

June 2003

Voluntary Early Retirement Under Homeland Security Act

Compliments of feddesk.com - [FREE Weekly Handbooks](#) -
Every week, feddesk.com brings you the latest FREE handbooks published by the Federal Government. Written specifically for Federal Employees, these handbooks are brought together on one, easy-to-use website. Now you can quickly - and easily - find the handbooks you want and need!

employee for promotion to a higher graded position or to a position that requires an academic degree.

(d) Agency heads must assess and maintain records on the effectiveness of training assignments under this section.

(e) On a periodic basis, OPM may request agency information on the use and effectiveness of training assignments under this section.

(f) The authority to authorize training for an employee to obtain an academic degree terminates June 14, 2004.

[FR Doc. 03-14971 Filed 6-10-03; 4:46 pm]

BILLING CODE 6325-38-P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 842

RIN 3206-AJ82

Voluntary Early Retirement Under the Homeland Security Act of 2002

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim voluntary early retirement authority (VERA) regulations. These regulations implement the VERA provisions of the Homeland Security Act of 2002, which apply to most executive branch agencies. These interim regulations explain how an agency requests authority from OPM to offer voluntary early retirement to its employees.

DATES: These regulations are effective June 13, 2003. OPM will consider written comments if received no later than August 12, 2003.

ADDRESSES: Send written comments to Ellen E. Tunstall, Deputy Associate Director for Talent and Capacity Policy, Office of Personnel Management, Room 6500, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Charles W. Gray at 202-606-0960, FAX at 202-606-2329, TTY at 202-418-3134, or e-mail at cwgray@opm.gov.

SUPPLEMENTARY INFORMATION Section 1313(b) of the "Homeland Security Act of 2002" (Public Law 107-296, 116 Stat. 2135) provides agencies the option to offer voluntary early retirement when restructuring as well as when downsizing. Previously, voluntary early retirement was only available in downsizing situations.

Subsection 1313(b)(1) of Public Law 107-296 covers employees under the Civil Service Retirement System (CSRS),

and is codified in 5 U.S.C. 8336(d)(2). Section 831.114 is revised to implement the new voluntary early retirement provisions under CSRS.

Subsection 1313(b)(2) of Public Law 107-296 covers employees under the Federal Employees Retirement System (FERS), and is codified in 5 U.S.C. 8414(b)(1). Section 842.213 is revised to implement the new voluntary early retirement provisions under FERS.

The voluntary early retirement provisions are the same under CSRS and FERS. The revised regulations explain which employees are potentially eligible for voluntary early retirement, how an agency requests voluntary early retirement authority from OPM, and how the agency manages the voluntary early retirement authority after approval.

Under the interim regulations, an agency's human capital plan and/or voluntary separation incentive plan may be used to satisfy the requirements for requesting a voluntary early retirement authority if it contains the information required in the VERA regulations.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this rule effective in less than 30 days.

OPM has already promulgated interim regulations regarding use of the Voluntary Separation Incentive Payment (VSIP) authority pursuant to Congressional mandate. While agencies may now receive OPM approval to use VSIP to reshape their workforces, they cannot use VERA for that purpose until these regulations are available. In this case, compliance with notice and comment procedures, as well as with the 30-day waiting period, would severely undercut the usefulness of the VSIP authority and would deny employees who have not attained full retirement eligibility the opportunity to be considered for VSIPs. The alternative to reshaping the workforce through voluntary measures such as early retirement is generally reduction in force—a tool that is disruptive and costly both to employees and agencies. The inability of agencies to offer this option to employees undermines the intent of Congress and the Administration in providing agencies with the ability to use both the VERA and VSIP flexibilities for workforce reshaping and impacts employee options for "soft landings."

