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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 837, 842, 846, 870, and 890

RIN 3206–AI02

Retirement, Health, and Life Insurance Coverage for Certain Employees of the District of Columbia Under the National Capital Revitalization and Self-Government Improvement Act of 1997

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the provisions of sections 11202, 11232, and 11246 of the National Capital Revitalization and Self-Government Improvement Act of 1997. These provisions of the Act require that nonjudicial employees of the District of Columbia Courts, and, under certain conditions, the District of Columbia Corrections Trustee and the District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee (Trustees) and their respective employees (Trustee Employees) be considered Federal employees for purposes of Federal retirement, health, and life insurance coverage. The Act requires that judicial employees (judges) of the District of Columbia Courts be considered Federal employees for the purposes of Federal health, and life insurance coverage. These regulations are necessary to put the new coverage into effect.

DATES: Interim rules effective October 1, 1997; comments must be received on or before December 1, 1997.

ADDRESSES: Send comments to John E. Landers, Chief, Retirement Policy Division; Retirement and Insurance Service; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street, NW., Washington, DC. Comments may also be submitted by electronic mail to combox@opm.gov.

FOR FURTHER INFORMATION CONTACT: Patrick Jennings, (202) 606–0299 concerning retirement coverage, or Karen Leibach (202) 606–0004 concerning health and life insurance coverage.

SUPPLEMENTARY INFORMATION: The National Capital Revitalization and Self-Government Improvement Act of 1997 (the Act), title XI of Public Law 105–33, 111 Stat. 251, was enacted on August 5, 1997. Section 11202 of the Act establishes a District of Columbia Department of Corrections Trustee, and section 11232 of the Act establishes a District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee. These sections of the Act require a former Federal employee appointed with a break in service of 3 days of less to be treated as a Federal employee for the purpose of chapter 83 (the Civil Service Retirement System—CSRS) or chapter 84 (the Federal Employees Retirement System—FERS); chapter 87 (the Federal Employees' Group Life Insurance Program—FEGLI); and chapter 89 (the Federal Employees Health Benefits Program—FEHB) of title 5, United States Code, during service as a Trustee or Trustee employee.

Section 11246 of the Act requires nonjudicial employees of the District of Columbia Courts to be treated as Federal employees for the purposes of chapters 81 (relating to compensation for work injuries), 83, 84, 87, and 89. This section also requires judges of the District of Columbia Courts to be treated as Federal employees for the purposes of chapters 81 (relating to compensation for work injuries), 87, and 89.

As employees of the District of Columbia Government, employees of the District of Columbia Courts have not been eligible for coverage under FERS and, therefore, were not allowed to elect to be covered by FERS. When the regulations take effect, nonjudicial employees of the District of Columbia Courts will be deemed to be Federal employees for this purpose and, because they will not have had an opportunity to elect FERS coverage, these regulations will allow them to elect FERS if now subject to CSRS, in the same way as new Federal hires who are eligible for CSRS may elect FERS.

Federal employees may be detailed to the District of Columbia Department of Corrections Trustee or the District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee under the provisions of part 334 of title 5, Code of Federal Regulations, which addresses assignments of Federal employees to State governments, and the District of Columbia. The Act authorizes such details to a Trustee at the request of a Trustee with the approval of the head of the employee's Federal department or agency. Employees detailed under part 334 retain their status as Federal employees and, therefore, retain Federal benefits coverage.

With respect to employees of the District of Columbia Courts, section 11246(b)(3) of the Act requires that the amendments shall apply with respect to all months beginning after the date on which OPM issues regulations to implement the new coverage provisions. Accordingly, the amendments made by section 11246 of the Act are effective October 1, 1997.

With respect to the District of Columbia Department of Corrections Trustee and the District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee, and the Trustees' employees, sections 11202 and 11232 of the Act do not establish a specific effective date for the beginning of Federal employee status. Accordingly, the regulations to implement the new coverage provisions for a Trustee and a Trustee's employees become effective on the date of a Trustee's appointment.

In addition, these regulations make technical amendments to retirement coverage provisions governing employees of the District of Columbia Financial Responsibility and Management Assistance Authority, conforming amendments to provisions governing reemployed annuitants, and non-substantive clarifying amendment to retirement coverage provisions governing certain employees of St. Elizabeths Hospital.

