



OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 353, 831, and 842

[Docket ID: OPM-2024-0014]

RIN 3206-AO54

First Responder Fair RETIRE Act

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management proposes regulations to carry out provisions of the First Responder Fair Return for Employees on Their Initial Retirement Earned Act. The Act allows covered Federal first responders who experience a qualifying duty-related illness or injury to continue receiving Federal retirement benefits in the same manner as though they had not experienced the disability. The proposed regulations would carry out the amendments the Act made to statutory provisions relating to the Civil Service Retirement System and the Federal Employees' Retirement System.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the instructions for submitting comments.

Where possible, please arrange and identify your comments on the regulatory text by subpart and section number; if your comments relate to the supplementary information, please refer to the heading and page number. Comments received after the close of the comment period will be marked "late," and OPM is not required to consider them in formulating a final decision. OPM will consider all timely comments within the scope of this rulemaking. All comments and other submissions received generally will be posted at <https://regulations.gov> as they are received, without change, including any personal information provided. However, OPM retains

discretion to redact personal or sensitive information, including but not limited to, personal or sensitive information pertaining to third parties.

As required by 5 U.S.C. 553(b)(4), a summary of this rule may be found in the docket for this rulemaking at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Alison Pastor by email at

RetirementPolicy@opm.gov with Attn: First Responder Fair RETIRE Act in the subject line, or by phone at (202) 606-0299.

SUPPLEMENTARY INFORMATION:

The Office of Personnel Management (OPM) proposes regulations to carry out provisions of the First Responder Fair Return for Employees on Their Initial Retirement Earned Act (First Responder Fair RETIRE Act or the Act).¹ The Act permits covered Federal employees that have become disabled to receive retirement benefits in the same manner as if they had not become disabled. In enacting this legislation, Congress amended statutory provisions relating to two Federal retirement systems under OPM's authority – the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS) – and required that OPM issue corresponding regulations to carry out these statutory amendments. OPM therefore proposes regulations relating to CSRS and the FERS as described in this notice.

I. Background

OPM has governmentwide responsibility for, and oversight over, two Federal employment retirement systems: CSRS and FERS. These systems provide retirement and disability benefits to most of the civilian Federal workforce. Retirement coverage under one of these systems is generally determined by the employee's date of entrance into Federal service. Most employees who entered Federal service prior to January 1, 1984, are covered under CSRS, while most employees who entered Federal service on or after January 1, 1984, are covered under FERS.

¹ Pub. L. 117-225, 136 Stat. 2293 (Dec. 9, 2022).

Contributions into these systems and the resulting annuities are generally determined based on a combination of the age at retirement and years of service. Federal employees who participate in these systems contribute 7% for CSRS and between 0.8% and 4.4% for FERS and, with 5 years of service, are eligible to receive monthly annuities beginning at age 62. Retiring earlier is possible, but annuities may be reduced if the employee is under age 62 and/or has less than 30 years of service. The annuity benefit is based on a percentage of the high-three average salary multiplied by the years and months of service.

This calculus of age and years of service to determine retirement benefits can be different for certain positions. Relevant to this rulemaking, CSRS and FERS authorize immediate early retirement benefits at age 50 for Federal employees who have completed 20 years of civilian service as a law enforcement officer, firefighter, customs and border protection officer, air traffic controller, nuclear materials courier, or member of the Capitol Police or Supreme Court Police. Employees in positions that qualify for these early enhanced retirement benefits are required to pay an extra one-half of one percent of basic pay in retirement contributions and their annuity is in turn based on a higher percentage of average salary. These employees are generally subject to maximum age entrance requirements and mandatory separation requirements. The enhanced retirement benefit provisions are designed to encourage a career in Federal service and make it economically feasible to retire early, while also allowing the Federal government to maintain an effective workforce in positions with rigorous duties.

Prior to the enactment of the First Responder Fair RETIRE Act, individuals who occupied these specialized positions and who were able to return to duty following an injury or illness were accommodated into other Federal positions, but often these new positions did not allow the employee to retain enhanced retirement coverage. For other Federal employees, current law requires placement into “equivalent positions” upon returning to work after a job-related injury or illness, which enables employees injured while on duty to continue to contribute their valuable skills and experience without losing retirement benefits associated with the prior

position. However, in the case of law enforcement officers, firefighters, customs and border protection officers, air traffic controllers, nuclear materials couriers, members of the Capitol Police, and members of the Supreme Court Police who are injured or become ill while on duty, returning to an equivalent covered, physically demanding position that remains subject to enhanced retirement provisions is often not possible.

The First Responder Fair RETIRE Act

The First Responder Fair RETIRE Act amended 5 U.S.C. 8336(c) (regarding CSRS) and 8412(d) (regarding FERS) and other retirement laws² so that enhanced retirement coverage is preserved for covered employees (called an “affected individual” in the Act) who become injured or ill as a direct result of the performance of duty with an injury or illness that permanently renders them unable to provide useful and efficient service in their covered position, if they are reemployed in a position under a qualifying reappointment, even if that position would not otherwise be subject to enhanced retirement provisions. To qualify for the benefits afforded under the Act, an affected individual must be certified by his or her employing agency as meeting several conditions, described below, relating to the position held when the employee incurred the qualifying injury or illness.

Effective Date

Affected individuals who incur a qualifying injury or illness on or after December 9, 2024, and who are current Federal employees are subject to the First Responder Fair RETIRE Act. The Act does not apply to employees who became injured or ill while on duty before December 9, 2024.

II. Proposed Amendments

² The Act also amends 50 U.S.C. 2152 (regarding retirement eligibility and benefits for employees of the Central Intelligence Agency) and 22 U.S.C. 4046 (regarding the Foreign Service Retirement and Disability System for employees of the Department of State). *See* 136 Stat. at 2295-2298. It also makes certain technical and conforming amendments. *Id.*

OPM proposes to amend 5 CFR parts 831 and 842 to carry out provisions of the First Responder Fair RETIRE Act, as required by the statute.

OPM specifically invites comments on whether, as a practical matter, there is any chance of applicability for CSRS employees, or whether amendments to 5 CFR part 831 should be omitted entirely to avoid confusion for agencies and employees.

Reappointment with the Same Agency

In section 3(e)(5) of the Act, Congress directed that OPM regulations ensure, to the greatest extent possible, that agency heads appoint affected employees to supervisory or administrative (covered secondary) positions related to the activities of the former covered position of the employee. Thus, the first desired objective is to place affected employees in a covered position—that is, a position covered by special retirement provisions under the normal rules.

OPM is proposing to codify this objective in §§ 831.2603 and 842.1303. Only when that objective cannot be achieved do the provisions in section 2(a) and (b) of the Act become relevant. Those provisions establish conditions under which an affected employee who is placed in a non-covered position will be deemed to be in a covered position for retirement purposes. Those provisions do not place requirements on agencies or OPM to take actions to facilitate placements in positions that meet the conditions to qualify for deemed coverage.

Qualifying Injury or Illness

To preserve enhanced retirement coverage, the Act outlines four criteria that must be met. *First*, when the employee incurred the injury or illness, the employee must be serving in a position covered by enhanced retirement provisions reserved for law enforcement officers, customs and border protection officers, firefighters, air traffic controllers, nuclear materials couriers, members of the Capitol Police, or members of the Supreme Court Police. See 5 U.S.C. 8336(c), (e), (m), and (n), and 5 U.S.C. 8412(d) and (e). These positions have one of the

following retirement codes on the Notification of Personnel Action, Standard Form 50, in the Executive Branch: 0, 6, E, L, LF, LR, M, MF, MR, O, OF, OR, Q.

