

# Rules and Regulations

Federal Register

Vol. 63, No. 41

Tuesday, March 3, 1998

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 880

RIN 3206-AH75

### Retirement and Insurance Benefits When an Annuitant Is Missing

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing regulations to establish a uniform standard that OPM will use in its administration of retirement and insurance benefits in cases in which an annuitant disappears. These regulations establish procedures to determine the status of the missing annuitant and allow OPM to provide benefits to the missing annuitant's dependents until the missing annuitant's status is resolved.

**EFFECTIVE DATE:** April 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Harold L. Siegelman, (202) 606-0299.

**SUPPLEMENTARY INFORMATION:** On July 2, 1997, we published (at 62 FR 35693) proposed regulations to establish OPM's procedures for making payments of annuity during a period when an annuitant is missing, and until the annuitant is either found or officially determined to have died. The regulations are aimed at providing continuing support to the family of a missing annuitant, while balancing the interest of the Government in protecting the retirement system from unwarranted disbursements. The regulations also provide procedures that OPM will follow to continue the family health insurance coverage of a missing annuitant, to restore retroactively the annuity of a missing annuitant who is found to be alive, and to authorize lump-sum death benefits, survivor

health insurance coverage, and life insurance payments in the case of a missing annuitant's death. OPM received no comments on the proposed rule.

The final regulations include two conforming changes resulting from recent consolidations of insurance regulations. On July 18, 1997, we published (at 62 FR 38433) final regulations that simplified and clarified the Federal Employees Health Benefits (FEHB) Program regulations concerning opportunities to enroll and make changes in enrollment. The reference to section 890.301(p) in § 880.303(a) of the proposed regulations has been changed to section 890.306(r) to conform to the current numbering of the FEHB regulations.

On September 17, 1997, we published final regulations to combine the five parts of Title 5 of the Code of Federal Regulations relating the Federal Employees Group Life Insurance (FEGLI) Program and to simplify the language of the regulations. The reference parts 870 through 873 in section 880.102 of the proposed regulations has been changed to part 870 to conform to the current numbering of the FEGLI regulations.

### 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 retirement and insurance benefits of retired Government employees and their survivors.

### List of Subjects in 5 CFR Parts 880

Administrative practice and procedure, Government employees, Health insurance, Hostages, Life insurance, Pensions, Retirement.

U.S. Office of Personnel Management.

**Janice R. Lachance,**

*Acting Director.*

Accordingly, OPM is amending 5 CFR by adding part 880 to read as follows:

### PART 880—RETIREMENT AND INSURANCE BENEFITS DURING PERIODS OF UNEXPLAINED ABSENCE

#### Subpart A—General

Sec.

- 880.101 Purpose and scope.
- 880.102 Regulatory structure.
- 880.103 Definitions.

#### Subpart B—Procedures

- 880.201 Purpose and scope.
- 880.202 Referral to Associate Director.
- 880.203 Missing annuitant status and suspension of annuity.
- 880.204 Restoration of annuity.
- 880.205 Determinations of death.
- 880.206 Date of death.
- 880.207 Adjustment of accounts after finding of death.

#### Subpart C—Continuation of Benefits

- 880.301 Purpose.
  - 880.302 Payments of CSRS or FERS benefits.
  - 880.303 FEHBP coverage.
  - 880.304 FEGLI coverage.
- Authority:** 5 U.S.C. 8347(a), 8461(g), 8716, 8913.

#### Subpart A—General

##### § 880.101 Purpose and scope.

(a) The purpose of this part is to establish a uniform standard that OPM will use in its administration of benefits for CSRS, FERS, FEHBP and FEGLI in cases in which an annuitant becomes a missing annuitant.

(b) This part establishes the procedures that OPM will follow to—

- (1) Determine—
  - (i) Who is a missing annuitant,
  - (ii) When a missing annuitant has died,
  - (iii) When benefits will be paid in missing annuitant cases, and
  - (iv) FEHBP coverage for family members of a missing annuitant; and
- (2) Make adjustments to CSRS and FERS benefit payments, FEHBP coverage and premiums, and FEGLI benefit payments and premiums after a determination that a missing annuitant is dead.

(c) This part applies only to situations in which an individual who satisfies the statutory definition of an annuitant under section 8331(9) or section 8401(2) of title 5, United States Code, disappears and has not been determined to be dead by an authorized institution. This part does not apply to—

- (1) An employee, regardless of whether the absence is covered by subchapter VII of chapter 55 of title 5, United States Code; or
- (2) A separated employee who either—
  - (i) Does not meet the age and service requirements for an annuity, or
  - (ii) Has not filed an application for annuity.

**§ 880.102 Regulatory structure.**

(a) This part contains the following subparts:

(1) Subpart A contains general information about this part and related subjects.

(2) Subpart B establishes the procedures that OPM will follow in missing annuitant cases.

(3) Subpart C establishes the methodologies that OPM will apply in determining continuations of coverage and amounts of payments in missing annuitant cases.

(b) Part 831 of this chapter contains information about benefits under CSRS.