Waiver of General Notice of Proposed Rulemaking

Under section 553(b) (3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking

and for making these rules effective in less than 30 days. These regulations will affect the retirement and insurance coverage of certain employees of the District of Columbia Courts on and after October 1, 1997, and the retirement and insurance coverage of a Trustee and the Trustee's employees on and after the appointment of the Trustee. Publication of a general notice on proposed rulemaking would be contrary to the public interest because it would delay the commencement of Federal employee benefits of employees of the District of Columbia Courts and eligible individuals employed during the initial staffing of the District of Columbia Department of Corrections Trustee, and the District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect a small number of former Federal employees of the Trustee of the District of Columbia Department of Corrections and the Trustee of District of Columbia Pretrial Services, Defense Service, Parole, Adult Probation and Offender Supervision, and employees of the District of Columbia Courts.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects

5 CFR Parts 831, 837, 842 and 846

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Janice R. Lachance,

Acting Director.

Accordingly, OPM is amending 5 CFR parts 831, 837, 842, 846, 870 and 890 as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.201(g) also issued under sections 11202(f), 11232(e), and 11246(b) of the National Capital Revitalization and Self-Government Improvement Act of 1997, title XI of Pub. L. 105–33, 111 Stat. 251; § 831.204 also issued under section 102(e) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); §§ 831.663 and 831.664 also issued under section 11004(c)(2) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66; § 831.682 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001 (a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, 104 Stat. 1388–328.

2. Section 831.201 is amended by revising paragraph (g) to read as follows:

§ 831.201 Exclusions from retirement coverage.

* * * * *

(g) Individuals first employed by the government of the District of Columbia on or after October 1, 1987, in a position subject to subchapter III of chapter 83 of title 5, United States Code, are excluded from such subchapter, except:

(1) Employees of St. Elizabeths Hospital who were covered under subchapter III of chapter 83 of title 5, United States Code, before October 1, 1987, appointed by the District of Columbia government on October 1, 1987, as provided in section 6 of Pub. L. 98–621, and deemed employed by the District of Columbia government before October 1, 1987, under section 109 of Pub. L. 100–238;

(2) Effective on and after October 1, 1997, the effective date of section 11246 of Pub. L. 105–33, 111 stat. 251, nonjudicial employees of the District of Columbia Courts employed in a position which is not excluded from CSRS under the provisions of this section;

(3) The District of Columbia Department of Corrections Trustee, authorized by section 11202 of Pub. L. 105–33, 111 Stat. 251, and an employee of the Trustee if the Trustee or employee is a former Federal employee appointed with a break in service of 3 days or less, and in the case of an employee of the Trustee is employed in a position which is not excluded from CSRS under the provisions of this section;

(4) The District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee, authorized by section 11232 of Pub. L. 105–33, 111 Stat. 251, and an employee of the Trustee if the Trustee or employee is a former Federal employee appointed with a break in service of 3 days or less, and in the case of an employee of the Trustee is employed in a position which is not excluded from CSRS under the provisions of this section, and;

(5) Subject to an election under § 831.204, employees of the District of Columbia Financial Responsibility and Management Assistance Authority.

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PART 837—REEMPLOYMENT OF ANNUITANTS

3. The authority citation for part 837 continues to read as follows:

Authority: 5 U.S.C. 8337, 8344, 8347, 8455, 8456, 8461, and 8468; and section 302 of Pub. L. 99–335, June 6, 1986, as amended.

4. Section 837.101 is amended by revising paragraph (a)(2) to read as follows:

§ 837.101 Applicability.

(a) * * *

(2) Reemployment of an annuitant by the government of the District of Columbia when the annuitant had been employed subject to CSRS by the District of Columbia prior to October 1, 1987, or is an employee of the government of the District of Columbia not excluded from CSRS under § 831.201(g) or is an employee of the government of the District of Columbia who is deemed to be a Federal employee for FERS purposes under § 842.107; and

* * * * *

5. Section 837.102 is amended by revising the definition for *Reemployed* to read as follows:

§ 837.102 Definitions.

* * * * *

Reemployed means reemployed in an appointive or elective position with the

Federal Government, or reemployed in an appointive or elective position with the District of Columbia (when the annuitant was first employed subject to CSRS by the District of Columbia before October 1, 1987, or is an employee of the government of the District of Columbia not excluded from CSRS under § 831.201(g) or is an employee of the government of the District of Columbia who is deemed to be a Federal employee for FERS purposes under § 842.107 of this chapter), whether the position is subject to CSRS, FERS, or another retirement system, but does not include appointment as a Governor of the Board of Governors of the United States Postal Service, or reemployment under the provisions of law that exclude offset of pay by annuity, that is, sections 8344 (i), (j), or (k), or 8468 (f), (g), or (h) of title 5, United States Code.