Second, the covered employee must have become injured or ill while on duty as a direct result of performance of the employee's duties while in a covered position.

Third, the injury or illness must render the covered employee permanently unable to provide useful and efficient service in a covered position (as is determined by the agency that employed the covered employee when the employee incurred the injury or illness).

Fourth, the covered employee must not be eligible for immediate retirement or subject to mandatory separation based on age and service at the time of injury or illness.

In addition to these four criteria, an individual with a qualifying injury or illness must be reemployed in a position under a qualifying reappointment to qualify for benefits under the Act.

OPM proposes capturing these requirements in its definition of a "qualifying condition" under §§ 831.2602 and 842.1302. The discussion of the required agency certification also addresses these requirements in more detail.

Qualifying Reappointment

When an affected individual returns to work in a non-covered position, certain requirements must be met under the First Responder Fair RETIRE Act for a covered employee to retain enhanced retirement coverage upon reappointment to a non-covered position. Specifically, for a position to qualify for coverage under the Act, the employee must have a qualifying reappointment that meets the following four criteria.

First, the position to which the employee is reappointed must be a position covered by CSRS or FERS.

Second, the position to which the employee is reappointed must not be otherwise subject to enhanced retirement provisions (i.e., not a covered position).

Third, the position to which the employee is reappointed must be either within the same agency that employed the employee when the employee incurred the qualifying injury or illness,

or with another agency that regularly appoints individuals to supervisory or administrative (covered secondary) positions related to the activities of the former covered position of the individual.

Fourth, the reappointment must occur without a break in service of more than 3 days.

OPM proposes capturing these requirements in its definition of a “qualifying reappointment” under §§ 831.2602 and 842.1302.

Section 2 of the First Responder Fair RETIRE Act communicates the sense of Congress that Federal agencies “should ensure, to the greatest extent possible, that an individual who can no longer carry out the duties of a covered position, and is reappointed to a position in the civil service that is not a covered position, is reappointed within the same Federal agency, in the same geographic location, and at a level of pay commensurate to the position which the individual held immediately prior to such injury or illness.” The “Sense of Congress” section further states that “it is in the best national and homeland security interests of the United States for Federal agencies to retain the specialized knowledge and experience of individuals who suffer an injury or illness while serving in a covered position.” Section 2 provides guiding principles for interpreting the statute, but it does not convey authority to issue regulations to achieve the stated objectives or to take other actions not otherwise permitted by law. OPM has broad authority to regulate the CSRS and the FERS (see 5 U.S.C. 8347(a) and 8461(g)). Nonetheless, that regulatory authority is limited to regulations that are necessary to “carry out” subchapter III of chapter 83 (the CSRS law) and chapter 84 (the FERS law). Section 2 is not part of those laws.

Section 3(e)(1) of the First Responder Fair RETIRE Act states that the OPM Director “shall promulgate regulations to carry out the amendments made by subsections (a) and (b) [of section 3].” Subsections (a) and (b) of section 3 deal with amendments to the CSRS and the FERS laws. Thus the section 3(e) regulatory authority does not reach to the principles found in section 2. OPM and agencies may seek to implement the Sense of Congress to the extent

possible, but they must act within the bounds of applicable law and regulation. They must also have some authority under which the contemplated actions may be taken.

However, the Sense of Congress can be connected to the requirements in 5 U.S.C. 8151, a provision in the Federal employee workers' compensation law that provides for reemployment and retention rights for individuals who resume employment after overcoming injury or disability. OPM has authority to regulate section 8151 (see section 8151(b)). Accordingly, OPM is proposing to specifically address in §§ 353.102, 353.110, and 353.301 the application of the workers' compensation law to affected individuals under the First Responder Fair RETIRE Act. If it is not possible to reemploy the employee in a position in the same employing agency, that agency should seek OPM assistance with placing the employee in accordance with § 353.110(b).

In addition, OPM has determined that the pay retention provisions in 5 U.S.C. 5363 can be applied to an affected individual who would otherwise experience a reduction in his or her rate of basic pay upon placement in a non-covered position that is covered by a different pay schedule (see 5 CFR 536.301(a)(4)), as long as all conditions in the pay retention law and regulations are met. OPM has determined that a placement of an employee in a non-covered position due to a work-related injury or illness can be considered a qualifying "management action" (as defined in 5 CFR 536.103). OPM notes that employees with a temporary or term appointment are not eligible for pay retention under 5 U.S.C. 5363 (see 5 U.S.C. 5361(1)). OPM also notes that section 5363 applies only to employees serving in positions covered by the General Schedule or Federal Wage System after the action that results in a reduction in the employee's rate of basic pay. Independent agency pay systems may provide similar pay retention benefits.

Break in Service

To qualify for coverage under the Act, an employee's break in service between employment in the covered position and the qualifying reappointment cannot exceed 3 days. Time the employee is receiving compensation benefits from the Office of Workers'

Compensation Program (OWCP) or using leave (including leave without pay) is not considered a break in service. Under the provisions of the First Responder Fair RETIRE Act, excess leave without pay (that is, leave without pay of more than 6 months in a calendar year) is not considered a break in service for purposes of meeting the qualifying reappointment requirements under the Act. Leave without pay that exceeds 6 months in any calendar year, however, continues to not be creditable under CSRS or FERS when calculating total service for retirement benefits.

OPM proposes capturing this requirement in its definition of a “break in service,” under §§ 831.2602 and 842.1302, as well as in §§ 831.2610(a) and 842.1310(a).

Deemed Covered Position

The Act allows an employee who is in a covered position, who sustains a qualifying injury or illness, and who is appointed or reappointed to a position under a qualifying reappointment to be deemed, for retirement purposes, in a covered position while serving in the new position. That is, service in a non-covered position will be treated as service subject to enhanced retirement provisions until the employee reaches the age and service requirements for mandatory separation that applied to the former covered position.

OPM proposes codifying this language in its definition of “deemed covered,” under §§ 831.2602 and 842.1302.

Agency Certification Requirement

The Act requires that the head of the agency where the employee in a covered position incurred the qualifying injury or illness (“employing agency”) must certify that such injury or illness:

- (1) was incurred while on duty;
- (2) was a direct result of the performance of those duties;
- (3) rendered the employee permanently unable to provide useful and efficient service in the covered position; and

(4) would not preclude the individual from continuing to serve in the Federal service.

OPM proposes capturing these agency certification requirements under §§ 831.2605 and 842.1305. OPM is proposing that, for the purposes of the relevant subparts in part 831 and part 842, *agency head* would be deemed to include the designated representative of the agency head at any level within the agency. OPM recognizes that this review may require assessment of medical information and position-specific requirements so an agency head may choose to assign the certification function to a Chief Medical Officer or another agency-specific position that is well-suited to these types of determinations.

The Act requires that the injury or illness be “a direct result” of the performance of the duties of the covered position. OPM is addressing the first and second aspects of this certification through the definition of the phrase “while on duty” – the statutory phrase – to mean while performing work under the control or direction of the agency. OPM believes this would capture injuries or illnesses directly resulting from performance of duties within the scope of employment (i.e., the duties of the covered position). As discussed in the Regulatory Alternative section, OPM welcomes comment on this definition.

OPM addresses the third aspect of this certification through the definition for “useful and efficient service.” OPM proposes that an employee would be considered unable to provide useful and efficient service if the employee could not provide acceptable performance of the critical or essential elements of the covered position and also demonstrate satisfactory conduct and attendance. This is consistent with OPM’s long-term interpretation of useful and efficient service.

