

§ 844.106 Disability annuities which include credit for service with a nonappropriated fund instrumentality.

A disability annuity that includes credit for service with a nonappropriated fund instrumentality performed after December 31, 1965, based on an election under 5 CFR part 847, subpart D, is computed under 5 CFR part 847, subpart F.

PART 847—ELECTIONS OF RETIREMENT COVERAGE BY CURRENT AND FORMER EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES

12. The authority citation for part 847 is revised to read as follows:

Authority: 5 U.S.C. 8332(b)(17) and 8411(b)(6) and sections 1131 and 1132 of Pub. L. 107–107, December 28, 2001, 115 Stat. 1242; 5 U.S.C. 8347(a) and 8461(g) and section 1043(b) of Pub. L. 104–106, Div. A, Title X, Feb. 10, 1996, 110 Stat. 434. Subpart B also issued under 5 U.S.C. 8347(q) and 8461(n).

Subpart A—General Provisions

13. In § 847.101, paragraph (a) is revised to read as follows:

§ 847.101 Purpose and scope.

(a) This part contains the regulations issued by the Office of Personnel Management (OPM) to implement the statutory election rights of certain current and former NAFI employees under the Portability of Benefits for Nonappropriated Fund Employees Act of 1990, section 1043 of the National Defense Authorization Act for Fiscal Year 1996, and sections 1131 and 1132 of the National Defense Authorization Act for Fiscal Year 2002.

14.–15. In § 847.102, new paragraphs (a)(8) and (a)(9) are added and paragraph (c)(4) is revised to read as follows:

§ 847.102 Regulatory structure.

(a) * * *

(8) Subpart H of this part contains information about elections to credit NAFI service to qualify for immediate retirement under section 1132 of Public Law 107–107, the National Defense Authorization Act for Fiscal Year 2002.

(9) Subpart I of this part contains information about how benefits are computed when employees elect to credit NAFI service to qualify for immediate retirement under section 1132 of Public Law 107–107, the National Defense Authorization Act for Fiscal Year 2002.

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(c) * * *

(4) Part 870 of this chapter contains information about the Federal Employees' Group Life Insurance Program.

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16. In § 847.103, paragraph (b), the definition of *Deficiency* is revised to read as follows:

§ 847.103 Definitions.

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(b) * * *

Deficiency means the remainder of the actuarial present value of crediting NAFI service, after subtracting the amount credited to the employee from a transfer to the Fund under subpart E of this part, and earnings under § 847.507 on the transferred amount.

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17. In § 847.104, paragraph (c) is added to read as follows:

§ 847.104 OPM responsibilities.

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(c) OPM will determine if an employee who wishes to make an election under 5 CFR part 847, subpart H, is eligible to make such an election, and OPM's determination is subject to reconsideration under 5 CFR part 831, subpart A, or 5 CFR part 841, subpart C.

18. Section 847.105 is revised to read as follows:

§ 847.105 Agency responsibilities.

(a) Each agency is responsible for notifying its employees of the opportunity to make an election under this part and for determining if an employee who wishes to make an election under subparts B and D of this part is qualified to do so, and for counseling employees in accordance with guidance issued by OPM.

(b) If an agency determines that an employee is not eligible to make an election under subparts B and D of this part, the agency shall issue a final decision to the employee that meets the requirements of § 847.106, including notice of the right to appeal under § 847.107.

19. In § 847.106, paragraph (a) is revised to read as follows:

§ 847.106 Agency decision concerning eligibility.

(a) If the agency determines that the employee is not eligible to make an election under subpart B or D of this part, it must issue a final decision to the employee.

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20. In § 847.107, paragraph (b) is revised to read as follows:

§ 847.107 Appeals to MSPB.

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(b) Paragraph (a) of this section is the exclusive remedy for review of agency decisions concerning eligibility to make an election under subparts B and D of this part. An agency decision must not allow review under any employee grievance procedures, including those established by 5 U.S.C. chapter 71, and 5 CFR part 771.

Subpart B—Election To Continue Retirement Coverage After a Qualifying Move

21. Section 847.202 is revised to read as follows:

§ 847.202 Definition of qualifying move.

(a) A qualifying move occurring on or after December 28, 2001, that would allow an opportunity to elect to continue retirement coverage under CSRS and FERS must meet all of the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue CSRS or FERS retirement coverage.

(2) The employee must have moved from a position covered by CSRS or FERS to a retirement-covered position in an NAFI, and

(3) The employee must begin employment in a retirement-covered position in an NAFI no later than 1 year after separation from CSRS- or FERS-covered employment.

(b) A qualifying move occurring on or after December 28, 2001, that would allow an opportunity to elect to continue retirement coverage under an NAFI retirement system must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue NAFI retirement system coverage;

(2) The employee must have moved from an NAFI to a civil service position subject to CSRS or FERS coverage; and

(3) The employee must be appointed to a CSRS- or FERS-covered position no later than 1 year after separation from retirement-covered NAFI employment.

(c) A qualifying move occurring on or after August 10, 1996, and before December 28, 2001, that would allow an opportunity to elect to continue retirement coverage under CSRS and FERS must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue CSRS or FERS retirement coverage;

(2) The employee must have been vested in CSRS or FERS prior to the move to an NAFI;

(3) The employee must have moved from a position covered by CSRS or FERS to a retirement-covered position in an NAFI; and