

# Rules and Regulations

Federal Register

Vol. 68, No. 11

Thursday, January 16, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

**5 CFR Parts 831, 837, 842, 843, 844,  
and 847**

**RIN 3206-AJ72**

### Retirement Coverage and Service Credit Elections Available to Current and Former Nonappropriated Fund Employees

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Interim rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to implement the civilian retirement provisions of the National Defense Authorization Act for Fiscal Year 2002. These regulations establish procedures whereby Federal employees may elect to use service they performed for a Nonappropriated Fund Instrumentality (NAFI) of the Department of Defense or Coast Guard to qualify for an immediate retirement under the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS). These regulations also establish the methodology for computing the CSRS or FERS annuity when employees elect to use NAFI service to qualify for immediate CSRS or FERS retirement.

**DATES:** Interim rules effective December 28, 2001, comments must be received on or before March 17, 2003.

**ADDRESSES:** Send or deliver comments to Mary Ellen Wilson, Chief, Retirement Policy Center; Retirement and Insurance Service; Office of Personnel Management; 1900 E Street NW., Washington DC 20415-3200, FAX (202) 606-0990, or e-mail them to [combox@opm.gov](mailto:combox@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** Jim Giuseppe, (202) 606-0299.

## SUPPLEMENTARY INFORMATION:

### 1. Overview

The President signed into law the National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, on December 28, 2001. Sections 1131 and 1132 of that law amend existing provisions of the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) relating to service with a Department of Defense (DoD) or Coast Guard Nonappropriated Fund Instrumentality (NAFI). Section 1131 amends rules relating to portability of retirement coverage when employees move from NAFI positions to civil service positions and vice versa. Section 1132 amends rules relating to service credit for NAFI service under CSRS and FERS.

These interim regulations amend current regulations that define a qualifying move from DoD or Coast Guard NAFI positions to civil service positions and vice versa. In addition, these interim regulations add two subparts to 5 CFR part 847. Subpart H describes how employees may elect to credit NAFI service to qualify for immediate CSRS or FERS retirement. Subpart I describes how such an election will affect the computation of the CSRS or FERS annuity benefit.

A qualifying move from a DoD or Coast Guard NAFI position to a civil service position allows an employee to elect to continue NAFI retirement coverage in the civil service position. Similarly, a qualifying move from a civil service position to a DoD or Coast Guard NAFI position allows an employee to elect to continue civil service retirement coverage in the NAFI position. As originally defined, for a move to be considered qualifying, among other requirements, employees had to be vested in the retirement plan of the position they were leaving. Section 1131 of Public Law 107-107 eliminates that vesting requirement for moves that occur on or after December 28, 2001.

Section 1132 of Public Law 107-107 allows CSRS and FERS employees to use NAFI service to qualify for immediate retirement. However, crediting NAFI service under Public Law 107-107 will not result in higher annuity benefits. The annuities of employees electing to use NAFI service

to qualify for immediate retirement must be reduced to ensure that there will be no long-term cost to the Retirement Fund. The annuities payable after this reduction will be actuarially equivalent to the present value of the deferred annuities employees would receive if they simply left Government service and didn't use the NAFI time to qualify for an immediate retirement.

Section 1132 has no effect on previous laws that allow credit for certain NAFI service. Public Law 104-106, approved February 10, 1996, allowed certain FERS employees to elect retirement credit for their NAFI service. Public Law 99-638, enacted on November 10, 1986, allowed CSRS employees to credit certain NAFI service performed between June 19, 1952, and December 31, 1965. NAFI service creditable under either of those laws remains creditable under the provisions of those laws.

### 2. Qualifying Moves

We have amended 5 CFR 847.202 to reflect the new definition of a qualifying move. An employment move on or after December 28, 2001, from a covered NAFI position to a covered civil service position is a qualifying move allowing the employee to elect to continue the NAFI retirement coverage if:

- The employee has not had a prior opportunity to elect to continue NAFI retirement coverage;
- The employee has moved from a covered NAFI position within DoD or the Coast Guard to any covered civil service position; and
- The employee has moved to the covered civil service position not more than 1 year after separating from the covered NAFI position.

Likewise, an employment move on or after December 28, 2001, from a covered civil service position to a covered NAFI position is a qualifying move allowing the employee to elect to continue CSRS, CSRS Offset, or FERS retirement coverage if:

- The employee has not had a prior opportunity to elect to continue CSRS, CSRS Offset, or FERS retirement;
- The employee has moved from any covered civil service position to a covered NAFI position within DoD or the Coast Guard; and
- The employee has moved to the covered NAFI position not more than 1 year after separating from the covered civil service position.