Declining Deemed Covered Position Treatment

Under the Act, an employee returning to work after a qualifying injury or illness who meets all requirements to retain enhanced retirement coverage in a deemed covered position may elect to decline the benefits afforded under the First Responder Fair RETIRE Act. The employee would need to affirmatively elect not to have service performed in a qualifying reappointment as

deemed covered service for purposes of these provisions. Agencies that employ eligible employees after a qualifying injury or illness must provide the employee with the opportunity to waive deemed coverage. These waivers are irrevocable.

OPM proposes outlining waiver opportunity rights under §§ 831.2607 and 842.1307.

Employee Retirement Deductions and Agency Contributions

Unless the employee waives deemed coverage under the First Responder Fair RETIRE Act, employee retirement deductions must be withheld from the employee's basic pay at the same percentage withheld for the covered position that the employee held before incurring the qualifying injury or illness. This employee deduction percentage is generally one half of one percent higher than the deduction rate applicable to employees not subject to enhanced retirement coverage. The agency must continue to contribute the full normal cost for FERS-covered employees, based on the covered position the employee occupied before incurring the qualifying injury or illness. The agency contribution for CSRS-deemed covered employees is 7.5 percent. Once the employee reaches the age and service requirements for mandatory separation that applied to the former covered position, the employee deductions must decrease to the deduction percentages applicable to the employee category listed under 5 U.S.C. 8334(c) and 8422(a)(3) typically assigned to the affected individual's non-covered position, and the agency contribution percentages must decrease to the contribution percentages applicable to the employee category listed under 5 U.S.C. 8334(c), 5 U.S.C. 8442(a)(3), and 5 CFR 841.403 typically assigned to the affected individual's non-covered position.

OPM proposes maintaining agency deductions and employee contributions for a deemed cover position under §§ 831.2609 and 842.1309.

Subsequent Transfers or Separations

Under the Act, an employee who has established entitlement to retain enhanced retirement coverage in a deemed covered position may transfer to another agency and continue to retain enhanced coverage in a subsequent position provided there is no break in service greater

than 3 days from the employee's prior covered position, and the new appointment is also a qualifying reappointment. A break in service of more than 3 days, or a transfer to a non-covered position in an agency that does not regularly appoint individuals to secondary positions related to the employee's prior covered position, terminates deemed coverage under the First Responder Fair RETIRE Act. An employee in a deemed covered position who subsequently obtains a position that the employing agency designated as covered under 5 U.S.C. 8336(c), (e), (m), or (n), or 8412(d) or (e) will no longer be covered by the provisions of the Act. The prospective termination of deemed coverage does not affect the creditability of the past service under the First Responder Fair RETIRE Act.

For law enforcement officers, firefighters, nuclear materials couriers, and customs and border protection officers, time served in a deemed covered position satisfies the direct transfer requirement from a primary/rigorous position to a secondary position under OPM's regulations, provided the transfer occurs without a break in service exceeding 3 days.

OPM proposes codifying the conditions for maintaining deemed covered treatment under §§ 831.2610 and 842.1310.

Administrative Review

Agency determinations and actions taken to implement the First Responder Fair RETIRE Act must be provided to the employee in writing and must include notice of the right to appeal the agency's decision to the Merit Systems Protection Board (MSPB). Employees may appeal to the MSPB a decision that affects their rights and interests under chapters 83 and 84 of title 5, United States Code.

OPM proposes codifying these notice and due process requirements under §§ 831.2606 and 842.1306 and §§ 831.2612 and 842.1312, respectively.

Retirement Benefits

When OPM receives an application for retirement from an employee subject to the First Responder Fair RETIRE Act, OPM will calculate the retirement benefit as if the employee were

retiring under enhanced retirement provisions under 5 U.S.C. 8336(c), (e), (m), and (n), or 8412(d) and (e), as is applicable, unless the employee filed for a waiver of coverage. For FERS retirees, this includes the application of special provisions applicable to employees in covered positions for cost-of-living adjustments and for establishing entitlement to, and computing, a FERS annuity supplement.

OPM proposes codifying requirements for retirement and benefits under §§ 831.2611 and 842.1311.

Mandatory Separation Age

Under the Act, employees who return to work in deemed covered positions after a qualifying injury or illness are not subject to the mandatory separation provisions found at 5 U.S.C. 8335 and 8425. However, once the employee attains the requisite age and service requirements normally triggering mandatory separation, retirement deductions and agency contributions revert to the levels required for employees in non-covered positions, and the employee ceases to be in a deemed covered position.

OPM proposes codifying requirements for retirement and benefits under §§ 831.2611 and 842.1311.

Pay Authorities

The First Responder Fair RETIRE Act provides that placement in a deemed covered position does not make an employee eligible for pay that may have applied to the employee in the prior covered position. An employee in a deemed covered position must meet the normally applicable requirements in the pay laws and regulations in order to receive pay under those provisions. A deemed covered position is not considered a covered position for pay purposes. For example, an employee who is a law enforcement officer as defined in 5 U.S.C. 5541(3), which links to the definitions in the retirement laws, is entitled to special base rates at GS grades 3 to 10, and an employee who is a wildland firefighter as defined in 5 U.S.C. 5332a is entitled to special base rates at GS grades 1 to 15. However, those special base rates would not apply to an

employee in a deemed covered position. Also, law enforcement availability pay (LEAP) is payable only to a criminal investigator who is a law enforcement officer as defined in 5 U.S.C. 5541(3); thus, LEAP would not be payable to an employee in a deemed covered position, since the actual position held does not meet eligibility conditions in the LEAP law. Similarly, the Border Patrol overtime supplement under 5 U.S.C. 5550 applies only to employees who are actual border patrol agents. An employee in a deemed covered position may meet the conditions to receive administratively uncontrollable overtime (AUO) pay under 5 U.S.C. 5545(c)(2), but any AUO pay received would not be retirement-creditable basic pay since such treatment is reserved for employees in a law enforcement position as defined in the retirement law (5 U.S.C. 8331(3)(D) and 5 U.S.C. 8401(4)).

OPM proposes addressing this limitation under §§ 831.2604(c) and 842.1304(c).

III. Regulatory Analysis

A. Statement of Need

Employees serving in law enforcement, firefighting, air traffic control, nuclear materials transport, or border patrol mission capacities have some of the most dangerous Federal positions. It follows that these employees in these covered positions are more likely than employees in non-covered positions to become ill or injured while on the job. The First Responder Fair RETIRE Act is designed to allow these affected individuals to maintain their Federal careers and retain enhanced retirement coverage, rather than forcing them out of Federal service through a medical retirement. Whereas, historically, covered employees may have sought to hide a job-related illness or injury based on fear of losing their position entirely, the Act provides an alternative path that allows them to maintain their original retirement benefits.

Before the enactment of the Act, eligible employees had no options but to forfeit their enhanced retirement contributions and forgo their enhanced retirement benefits, or alternatively to apply for a disability retirement, if they met the eligibility requirements under 5 U.S.C. 8337 and 8451 and forgo their Federal careers. Neither of these options allowed for eligible employees

to simultaneously enjoy a meaningful and continuous Federal career in their similar field and enjoy the enhanced benefits that they originally received.

B. Regulatory Alternatives

Because the Act requires OPM to implement the statutory retirement protections, OPM did not consider an alternative under which no regulations would be issued. OPM did, however, consider alternative approaches to certification procedures, waiver timing, treatment of Department of Labor determinations, and the interaction between deemed covered service and part 353 restoration rights. OPM invites comment on whether the proposed approach appropriately balances administrative workability, employee protections, and fidelity to the statutory text.

