

§ 831.111 Employee deductions and agency contributions.

(a) *Agency share.* When an agency fails to withhold some or all of an employee deduction under 5 U.S.C. 8334(a) for any pay period, the agency is still responsible for submitting the correct agency contribution to OPM. The agency must submit as the agency share, a payment equal to the amount that would have been submitted if the error had not been made (or a payment equal to the difference between the amount already submitted as the agency share and the amount that should have been submitted). The payment should be submitted to OPM in the manner currently prescribed for the transmission of withholdings and contributions as soon as possible, but not later than provided by standards established by OPM.

(b) *Employee share.* (1) If, through administrative error, an agency did not withhold any of the employee deductions required by 5 U.S.C. 8334(a) for any pay period, the employee may, at his or her option—

(i) Request the agency that employed him or her when the error was made to correct his or her records and arrange to pay any resulting overpayment of pay to the agency (unless it is waived by the agency); or

(ii) Pay the deposit plus any applicable interest (under certain conditions, the deposit may be made at any time until the final adjudication of his or her application for retirement) directly to OPM by submitting SF 2803; or

(iii) Have the period of service treated like the nondeduction service described in § 831.303.

(2) When the agency withholds part of the required employee deductions for any pay period, the balance must be submitted to OPM in the manner currently prescribed for the transmission of withholdings and contributions as soon as possible, but not later than provided by standards established by OPM. The agency must correct its error. The employee does not have the option to pay a deposit directly to OPM when partial deductions have been withheld.

(3) If the agency waives the employee's repayment of the salary overpayment that resulted from the adminis-

trative error, the agency must also submit (in addition to the agency contribution) the employee's share of the unpaid contributions to OPM in the manner currently prescribed for the transmission of withholdings and contributions.

[53 FR 35295, Sept. 13, 1988, as amended at 66 FR 66711, Dec. 27, 2001]

§ 831.112 Definitions of employee.

(a) *Determinations involving an employee's ability to make a deposit or redeposit.* A person may make a deposit or redeposit under section 8334 of title 5, United States Code, if he or she is an "employee." For purposes of this paragraph, an *employee* is—

(1) A person currently employed in a position subject to the civil service retirement law; or

(2) A former employee (whose annuity has not been finally adjudicated) who retains civil service retirement annuity rights based on a separation from a position in which retirement deductions were properly withheld and remain (or have been redeposited in whole or in part) in the Civil Service Retirement and Disability Fund.

(b) *Determinations involving the payment of survivor benefits at an employee's or former employee's death.* To determine entitlement to survivor benefits, OPM establishes whether the deceased individual was an "employee" or a "retiree" on the date of death. If the decedent was an "employee" on the date of death, survivor benefits are paid as though the individual died in service. If the decedent was a "retiree" on the date of death, survivor benefits are only paid as provided in the individual's election, provided it was properly made. However, if a former employee was eligible only for a deferred annuity at age 62, survivor benefits are only paid if the individual was a "retiree" on the date of death. For purposes of this paragraph—

(1) *Employee* is a person—

(i) Who had not been separated from service prior to his or her death, even if he or she had applied for retirement (for example, an applicant for disability annuity) and the application had been approved; or

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(ii) Whose death occurs before the commencing date of annuity, even though separation has occurred.

(2) *Retiree or annuitant* is a person—

(i) Who has been separated from service and met all the requirements to receive an annuity including having filed an application for the annuity prior to his or her death; and

(ii) Whose death occurs on or after the commencing date of annuity.

(c) *Determinations involving the requirement of spousal consent for elections of alternative annuity and survivor annuity benefits.* Spousal consent is required as specified in §§ 831.614 and 831.2203(c), if the employee/annuitant is married on the commencing date of annuity, regardless of whether that date is before or after the date of separation from service.

[56 FR 45883, Sept. 9, 1991, as amended at 58 FR 52880, Oct. 13, 1993]

§ 831.113 Payments to children.

For purposes of section 8345(e) of title 5, United States Code, persons who have attained age 18 are considered adults regardless of the age of majority in the jurisdiction in which they reside.

[56 FR 45884, Sept. 9, 1991]

§ 831.114 Early retirement—major reorganization, major reduction in force, or major transfer of function.

(a) Upon an agency's request, as described in paragraph (c) of this section, OPM may make a determination as provided in 5 U.S.C. 8336(d)(2), that:

(1) The agency is undergoing a major reduction in force, major reorganization, or major transfer of function; and

(2) A significant percentage of the employees serving in the employing agency will be involuntarily separated, or subject to a reduction in basic pay.

(b)(1) Based on a determination by OPM under paragraph (a) of this section, OPM will provide to the agency the authority to offer voluntary early retirements to its employees.

(2) Under an OPM approved authority, the agency may offer voluntary early retirements to its employees based on:

- (i) Organizational unit(s);
- (ii) Occupational series or level(s);
- (iii) Geographic area(s);

(iv) Specific window period(s);

(v) Any similar nonpersonal and objective factors; or

(vi) Any combination of factors under this paragraph (b)(2) that the agency determines to be appropriate and necessary to accomplish the reductions which formed the basis for OPM's determination under paragraph (a) of this section.

(3) An employee who separates from the service voluntarily under authority of 5 U.S.C. 8336(d)(2) after completing 25 years of service, or becoming age 50 and completing 20 years of service, is entitled to an annuity if, on the date of separation, the employee:

(i) Is serving in a position covered by an offer by the agency as described in paragraph (b)(2) of this section;

(ii) Has been employed in the requesting agency at least 31 days prior to the date the agency requested an OPM determination under paragraph (a) of this section;

(iii) Is not serving under a time-limited appointment; and

(iv) Is not in receipt of a decision of involuntary separation for misconduct or unacceptable performance.

(4) OPM may approve an agency's request for voluntary early retirement authority to cover the entire period of the major reduction in force, major reorganization, or major transfer of function; or through the end of each fiscal year, whichever is less.

(c)(1) An agency's request for voluntary early retirement must be signed by the head of the agency or by a specific designee with delegated authority.

(2) The agency's request for voluntary early retirement must contain the following:

(i) Identification of the agency or organizational unit(s) for which a determination is requested;

(ii) Reasons why the voluntary early retirement authority is needed. This explanation must include a detailed summary of the agency's personnel and budgetary situation that will result in an excess of personnel because of a major reduction in force, major reorganization, or major transfer of function as well as the date on which the agency