* * * * *

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

6. The authority citation for part 842 is revised to read as follows:

Authority: 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 102(e) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; § 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of the National Capital Revitalization and Self-Government Improvement Act of 1997, title XI of Pub. L. 105–33; 111 Stat. 251; §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; § 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; § 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

7. Section 842.107 is added to read as follows:

§ 842.107 Employees covered under the National Capital Revitalization and Self-Government Improvement Act of 1997.

The following categories of employees of the District of Columbia Government are deemed to be Federal employees for FERS purposes on and after October 1, 1997:

(a) Nonjudicial employees of the District of Columbia Courts;

(b) The District of Columbia Department of Corrections Trustee, authorized by section 11202 of Pub. L. 105–33, 111 Stat. 251, and an employee of the Trustee if the Trustee or employee is a former Federal employee appointed with a break in service of 3 days or less;

(c) The District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee, authorized by section 11232 of Pub. L. 105–33, 111 Stat. 251, and an employee of the Trustee if the Trustee or employee is a former Federal employee appointed with a break in service of 3 days or less.

PART 846—FEDERAL EMPLOYEES RETIREMENT SYSTEM—ELECTING COVERAGE

8. The authority citation for part 846 is revised to read as follows:

Authority: 5 U.S.C. 8461(g); § 846.201(b) also issued under 5 U.S.C. 7701(b)(2); § 846.201(d) also issued under section 11246(b) of the National Capital Revitalization and Self-Government Improvement Act of 1997, title XI of Pub. L. 105–33, 111 Stat. 251; § 846.202 also issued under section 301(d)(3) of Pub. L. 99–335; § 846.201(b)(ii) also issued under section 153 of Pub. L. 104–134, 110 Stat. 1321.

9. Section 846.201 is amended by revising paragraph (d)(1) to read as follows:

§ 846.201 Elections to become subject to FERS.

* * * * *

(d) *Exceptions.* (1) An individual who is an employee of the government of the District of Columbia may not elect to become subject to FERS except an individual so employed who is covered by CSRS and eligible for FERS coverage by operation of section 11246, of Pub. L. 105–33, 111 Stat. 251.

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PART 870—BASIC LIFE INSURANCE

10. The authority citation for part 870 is revised to read as follows:

Authority: 5 U.S.C. 8716; § 870.202(c) also issued under 5 U.S.C. 7701(b)(2); subpart J also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 870.202 also issued under sections 11202(f), 11232(e), and 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251.

11. Section 870. 202 is amended by revising paragraph (a)(8) to read as follows:

§ 870.202 Exclusions.

(a) * * *

(8) An individual first employed by the government of the District of Columbia on or after October 1, 1987. However, this exclusion does not apply to:

(i) Employees of St. Elizabeths Hospital who accept offers of employment with the District of Columbia government without a break in service, as provided in section 6 of Pub. L. 98–621 (98 Stat. 3379);

(ii) The Corrections Trustee and the Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee and employees of these Trustees who accept employment with the District of Columbia government within 3 days after separating from the Federal Government; and

(iii) Effective October 1, 1997, judges and nonjudicial employees of the District of Columbia Courts, as provided by Pub. L. 105–33 (111 Stat. 251).

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PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

12. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), and 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251.

13. Section 890.102 is amended by revising paragraph (c)(8) to read as follows:

§ 890.102 Coverage.

* * * * *

(c) * * *

(8) An individual first employed by the government of the District of Columbia on or after October 1, 1987. However, this exclusion does not apply to:

(i) Employees of St. Elizabeths Hospital who accept offers of employment with the District of Columbia government without a break in service, as provided in section 6 of Pub. L. 98–621 (98 Stat. 3379);

(ii) The Corrections Trustee and the Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee and employees of these Trustees who accept employment with the District of Columbia government within 3 days after separating from the Federal Government; and

(iii) Effective October 1, 1997, judges and nonjudicial employees of the District of Columbia Courts, as provided by Pub. L. 105–33 (111 Stat. 251).

[FR Doc. 97–25889 Filed 9–29–97; 8:45 am]

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