OPM specifically invites comment on how it should treat duty-related injuries that occur during official travel, emergency callbacks, required training, commuting exceptions, on-call response, or other duty-connected contexts outside of scheduled work hours, and whether its proposed regulatory definition of “while on duty” combined with the statutory language “as a direct result of the performance of such duties” is sufficient.

Since instances of willful misconduct and other prohibited acts fall outside the scope of the employee’s duties, injuries or illnesses incurred from those prohibited acts would not be considered a direct result of the performance of duties. Even if such an act occurs “while on duty,” an employee’s willful misconduct would sever the link needed in order for an injury or illness to directly result from the performance of the employee’s assigned duties, and thus the employee would be ineligible to benefit from the Act. This determination would be made in the course of the agency certification, as it speaks to the requirements for what can be considered a “qualifying condition.”

C. Impact

While there are approximately 220,000 federal employees who are currently subject to the CSRS or the FERS enhanced retirement provisions and who could potentially be affected by

this rule, OPM anticipates that only about 10,000 employees currently subject to enhanced retirement provisions will become injured or ill while on duty. Of these 10,000 potentially affected employees, OPM anticipates that there will only be approximately 215 employees who will be unable to secure positions in primary or secondary positions subject to enhanced retirement provisions after becoming ill or injured as part of their job duties, which would allow this affected population to otherwise retain enhanced retirement coverage under other provisions. Therefore, the estimated number of employees who will likely be subject to the First Responder Fair RETIRE Act represents less than one-tenth of one percent of the total number of employees in enhanced retirement positions. Accordingly, OPM does not anticipate this regulation will have a significant impact on the economy or have a large impact in local labor markets.

D. Costs

This proposed rule does have costs associated with it, which will primarily be incurred by employing agencies. Agencies will have to invest resources into placing employees in covered secondary positions (if possible), evaluating and certifying affected individuals and their qualifying conditions in connection with establishing deemed covered positions, and making up the difference in agency retirement contributions for the length of time affected individuals serve in their deemed covered positions. (OPM notes the costs of higher agency retirement contributions are imposed by statute, not by these regulations.)

E. Benefits

This proposed rule would enable the agencies with a law enforcement, firefighting, air traffic control, nuclear materials transport, or border patrol mission to retain employees who meet certain specialized knowledge requirements for a first responder covered position, but serve in adjacent roles in non-covered positions because they no longer satisfy the strict physical fitness requirements for a covered position. It would enhance agency retention of employees with experience in the field, expand opportunities for mentorship, and disincentivize employees who

no longer meet the requirements for a covered position from remaining in that position longer than necessary.

IV. Procedural Issues and Regulatory Review

A. Severability

OPM proposes that, if any of the provisions of this proposed rule as finalized are held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, it would be severable from its respective section(s) and not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances. For example, if a court were to invalidate any portions of this proposed rule as finalized imposing procedural requirements on agencies relating to the CSRS, the other portions of the rule—including the portions relating to the FERS—would independently remain workable and valuable. In carrying out its statutory obligations under the First Responder Fair RETIRE Act, OPM will comply with all applicable legal requirements.

B. Regulatory Review

OPM has examined the impact of this rule as required by E.O.s 12866 and 13563, which direct 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 rules that have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rulemaking does not reach that threshold but has otherwise been designated a “significant regulatory action” under section 3(f) of Executive Order 12866. This rule is not expected to be considered an Executive Order 14192 regulatory action because it imposes no more than de minimis costs.

C. Regulatory Flexibility Act

The Director of the Office of Personnel Management certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities because it only applies to Federal agencies and employees.

D. Federalism

This rulemaking will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Aug. 10, 1999), this rulemaking does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E. Civil Justice Reform

OPM has reviewed this rulemaking and has determined that this action conforms to the applicable standards set forth in Section 3(a) and (b)(2) of Executive Order 12988 (Feb. 7, 1996).

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that would impose spending costs on State, local, or tribal governments in the aggregate, or on the private sector, in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold is currently approximately \$206 million. This rulemaking will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, in excess of the threshold. Thus, no written assessment of unfunded mandates is required.

G. Paperwork Reduction Act

This regulatory action will not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects

5 CFR Part 353

Administrative practice and procedure, Government employees.

5 CFR Part 831

Customs and Border Protection officers, Firefighters, Law enforcement officers, Nuclear materials couriers, Retirement.

5 CFR Part 842

Air traffic controllers, Basic annuity, Customs and Border Protection officers, Eligibility, Firefighters, Law enforcement officers, Members of the Capitol or Supreme Court police, Nuclear materials couriers.

Signing Statement

The Director of OPM, Scott Kupor, reviewed and approved this document and has authorized the undersigned to electronically sign and submit this document to the Office of the Federal Register for publication.

Office of Personnel Management

Jerson Matias,

Federal Register Liaison.

For the reasons stated in the preamble, the Office of Personnel Management proposes to amend 5 CFR parts 353, 831, and 842 to read as follows:

PART 353—RESTORATION TO DUTY FROM UNIFORMED SERVICE OR COMPENSABLE INJURY

1. Revise the authority citation for part 353 to read as follows:

Authority: 38 U.S.C. 4301 et seq.; 5 U.S.C. 8151; sec. 3(e)(5), Pub. L. 117-225, 136 Stat. 2298 (5 U.S.C. 8336 note).

Subpart A—General Provisions

2. Amend § 353.102 by revising the definition for “Partially recovered” to read as follows:

§ 353.102 Definitions

* * * * *

Partially recovered means an injured employee, though not ready to resume the full range of his or her regular duties, has recovered sufficiently to return to part-time or light duty or to another position with less demanding physical requirements. A partially recovered employee may fully recover and may be entitled to the rights accorded individuals who fully recover.

* * * * *

3. Amend § 353.110 by revising paragraph (b) to read as follows:

§ 353.110 OPM placement assistance.

* * * * *

(b) *Employee returning from compensable injury, including an employee who is reappointed to a position in the executive branch under subpart Z of part 831 or subpart M of part 842 of this chapter.* Unless otherwise specified, OPM will provide placement assistance to an employee with restoration rights in the executive, legislative, or judicial branches who cannot be placed in his or her former agency and who either has competitive status or is eligible to acquire it under 5 U.S.C. 3304(i). If the employee's agency is abolished and its functions are not transferred, or it is not possible for the employee to be restored in his or her former agency, the employee is eligible for placement assistance under the Interagency Career Transition Assistance Plan (ICTAP) under part 330, subpart G, of this chapter.

Subpart C—Compensable Injury

4. Amend § 353.301 by revising paragraphs (c) and (d) to read as follows:

§ 353.301 Restoration rights.

* * * * *

(c) *Physically disqualified.* An individual who is physically disqualified for the former position or equivalent because of a compensable injury, is entitled to be placed in another position for which qualified that will provide the employee with the same status, and pay, or the nearest approximation thereof, consistent with the circumstances in each case. For purposes of

this section, “affected individuals,” as defined in § 831.2602 or 842.1302, are deemed to be physically disqualified. This right is agencywide and applies for a period of 1 year from the date eligibility for compensation begins. After 1 year, the individual is entitled to the rights accorded individuals who fully or partially recover, as applicable.

(d) *Partially recovered.* Agencies must make every effort to restore in the local commuting area, according to the circumstances in each case, an individual who has partially recovered from a compensable injury and who is able to return to limited duty or other position for which the individual is qualified. This includes affected individuals covered under subpart Z of part 831 or subpart M of part 842 of this chapter. At a minimum, this would mean treating these employees substantially the same as other handicapped individuals under the Rehabilitation Act of 1973, as amended. (See 29 U.S.C. 791(b) and 794.) If the individual fully recovers, he or she is entitled to be considered for the position held at the time of injury, or an equivalent one. A partially recovered employee is expected to seek reemployment as soon as he or she is able.

