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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 842

RIN 3206-AF67

Law Enforcement Officers and Firefighters

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final rules amending the regulations covering special retirement provisions for law enforcement officers and firefighters employed under the Civil Service Retirement System (CSRS). These changes, and conforming changes under the Federal Employees Retirement System (FERS), are intended to improve efficiency by delegating to the employing agencies responsibility for deciding who is entitled to coverage under the special retirement provisions.

EFFECTIVE DATE: February 16, 1995.

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SUPPLEMENTARY INFORMATION: On December 7, 1993, OPM published (at 58 FR 64366) interim regulations and requested comments concerning the delegation to employing agencies of the Office of Personnel Management's (OPM) authority to make determinations of eligibility for law enforcement officer and firefighter retirement coverage. The delegation of authority from OPM to agency heads will streamline the processing of law enforcement officer and firefighter coverage determinations, and place responsibility for those determinations with the employing agencies that have the most direct personnel management interest in them.

Section 8336(c) of title 5, U.S. Code, authorizes immediate retirement benefits at age 50 for Federal employees

who have completed 20 years of Federal civilian service as a law enforcement officer or firefighter. Prior to publication of the interim regulations, OPM retained sole authority to determine whether service met the retirement law's definitions of *law enforcement officer* or *firefighter* (5 U.S.C. § 8331(20) and 5 U.S.C. § 8331(21), respectively), and therefore qualified for special retirement benefits. The interim regulations authorized heads of employing agencies, subject to OPM oversight, to decide which of their CSRS employees qualify for law enforcement officer or firefighter coverage in the same manner as those determinations had previously been made for law enforcement officers and firefighters under FERS. (See subpart H of 5 CFR part 842.)

The interim rules were intended to make substantive changes only with regard to the delegation of authority to make coverage determinations (with OPM retaining an oversight role); the criteria for making coverage determinations were not changed. We received several comments on the interim regulations and they are addressed below. We have not addressed the many comments we received that were aimed at substantive benefit and procedural provisions outside the scope of the interim regulations. Two comments also revealed the need for nonsubstantive changes to the interim regulations, and these changes, which have been incorporated into the final rules, are explained below.

One commenter stated that the level of delegation to agency heads is too high. The interim regulations, in § 831.902, allow limited redelegation of the coverage-approval authority to the designated representative of an executive department head. The representative must be a department headquarters-level official who reports directly to the executive department head and must be the sole such representative for the entire department. The level of delegation reflects the high, on-going cost of the special benefits and the need for department-wide consistency in making these determinations. It has come to our attention, however, that the requirement that the representative be an official who reports directly to the department head is unnecessarily restrictive in a situation where the appropriate

representative, who has department-wide responsibility, does not report directly to the department head, but rather to the deputy department head. Accordingly, we are amending this provision to allow the department head to designate as his or her representative for this purpose an official who reports directly to the deputy department head. The existing requirement that the representative be a department headquarters-level official who is the sole such representative for the entire department is unchanged. We are making a similar amendment to the FERS regulations.

We have also made an editorial change in the definition of *agency head* in § 831.902, deleting in the second sentence the unnecessary phrase *for provisions dealing with law enforcement officers and firefighters*.

Another commenter pointed out an inconsistency between the interim regulations and the FERS rules regarding the level of authority to issue denials of requests for special benefits coverage. To remedy this inconsistency, § 831.910 is being amended to conform to the FERS rule. An agency's final denial of coverage to an individual is appealable to the Merit Systems Protection Board, but authority to issue the denial is not subject to the restriction on redelegations discussed above, and may be issued at any level considered appropriate by the employing agency.

A number of individual commenters asked that we impose a time limit on agencies to make coverage determinations. The purpose of these regulations is to allow agencies to make their determinations as efficiently as possible without having to seek an additional approval by OPM. Therefore, we believe that the final determinations should take less time. However, OPM does not generally place time limits on internal decision-making by agencies—we cannot control the agencies' resources or workload—and we do not consider it to be administratively feasible to do so with respect to agency actions under this delegated authority.

Other commenters, who agreed with OPM's decision to delegate the authority to make these determinations, stated that agencies should re-open requests for special benefits coverage that OPM denied—and the employee had not appealed—before publication of the