 as follows:

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

1. The authority citation for part 841 continues to read as follows:

Authority: 5 U.S.C. 8461; Sec. 841.108 also issued under 5 U.S.C. 552a; Secs. 841.110 and 841.111 also issued under 5 U.S.C. 8470(a); subpart D also issued under 5

U.S.C. 8423; Sec. 841.504 also issued under 5 U.S.C. 8422; Sec. 841.507 also issued under section 505 of Pub. L. 99-335; subpart J also issued under 5 U.S.C. 8469; Sec. 841.506 also issued under 5 U.S.C. 7701(b)(2); Sec. 841.508 also issued under section 505 of Pub. L. 99-335; Sec. 841.604 also issued under Title II, Pub. L. 106-265, 114 Stat. 780.

Subpart D—Government Costs

1. Amend §841.403 by redesignating paragraphs (c) through (h) as paragraphs (d) through (i) respectively, revise paragraph (b), and add new paragraph (c) to read as follows:

§ 841.403 Categories of employees for computation of normal cost percentages.

* * * * *

(b) Capitol Police covered under 5 U.S.C. 8412(d) and 5 U.S.C. 8425(c);

(c) Other Congressional employees;

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