PART 831—RETIREMENT

5. Revise the authority citation for part 831 to read as follows:

Authority: 5 U.S.C. 8347. Sec. 831.102 also issued under 5 U.S.C. 8334. Sec. 831.106 also issued under 5 U.S.C. 552a. Sec. 831.114 also issued under sec. 1313(b)(5), Pub. L. 107-296, 116 Stat. 2296. Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2). Sec. 831.201(g) also issued under secs. 11202(f), 11232(e), and 11246(b), Pub. L. 105-33, 111 Stat. 251; sec. 7(e), Pub. L. 105-274, 112 Stat. 2427. Sec. 831.201(i) also issued under secs. 3 and 7(c), Pub. L. 105-274, 112 Stat. 2419. Sec. 831.202 also issued under sec. 111, Pub. L. 99-500, 100 Stat. 1783; sec. 1, Pub. L. 110-279, 122 Stat. 2604. Sec. 831.204 also issued under sec. 102(e), Pub. L. 104-8, 109 Stat. 102, as amended by sec. 153, Pub. L. 104-134, 110 Stat. 1321. Sec. 831.205 also issued under sec. 2207, Pub. L. 106-265, 114 Stat. 784. Sec. 831.206 also issued under sec. 1622(b), Pub. L. 104-106, 110 Stat. 521. Sec. 831.301 also issued under sec. 2203, Pub. L. 106-265, 114 Stat. 780. Sec. 831.303 also issued under sec. 2203, Pub. L. 106-265, 114 Stat. 780.

Sec. 831.502 also issued under E.O. 11228, 78 FR 7739, 3 CFR, 1965 Comp. p. 317. Sec. 831.682 also issued under sec. 201(d), Pub. L. 99-251, 100 Stat. 23. Sec. 831.912 also issued under app. C, tit. VI, sec. 636, Pub. L. 106-554, 114 Stat. 2763A-164. Subpart P also issued under div. E, title V, sec. 535, Pub. L. 110-161, 121 Stat. 2075. Subpart V also issued under tit. VI, sec. 6001, Pub. L. 100-203, 101 Stat. 1330-275. Sec. 831.2203 also issued under sec. 7001(a)(4), Pub. L. 101-508, 104 Stat. 1388-328. Subpart Z also issued under 5 U.S.C. 8336(c); sec. (3)(e)(f), Pub. L. 117-225, 136 Stat. 2298.

6. Add subpart Z to read as follows:

Subpart Z—Special Retirement Provisions for Certain Duty-Related Illnesses or Injuries

Sec.

831.2601 Scope.

831.2602 Definitions.

831.2603 Reappointment to a covered position.

831.2604 Continuation of enhanced retirement coverage in a deemed covered position.

831.2605 Agency certification.

831.2606 Notice.

831.2607 Waiver.

831.2608 Reappointment to a secondary position.

831.2609 Employee deductions and agency contributions.

831.2610 Post-qualifying return treatment and loss of deemed coverage.

831.2611 Retirement benefits.

831.2612 Appeal rights.

§ 831.2601 Scope.

The regulations in this subpart apply to law enforcement officers and firefighters (as those terms are defined in subpart I of this part), nuclear materials couriers (as defined in § 831.802), customs and border protection officers (as defined in § 831.1602), air traffic

controllers, and members of the Capitol Police and Supreme Court Police who fall under the Civil Service Retirement System and who have incurred a qualifying injury or illness while on duty as a direct result of the performance of their duties on or after December 9, 2024. The regulations address the employing agency's obligation, to the greatest extent possible, to place such an employee in a supervisory or administrative position covered by the special enhanced retirement provisions for such positions. The regulations further address the conditions under which an employee can be placed in a non-covered position but have deemed coverage under the special enhanced retirement provisions, if placement in a covered position is not possible. Treatment as serving in a deemed covered position under this subpart applies only for retirement credit, deduction, contribution, and annuity computation purposes and does not confer eligibility for pay-related laws or regulations applicable to an actual covered position.

§ 831.2602 Definitions

In this subpart—

Affected individual means an employee who was serving in a covered position when the employee incurred a qualifying injury or illness while on duty as a direct result of the performance of those duties that permanently rendered the employee unable to provide useful and efficient service in the individual's prior covered position (as certified by the employing agency under § 831.2605).

Agency means an executive branch agency as defined under 5 U.S.C. 105; a legislative branch agency; a judicial branch agency; and the U.S. Postal Service and Postal Regulatory Commission.

Agency head has the same meaning as that term is defined under § 831.902 for law enforcement officers and firefighters; § 831.1602 for customs and border protection officers; § 831.802 for nuclear materials couriers; and *agency head* means the Capitol Police Board for members of the Capitol Police and the Marshal of the Supreme Court of the United States for members of the Supreme Court Police. For the purposes of this subpart, *agency head* is also

deemed to include the designated representative of the *agency head*, as defined in the first sentence of the definition, at any level within the agency.

Break in service means a break in service lasting more than 3 days. A period where an affected individual is receiving benefits under the Federal Employees' Compensation Act (FECA) is not considered a break in service for purposes of this subpart.

CSRS means the Civil Service Retirement System as described in 5 U.S.C. chapter 83, subchapter III.

Covered position means a position subject to enhanced retirement coverage as a law enforcement officer, customs and border protection officer, firefighter, air traffic controller, nuclear materials courier (as those terms are defined under 5 U.S.C. 8331), or member of the Capitol Police or Supreme Court Police.

Deemed covered position means a non-covered position, as defined under this section, that is subject to enhanced retirement coverage under this subpart.

Employing agency means the agency that employed the affected individual in a covered position when the affected individual incurred a qualifying injury or illness.

Enhanced retirement coverage means coverage subject to higher employee deductions and agency contributions under 5 U.S.C. 8334(c); higher accrual rates under 5 U.S.C. 8339(d), (q), and (r); early immediate retirement eligibility under 5 U.S.C. 8336(c), (e), (m), and (n); and mandatory separation under 5 U.S.C. 8335.

Non-covered position means a position covered under the Civil Service Retirement System (CSRS) that is not subject to enhanced retirement coverage and is not a primary or secondary position as a law enforcement officer, customs and border protection officer, firefighter, air traffic controller, or nuclear materials courier (as those terms are defined under this part), nor a member of the Capitol Police or Supreme Court Police.

Office means the Office of Personnel Management.

Prior covered position means the covered position the affected individual held at the time of incurring the qualifying condition.

Qualifying condition means an injury or illness an employing agency determines was incurred by an employee in a covered position—

- (1) while on duty;
- (2) as a direct result of the performance of those duties;
- (3) that renders the employee permanently unable to provide useful and efficient service in the covered position; and
- (4) that occurred prior to the date the employee otherwise would have met the age and service requirements necessary to be eligible for immediate retirement under 5 U.S.C. 8336(c), (e), (m), or (n), as applicable, or would have otherwise been subject to mandatory separation under 5 U.S.C. 8335(a)-(d), as applicable.

Qualifying reappointment means an appointment of an affected individual to a non-covered position:

- (1) within the same employing agency as the prior covered position, or within an agency that regularly appoints employees to secondary positions related to the prior covered position; and
- (2) without a break in service; but
- (3) does not include an appointment to a secondary position that is otherwise subject to coverage under § 831.804, 831.904, or 831.1604.

Reappointing agency means the agency that appointed an affected individual to a qualifying reappointment after the affected individual incurred a qualifying condition.

Related secondary position means a secondary position that is related to the activities of an affected individual's former covered position.