(c) Part 838 of this chapter contains information about benefits available to former spouses under court orders.

(d) Parts 841 through 844 of this chapter contain information about benefits under FERS.

(e) Part 870 of this chapter contains information about benefits under FEGLI.

(f) Part 890 of this chapter contains information about benefits under FEHBP.

(g) Part 1200 of this title contains information about Merit Systems Protection Board review of OPM decisions affecting interests in CSRS or FERS benefits.

(h) Part 1600 of this title contains information about benefits under the Thrift Savings Plan.

**§ 880.103 Definitions.**

For purposes of this part—

*Annuitant* means an individual who has separated from the Federal service with, and has retained, title to a CSRS or FERS annuity, has satisfied the age and service requirements for commencement of that annuity, and has filed an application for that annuity;

*Associate Director* means OPM's Associate Director for Retirement and Insurance or his or her designee;

*Authorized institution* means a government organization or official legally charged with making determinations of death in the State or country of the missing annuitant's domicile, citizenship, or disappearance;

*CSRS* means the Civil Service Retirement System established in subchapter III of chapter 83 of title 5, United States Code;

*FEGLI* means the Federal Employees Group Life Insurance program established in chapter 87 of title 5, United States Code;

*FEHBP* means the Federal Employees Health Benefits Program established in chapter 89 of title 5, United States Code;

*FERS* means the basic benefit portion of the Federal Employees Retirement System established in subchapters I, II, IV, V, and VI of chapter 84 of title 5,

United States Code; *FERS* does not include benefits under the Thrift Savings Plan established under subchapters III and VII of chapter 84 of title 5, United States Code;

*Missing annuitant* means an individual who has acquired the status of missing annuitant under § 880.203(b).

**Subpart B—Procedures****§ 880.201 Purpose and scope.**

This subpart establishes the procedures that OPM will use to—

(a) Determine that an individual is a missing annuitant;

(b) Suspend payment of annuity to a missing annuitant;

(c) Notify individuals affected by such a suspension of payments; and

(d) Determine that a missing annuitant has died.

**§ 880.202 Referral to Associate Director.**

Any OPM office that receives information concerning the possibility that an annuitant might have disappeared will notify the Associate Director.

**§ 880.203 Missing annuitant status and suspension of annuity.**

(a) Upon receipt of information concerning the possibility that an annuitant has disappeared, the Associate Director will conduct such inquiry as he or she determines to be necessary to determine whether the annuitant is alive and whether the annuitant's whereabouts can be determined.

(b) If during an inquiry under paragraph (a) of this section, or upon subsequent receipt of additional information, the Associate Director finds substantial evidence (as defined in § 1201.56(c)(1) of this title) to believe that an annuitant is either not alive or that the annuitant's whereabouts cannot be determined, the annuitant acquires the status of missing annuitant. The Associate Director will then—

(1) Suspend payments to the missing annuitant; and

(2) Notify individuals who may be able to qualify for payments under § 880.302 that—

(i) OPM has suspended the annuity payments to the missing annuitant;

(ii) Payment may be made under § 880.302, including the amount available for payment, how that amount was determined, and the documentation required (if any) to qualify for such payments; and

(iii) In response to an inquiry from any person seeking CSRS, FERS, FEHBP, or FEGLI benefits, OPM will provide information about

documentation necessary to establish a claim for such benefits.

**§ 880.204 Restoration of annuity.**

(a) If the missing annuitant's whereabouts are determined, and he or she is alive and—

(1) Competent, OPM will resume payments to the annuitant and pay retroactive annuity for the period in missing status less any payment made to the family during that period; or

(2) Incompetent, OPM will resume payments to a representative payee under section 8345(e) or section 8466(c) of title 5, United States Code, and pay retroactive annuity for the period in missing status less any payment made to the family during that period.

(b) If the missing annuitant's whereabouts cannot be determined, missing annuitant status continues until an authorized institution determines that the missing annuitant is dead. (See § 880.205.)

**§ 880.205 Determinations of death.**

OPM does not make findings of presumed death. A claimant for CSRS, FERS, or FEGLI death benefits (other than payments under § 880.302) or an individual seeking an adjustment of accounts under § 880.207 must submit a death certificate or other legal certification of death issued by an authorized institution.

**§ 880.206 Date of death.**

(a) Except as provided in paragraph (b) of this section, for the purpose of benefits administered by OPM, the date of death of a missing annuitant who has been determined to be dead by an authorized institution is the date of disappearance as determined by the Associate Director.

(b) For the purpose of determining whether a claim is untimely under any statute of limitations applicable to CSRS, FERS or FEGLI benefits (section 8345(i)(2), section 8466(b), or section 8705(b) through (d) of title 5, United States Code), the time between the date of disappearance and the date on which the authorized institution issues its decision that the missing annuitant is dead is excluded.

**§ 880.207 Adjustment of accounts after finding of death.**

After a missing annuitant is determined to be dead under § 880.205, OPM will review the case to determine whether additional benefits are payable or excess insurance premiums have been withheld.