Secondary position has the same meaning as the term is defined under § 831.802 for nuclear materials couriers; § 831.902 for law enforcement officers and firefighters; and §

831.1602 for customs and border protection officers. A secondary position is a position that qualifies as a covered position based on qualifying supervisory or administrative duties.

Useful and efficient service means acceptable performance of the critical or essential elements of the position and satisfactory conduct and attendance.

While on duty means while performing work under the control or direction of the agency. *While on duty* does not mean a period during which a covered employee is required to generally and reasonably be accessible to perform unscheduled work, such as a period of on-call status or non-work availability hours.

§ 831.2603 Reappointment to a covered position.

(a) If an affected individual incurs a qualifying condition, the affected individual's employing agency must, to the greatest extent possible and in accordance with applicable statutes and regulations, reappoint the individual to a related secondary position within the employing agency.

(b) If it is not possible to offer the individual placement in such a related secondary position, the employing agency must notify the affected individual of the reasons why such placement in such a related secondary position is not possible and provide information on the conditions under which the employee may qualify for continuation of enhanced retirement coverage in a non-covered position (that is, in a deemed covered position).

§ 831.2604 Continuation of enhanced retirement coverage in a deemed covered position.

(a) An affected individual is entitled to continued coverage under enhanced retirement coverage provisions while employed in a deemed covered position, as provided in this subpart.

(b) The affected individual will be subject to the same employee deductions and agency contributions applicable under 5 U.S.C. 8334 as under the affected individual's prior covered position.

(c) A deemed covered position is not considered a covered position for pay purposes.

§ 831.2605 Agency certification.

(a) An affected individual's employing agency must provide, upon the request of the reappointing agency or the affected individual, certification that the employee's injury or illness is a qualifying condition and would not preclude the individual from continuing to serve in the Federal service.

(b) For purposes of providing a certification that an employee has a qualifying condition, the employing agency's head (or his or her designee) may consider a determination by the Department of Labor (for purposes of determining entitlement to FECA compensation) that an injury or illness was incurred in the performance of the employee's duties, but the employing agency must independently determine whether the employee is permanently unable to serve in the covered position and not precluded from continued Federal service.

§ 831.2606 Notice.

Upon an affected individual's reappointment to a qualifying reappointment, the reappointing agency must provide notice to the affected individual of the following:

- (a) That he or she qualifies for coverage under 5 U.S.C. 8336(c)(3) and § 831.2604;
- (b) That he or she may waive coverage in accordance with § 831.2607;
- (c) The time limit for waiving coverage; and
- (d) That, if the affected individual elects to waive coverage under § 831.2607, the individual will not be entitled to retain enhanced retirement coverage.

§ 831.2607 Waiver.

(a) An affected individual appointed to a qualifying reappointment may elect to waive the continuation of enhanced retirement coverage under § 831.2604 by submitting a waiver to the reappointing agency. Such a waiver renders any qualifying reappointment that would have otherwise been a deemed covered position a non-covered position for purposes of this subpart, and thus not subject to enhanced retirement coverage under § 831.2604.

(b) To waive coverage under paragraph (a), an affected individual must file a written election with his or her reappointing agency within 60 days after receiving the notice required under § 831.2606, and such waiver is irrevocable.

§ 831.2608 Reappointment to a secondary position.

If an affected individual is transferred after incurring a qualifying condition to a secondary position that entitles the affected individual to secondary coverage under § 831.804, 831.904, or 831.1604, then the individual is no longer eligible for coverage under this subpart.

§ 831.2609 Employee deductions and agency contributions.

(a) An affected individual in a deemed covered position, who has not otherwise waived continuation of enhanced retirement coverage, is deemed to have consented to the retirement deductions that apply to the deemed covered position.

(b) The reappointing agency employing the affected individual in a deemed covered position is responsible for paying the agency contributions in an amount equal to the agency contributions required under 5 U.S.C. 8334(a) for the affected individual's prior covered position.

(c) Employee deductions and agency contributions for the deemed covered position revert to the amount applicable to an employee in a non-covered position under 5 U.S.C. 8334(a) on the first pay period that is after the first day of the month the employee in the deemed covered position meets the age and service requirements for mandatory separation from the prior covered position under 5 U.S.C. 8335(a)-(d), as applicable.

§ 831.2610 Post-qualifying return treatment and loss of deemed coverage.

(a) *Breaks in service.* An employee serving in a deemed covered position loses deemed coverage if there is a break in service that exceeds 3 days. Time the employee is receiving compensation benefits under 5 U.S.C. chapter 81, subchapter I as a result of an injury incurred by the employee in the performance of duty or using leave (including leave without pay) is not considered a break in service.

(b) *Agency transfers.* The employee retains deemed coverage upon transfer, without a break in service, to another agency provided the new agency is one that regularly appoints individuals to secondary positions related to the employee's prior covered position occupied when the employee incurred the qualifying condition.

(c) *Agency details.* An employee retains deemed coverage if detailed or temporarily promoted to a position that is not a secondary position related to the activities of the former covered position.

(d) *Recovery.* (1) An employee in a deemed covered position loses coverage under this subpart if subsequently employed in a covered position. Enhanced retirement coverage is determined based on the new covered position.

(2) An employee in a deemed covered position who transfers directly, with no break in service, from a deemed covered position to a secondary law enforcement officer, firefighter, air traffic controller, nuclear materials courier, or customs and border protection officer position satisfies the direct transfer requirement under §§ 831.804, 831.904, and 831.1604 for purposes of determining entitlement to secondary coverage under these provisions.

(e) *No restoration of lost coverage.* Once eligibility for deemed coverage under this subpart is lost, it cannot be restored, unless the employee meets the eligibility requirements of § 831.2604 based on a new qualifying condition separate from the original injury or illness incurred.

§ 831.2611 Retirement benefits.

(a) *Mandatory separation.* Employees in deemed covered positions are not subject to the mandatory separation (and corresponding exemptions) provisions under 5 U.S.C. 8335.

(b) *Retirement computation.* Service in a deemed covered position is considered covered service in the calculation of retirement benefits under 5 U.S.C. 8339.

(c) *Reemployed annuitants.* (1) For reemployed annuitants whose separation for retirement was based on mandatory separation from a covered or deemed covered position,

service as a reemployed annuitant must be treated as non-covered service for purposes of this subpart.

(2) For reemployed annuitants whose separation for retirement was not based on mandatory separation, service as a reemployed annuitant in a deemed covered position is covered under enhanced retirement provisions. A reemployed annuitant in a covered position who incurs a qualifying condition and is appointed to a qualifying reappointment in a non-covered position may be entitled to coverage under § 831.2604 provided the reemployed annuitant meets the eligibility requirements provided under this subpart.

§ 831.2612 Appeal rights.

(a) *Denial of qualifying condition.* If the employing agency determines that the employee's injury or illness does not meet the criteria necessary to be a qualifying condition for purposes of this subpart, the employing agency must inform the reappointing agency and employee in writing of that determination and must include notice of the employee's right to appeal the employing agency's determination to the U.S. Merit Systems Protection Board.

(b) *Denial of deemed coverage.* If, after an employing agency provides certification to a reappointing agency of the employee's qualifying condition under § 831.2605, and the reappointing agency denies treatment of the employee's appointment in a non-covered position as a deemed covered position, the employee may appeal the reappointing agency's denial of deemed coverage to the U.S. Merit Systems Protection Board.

(c) *Computation of benefits.* OPM's initial and final decisions issued with respect to the computation of an affected individual's retirement benefits under this subpart are appealable consistent with the provisions in §§ 831.109 and 831.110.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

7. Revise the authority citation for part 842 to read as follows:

Authority: 5 U.S.C. 8461(g). Sec. 842.104 also issued under sec. 3, Pub. L. 105-274, 112 Stat. 2423. Sec. 842.105 also issued under 7701(b)(2). Sec. 842.106 also issued under sec. 102(e),

Pub. L. 104-8, 109 Stat. 102, as amended by sec. 153, Pub. L. 104-134, 110 Stat. 1321-102. Sec. 842.107 also issued under secs. 11202(f), 11232(e), and 11246(b), Pub. L. 105-33, 111 Stat. 251; sec. 7(e), Pub. L. 105-274, 112 Stat. 2427. Sec. 842.108 also issued under sec. 7(e), Pub. L. 105-274, 112 Stat. 2427. Sec. 842.109 also issued under sec. 1622, Pub. L. 104-106, 110 Stat. 521. Sec. 842.110 also issued under tit. VIII, sec. 111, Pub. L. 99-500, 100 Stat. 1783-348; sec. 1, Pub. L. 110-279, 122 Stat. 2604. Sec. 842.208 also issued under div. E., title V, sec. 535, Pub. L. 110-161, 121 Stat. 2075. Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B). Secs. 842.304 and 842.305 also issued under div A, tit. III, sec. 321 of Pub. L. 107-228, 116 Stat. 1380. Sec. 842.707 also issued under tit. VI, sec. 6001, Pub. L. 100-203, 101 Stat. 1300-275. Sec. 842.703 also issued under sec. 7001 of Pub. L. 101-508, 104 Stat. 1388-328. Sec. 842.708 also issued under tit. IV, sec. 4005, Pub. L. 101-239, 103 Stat. 235, and sec. 7001 of Pub. L. 101-508, 104 Stat. 1388-328. Sec. 842.808 also issued under 5 U.S.C. 1104. Sec. 842.810 also issued under Appendix C, tit. VI, sec. 636, Pub. L. 106-554 at 114 Stat. 2763A-164. Sec. 842.811 also issued under tit. II, sec. 226(c)(2), Pub. Law 108-176, 117 Stat. 2530. Subpart J also issued under div. E, tit. V, sec. 535, Pub. L. 110-161, 121 Stat. 2075. Subpart M also issued under 5 U.S.C. 8336(c) and 8412(d); sec. 3(e)-(f), Pub. L. 117-225, 136 Stat. 2298 (5 U.S.C. 8336 note).

8. Add subpart M to read as follows:

Subpart M—Special Retirement Provisions for Certain Duty-Related Illnesses or Injuries

Sec.

842.1301 Scope.

842.1302 Definitions.

842.1303 Reappointment to a covered position.

842.1304 Continuation of enhanced retirement coverage in a deemed covered position.

842.1305 Agency certification.

842.1306 Notice.

842.1307 Waiver.

842.1308 Reappointment to a secondary position.

842.1309 Employee deductions and agency contributions.

842.1310 Post-qualifying return treatment and loss of deemed coverage.

842.1311 Retirement benefits.

842.1312 Appeal rights.

§ 842.1301 Scope.

The regulations in this subpart apply to law enforcement officers, firefighters, nuclear materials couriers, customs and border protection officers, air traffic controllers, and members of the Capitol Police and Supreme Court Police (as those terms are defined under this part), who fall under the Federal Employees Retirement System and who have incurred a qualifying injury or illness while on duty as a direct result of the performance of their duties on or after December 9, 2024. The regulations address the employing agency's obligation, to the greatest extent possible, to place such an employee in a supervisory or administrative position covered by the special enhanced retirement provisions for such positions. The regulations further address the conditions under which an employee can be placed in a non-covered position but have deemed coverage under the special enhanced retirement provisions, if placement in a covered position is not possible. Treatment as serving in a deemed covered position under this subpart applies only for retirement credit, deduction, contribution, and annuity computation purposes and does not confer eligibility for pay-related laws or regulations applicable to an actual covered position.

§ 842.1302 Definitions.

In this subpart—

Affected individual means an employee who was serving in a covered position when the employee incurred a qualifying injury or illness while on duty as a direct result of the performance of those duties that permanently rendered the employee unable to provide useful and efficient service in the individual's prior covered position (as certified by the employing agency under § 842.1305).

Agency means an executive branch agency as defined under 5 U.S.C. 105; a legislative branch agency; a judicial branch agency; and the U.S. Postal Service and Postal Regulatory Commission.

Agency head has the same meaning as that term is defined under § 842.802 for law enforcement officers, firefighters, and air traffic controllers; § 842.902 for nuclear materials couriers; § 842.1002 for customs and border protection officers; and *agency head* means the Capitol Police Board for members of the Capitol Police and the Marshal of the Supreme Court of the United States for members of the Supreme Court Police. For the purposes of this subpart, *agency head* is also deemed to include the designated representative of the *agency head*, as defined in the first sentence of the definition, at any level within the agency.

Break in service means a break in service lasting more than 3 days. A period where an affected individual is receiving benefits under the Federal Employees' Compensation Act (FECA) is not considered a break in service for purposes of this subpart.

Covered position means a position subject to enhanced retirement coverage as a law enforcement officer, customs and border protection officer, firefighter, air traffic controller, nuclear materials courier (as those terms are defined under 5 U.S.C. 8401), or member of the Capitol Police or Supreme Court Police.

Deemed covered position means a non-covered position, as defined under this section, that is subject to enhanced retirement coverage under this subpart.

Employing agency means the agency that employed the affected individual in a covered position when the affected individual incurred a qualifying injury or illness.

Enhanced retirement coverage means coverage subject to higher employee deductions and agency contributions under 5 U.S.C. 8422(a) and 8423; higher accrual rates under 5 U.S.C. 8415(e) and (f); early immediate retirement eligibility under 5 U.S.C. 8412(d) and (e); and mandatory separation under 5 U.S.C. 8425.

FERS means the Federal Employees' Retirement System as described in 5 U.S.C. chapter 84.

Non-covered position means a position covered under the Federal Employees' Retirement System (FERS) that is not subject to enhanced retirement coverage and is not a primary or secondary position as a law enforcement officer, customs and border protection officer, firefighter, air traffic controller, or nuclear materials courier (as those terms are defined under this part), nor a member of the Capitol Police or Supreme Court Police.

Office means the Office of Personnel Management.

Prior covered position means the covered position the affected individual held at the time of incurring the qualifying condition.

Qualifying condition means an injury or illness an employing agency determines was incurred by an employee in a covered position—

- (1) while on duty;
- (2) as a direct result of the performance of those duties;
- (3) that renders the employee permanently unable to provide useful and efficient service in the covered position; and
- (4) that occurred prior to the date the employee otherwise would have met the age and service requirements necessary to be eligible for immediate retirement under 5 U.S.C. 8412(d) and (e), as applicable, or would have otherwise been subject to mandatory separation under 5 U.S.C. 8425(a)-(d), as applicable.

Qualifying reappointment means an appointment of an affected individual to a non-covered position:

- (1) within the same employing agency as the prior covered position, or within an agency that regularly appoints employees to secondary positions related to the prior covered position; and
- (2) without a break in service; but

(3) does not include an appointment to a secondary position that is otherwise subject to coverage under § 842.803, 842.903, or 842.1003.

Reappointing agency means the agency that appointed an affected individual to a qualifying reappointment after the affected individual incurred a qualifying condition.

Related secondary position means a secondary position that is related to the activities of an affected individual's former covered position.