**Subpart C—Continuation of Benefits****§ 880.301 Purpose.**

This subpart establishes OPM's policy concerning the availability and amount of CSRS and FERS annuity payments and the continuation of FEHBP and FEGLI coverage and premiums while an annuitant is classified as a missing annuitant.

**§ 880.302 Payments of CSRS or FERS benefits.**

(a) OPM will pay an amount equal to the survivor annuity that would be payable as CSRS or FERS survivor annuity to an account in a financial institution designated (under electronic funds transfer regulations in part 209 or part 210 of Title 31, Code of Federal Regulations) by an individual who, if the missing annuitant were dead, would be entitled to receive payment of a survivor annuity.

(b) If more than one individual would qualify for survivor annuity payments in the event of the missing annuitant's death, OPM will make separate payments in the same manner as if the missing annuitant were dead.

**§ 880.303 FEHBP coverage.**

(a) If the missing annuitant had a family enrollment, the enrollment will be transferred to the eligible family members under § 890.303(c) of this chapter. If there is only one eligible family member, the enrollment will be changed to a self-only enrollment under § 890.306(r) of this chapter. The changes will be effective the first day of the pay period following the date of disappearance.

(b) If the missing annuitant was covered by a self only enrollment or if there is no eligible family member remaining, the enrollment terminates at midnight of the last day of the pay period in which he or she disappeared, subject to the temporary extension of coverage for conversion.

(c) If the missing annuitant is found to be alive, the coverage held before the disappearance is reinstated effective with the pay period during which the annuitant is found, unless the annuitant, or the annuitant's representative, requests that the enrollment be restored retroactively to the pay period in which the disappearance occurred.

**§ 880.304 FEGLI coverage.**

(a) FEGLI premiums will not be collected during periods when an annuitant is a missing annuitant.

(b)(1) If the annuity of a missing annuitant is restored under § 880.204(a), OPM will deduct the amount of FEGLI

premiums attributable to the period when the annuitant was a missing annuitant from any adjustment payment due the annuitant under § 880.204(a).

(2) If a missing annuitant is determined to be dead under § 880.205, FEGLI premiums and benefits will be computed using the date of death established under § 880.206(a).

[FR Doc. 98-5401 Filed 3-2-98; 8:45 am]

BILLING CODE 6325-01-P

**FEDERAL DEPOSIT INSURANCE CORPORATION****12 CFR Part 357**

RIN 3064-AB08

**Determination of Economically Depressed Regions**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** As part of the FDIC's systematic review of its regulations under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), the FDIC is amending its regulations to reflect changes in the marketplace, update and streamline the regulation, improve efficiency, and reduce unnecessary costs. The text of this final rule is substantially similar to that of the proposed rule that was published in the **Federal Register** of August 6, 1996. Previous references to specific sources of data to be used in determining whether a region is economically depressed were removed in order to allow for more flexibility in our analyses. In addition, the general designation of states as the geographical unit over which the FDIC defines "economically depressed regions" has been changed under this amendment. Under this amendment, the FDIC will define the geographic unit that comprises an "economically depressed region" for an institution on a case-by-case basis. Such a determination is required because the geographic area over which institutions conduct business varies across institutions, as well as over time for an individual institution. After an institution's geographic market has been defined the FDIC will next determine whether that market falls within an "economically depressed region". This allows for cases where an institution's geographic market is limited to some portion of a state or crosses two or more state boundaries. The FDIC also will consider relevant information from institutions

regarding their geographic market, as well as information on whether that market is "economically depressed". Elsewhere in this issue of the **Federal Register**, the FDIC also is withdrawing a 1992 proposed amendment to the regulation that was published on December 18, 1992.

The FDIC is required by statute to consider proposals for direct financial assistance by Savings Association Insurance Fund (SAIF) members having offices located in an "economically depressed region" as determined by the FDIC by regulation and meeting certain other specified criteria, before grounds exist for the appointment of a conservator or receiver for the institution. This amendment provides guidance to enable applicants to evaluate their situations before formally applying for assistance. Rather than periodically designating specific "economically depressed regions" in light of current economic conditions, this rule provides the criteria that the FDIC will use to determine which regions are economically depressed.

**EFFECTIVE DATE:** April 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** John P. O'Keefe, Chief, Economic Analysis Section, (202) 898-3945, David Horne, Financial Economist, (202) 898-3981, Division of Research and Statistics; Michael Phillips, Counsel, Legal Division, (202) 898-3581, FDIC, 550 17th Street, N.W., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** The FDIC is conducting a systematic review of its regulations and written policies in accordance with section 303(a) of the CDRI Act, 12 U.S.C. 4803(a). Section 303(a) requires each federal banking agency to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires each federal banking agency to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

As part of this review, the FDIC has determined that its regulations at 12 CFR part 357 should be amended to minimize the cost of implementing the regulation, make it more flexible regarding market standards, and give institutions more opportunity to establish that they are located in an "economically depressed region".

In the **Federal Register** of August 6, 1996 (61 FR 40756), the FDIC issued a proposed amendment of part 357 to provide criteria to enable applicants to evaluate their status before formally