Secondary position has the same meaning as the term is defined under § 842.802 for law enforcement officers, firefighters, and air traffic controllers; § 842.1002 for customs and border protection officers; and § 842.902 for nuclear materials couriers. A secondary position is a position that qualifies as a covered position based on qualifying supervisory or administrative duties.

Useful and efficient service means acceptable performance of the critical or essential elements of the position and satisfactory conduct and attendance.

While on duty means while performing work under the control or direction of the agency. *While on duty* does not mean a period during which a covered employee is required to generally and reasonably be accessible to perform unscheduled work, such as a period of on-call status or non-work availability hours.

§ 842.1303 Reappointment to a covered position.

(a) If an affected individual incurs a qualifying condition, the affected individual's employing agency must, to the greatest extent possible and in accordance with applicable statutes and regulations, reappoint the individual to a related secondary position within the employing agency.

(b) If it is not possible to offer the individual placement in such a related secondary position, the employing agency must notify the affected individual of the reasons why such placement in such a related secondary position is not possible and provide information on the

conditions under which the employee may qualify for continuation of enhanced retirement coverage in a non-covered position (that is, in a deemed covered position).

§ 842.1304 Continuation of enhanced retirement coverage in a deemed covered position.

(a) An affected individual is entitled to continued coverage under enhanced retirement coverage provisions while employed in a deemed covered position, as provided in this subpart.

(b) The affected individual will be subject to the same employee deductions and agency contributions applicable under 5 U.S.C. 8422 and 8423 as under the affected individual's prior covered position.

(c) A deemed covered position is not considered a covered position for pay purposes.

§ 842.1305 Agency certification.

(a) An affected individual's employing agency must provide, upon the request of the reappointing agency or the affected individual, certification that the employee's injury or illness is a qualifying condition and would not preclude the individual from continuing to serve in the Federal service.

(b) For purposes of providing a certification that an employee has a qualifying condition, the employing agency's head (or his or her designee) may consider a determination by the Department of Labor (for purposes of determining entitlement to FECA compensation) that an injury or illness was incurred in the performance of the employee's duties, but the employing agency must independently determine whether the employee is permanently unable to serve in the covered position and not precluded from continued Federal service.

§ 842.1306 Notice.

Upon an affected individual's reappointment to a qualifying reappointment, the reappointing agency must provide notice to the affected individual of the following:

- (a) That he or she qualifies for coverage under 5 U.S.C. 8412(d)(2) and § 842.1304;
- (b) That he or she may waive coverage in accordance with § 842.1307;
- (c) The time limit for waiving coverage; and

(d) That, if the affected individual elects to waive coverage under § 842.1307, the individual will not be entitled to retain enhanced retirement coverage.

§ 842.1307 Waiver.

(a) An affected individual appointed to a qualifying reappointment may elect to waive the continuation of enhanced retirement coverage under § 842.1304 by submitting a waiver to the reappointing agency. Such a waiver renders any qualifying reappointment that would have otherwise been a deemed covered position a non-covered position for purposes of this subpart, and thus not subject to enhanced retirement coverage under § 842.1304.

(b) To waive coverage under paragraph (a), an affected individual must file a written election with his or her reappointing agency within 60 days after receiving the notice required under § 842.1306, and such waiver is irrevocable.

§ 842.1308 Reappointment to a secondary position.

If an affected individual is transferred after incurring a qualifying condition to a secondary position that entitles the affected individual to secondary coverage under § 842.803, 842.903, or 842.1003, then the individual is no longer eligible for coverage under this subpart.

§ 842.1309 Employee deductions and agency contributions.

(a) An affected individual in a deemed covered position, who has not otherwise waived continuation of enhanced retirement coverage, is deemed to have consented to the retirement deductions that apply to the deemed covered position.

(b) The reappointing agency employing the affected individual in a deemed covered position is responsible for paying the agency contributions in an amount equal to the agency contributions required under 5 U.S.C. 8423 for the affected individual's prior covered position.

(c) Employee deductions and agency contributions for the deemed covered position revert to the amount applicable to an employee in a non-covered position under 5 U.S.C. 8422-8423 on the first pay period that is after the first day of the month the employee in the deemed

covered position meets the age and service requirements for mandatory separation from the prior covered position under 5 U.S.C. 8425(a)-(d), as applicable.

§ 842.1310 Post-qualifying return treatment and loss of deemed coverage.

(a) *Breaks in service.* An employee serving in a deemed covered position loses deemed coverage if there is a break in service that exceeds 3 days. Time the employee is receiving compensation benefits under 5 U.S.C. chapter 81, subchapter I as a result of an injury incurred by the employee in the performance of duty or using leave (including leave without pay) is not considered a break in service.

(b) *Agency transfers.* The employee retains deemed coverage upon transfer, without a break in service, to another agency provided the new agency is one that regularly appoints individuals to secondary positions related to the employee's prior covered position occupied when the employee incurred the qualifying condition.

(c) *Agency details.* An employee retains deemed coverage if detailed or temporarily promoted to a position that is not a secondary position related to the activities of the former covered position.

(d) *Recovery.* (1) An employee in a deemed covered position loses coverage under this subpart if subsequently employed in a covered position. Enhanced retirement coverage is determined based on the new covered position.

(2) An employee in a deemed covered position who transfers directly, with no break in service, from a deemed covered position to a secondary law enforcement officer, firefighter, air traffic controller, nuclear materials courier, or customs and border protection officer position satisfies the direct transfer requirement under §§ 842.803, 842.903, and 842.1003 for purposes of determining entitlement to secondary coverage under these provisions.

(e) *No restoration of lost coverage.* Once eligibility for deemed coverage under this subpart is lost, it cannot be restored, unless the employee meets the eligibility requirements of §

842.1304 based on a new qualifying condition separate from the original injury or illness incurred.

§ 842.1311 Retirement benefits.

(a) *Mandatory separation.* Employees in deemed covered positions are not subject to the mandatory separation (and corresponding exemptions) provisions under 5 U.S.C. 8425.

(b) *Retirement computation.* Service in a deemed covered position is considered covered service in the calculation of retirement benefits under 5 U.S.C. 8415.

(c) *Reemployed annuitants.* (1) For reemployed annuitants whose separation for retirement was based on mandatory separation from a covered or deemed covered position, service as a reemployed annuitant must be treated as non-covered service for purposes of this subpart.

(2) For reemployed annuitants whose separation for retirement was not based on mandatory separation, service as a reemployed annuitant in a deemed covered position is covered under enhanced retirement provisions. A reemployed annuitant in a covered position who incurs a qualifying condition and is appointed to a qualifying reappointment in a non-covered position may be entitled to coverage under § 842.1304 provided the reemployed annuitant meets the eligibility requirements provided under this subpart.

§ 842.1312 Appeal rights.

(a) *Denial of qualifying condition.* If the employing agency determines that the employee's injury or illness does not meet the criteria necessary to be a qualifying condition for purposes of this subpart, the employing agency must inform the reappointing agency and employee in writing of that determination and must include notice of the employee's right to appeal the employing agency's determination to the U.S. Merit Systems Protection Board.

(b) *Denial of deemed coverage.* If, after an employing agency provides certification to a reappointing agency of the employee's qualifying condition under § 842.1305, and the reappointing agency denies treatment of the employee's appointment in a non-covered position

as a deemed covered position, the employee may appeal the reappointing agency's denial of deemed coverage to the U.S. Merit Systems Protection Board.

(c) *Computation of benefits.* OPM's initial and final decisions issued with respect to the computation of an affected individual's retirement benefits under this subpart are appealable consistent with the provisions in §§ 841.306-308.

[FR Doc. 2026-14751 Filed: 7/21/2026 8:45 am; Publication Date: 7/22/2026]