This regulation is needed to allow agencies to immediately use the VERA flexibilities that Congress accorded to them in the Homeland Security Act (Act). Prior to the enactment of this Act, agencies could obtain from OPM the authority to offer individuals voluntary early retirement based on a need to downsize. Also, if they had their own VSIP law, they could offer VSIP to their employees on the same basis. In the Act, however, Congress introduced the ability to request authority from OPM to offer VERA or VSIP, or both, based on a need for workforce reshaping. This is a flexibility that Congress deemed necessary to ensure that agencies could accomplish their respective missions, which, in many cases, have changed significantly since September 11, 2001. The VERA flexibility is designed so that it may be used in tandem with the VSIP flexibility. In fact, the VSIP authority may be ineffective in some instances, or not fully effective, if there is not a corresponding VERA authority to allow employees to retire early.

Moreover, delaying the effective date for OPM's VERA regulations could lessen the usefulness of VSIPs for reshaping this year. The financial advantage of VSIP rapidly diminishes the later it is used in a fiscal year, because the cost of the VSIP payment and the payout for accrued leave is more likely to exceed the amount of the employee's salary for the remainder of the year. Congress's inclusion of the new VERA flexibilities in the Homeland Security Act indicates that it intended for agencies to use these flexibilities this year. Waiver of the requirements regarding notice, comment, and the effective date is necessary to ensure that Congress' intent is honored.

Finally, OPM will issue final regulations within 1 year of the publication of these interim regulations or these regulations will sunset.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

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 Part 831

Administrative practice and procedure, Alimony, Claims, Firefighters, Government employees,

Income taxes, Intergovernmental regulations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 842

Air Traffic Controllers, Alimony, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, OPM amends parts 831 and 842 of title 5, Code of Federal Regulations, as follows:

PART 831—RETIREMENT

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

Authority: 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2), and section 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 831.201(g) also issued under sections 7(b) and 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.201(i) also issued under sections 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.204 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 831.205 also issued under section 2207 of Pub. L. 106–265, 114 Stat. 784; Sec. 831.301 also issued under section 2203 of Pub. L. 106–265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and section 2203 of Pub. L. 106–235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337; Sec. 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp. p. 317; Sec. 831.663 also issued under sections 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under section 11004(c)(2) of Pub. L. 103–66, 107 Stat. 412; Sec. 831.682 also issued under section 201(d) of Pub. L. 99–251, 100 Stat. 23; Sec. 831.912 also issued under Appendix C to Pub. L. 106–554, 114 Stat. 2763A–125; subpart V also issued under 5 U.S.C. 8343a and section 6001 of Pub. L. 100–203, 101 Stat. 1330–275; Sec. 831.2203 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388–328.

Subpart A—Administration and General Provisions

■ 2. Section 831.114 is revised to read as follows:

§ 831.114 Voluntary early retirement—substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring.

(a) A “specific designee” is defined as a senior officer or official within an

agency who has been specifically designated to sign requests for voluntary early retirement authority for or in place of the head of the agency. Examples include the Chief Human Capital Officer or the Assistant Secretary for Administration.

(b) 5 U.S.C. 8336(d)(2) covers both the basis for an agency’s request for voluntary early retirement authority and OPM’s subsequent determination concerning the request.

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

(d) The request must contain the following information:

(1) Identification of the agency or organizational unit(s) for which the agency requests the authority;

(2) Reasons why the agency needs voluntary early retirement authority. This must include a detailed summary of the agency’s personnel and/or budgetary situation that will result in an excess of personnel because of a substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping, consistent with agency human capital goals;

(3) The date on which the agency expects to effect the substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping;

(4) The time period during which the agency plans to offer voluntary early retirement;

(5) The total number of non-temporary employees in the agency (or specified component(s));

(6) The total number of non-temporary employees in the agency (or specified component(s)) who may be involuntarily separated, downgraded, transferred, or reassigned as a result of the substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping;

(7) The total number of employees in the agency (or specified component(s)) who are eligible for voluntary early retirement;

(8) An estimate of the total number of employees in the agency (or specified component(s)) who are expected to retire early during the period covered by the request for voluntary early retirement authority; and

(9) A description of the types of personnel actions anticipated as a result of the agency’s need for voluntary early retirement authority. (Examples include separations, transfers, reassignments, and downgradings.)

(e) OPM will evaluate a request for voluntary early retirement based on:

(1) A specific request to OPM from the agency for voluntary early retirement authority;

(2) A voluntary separation incentive payment implementation plan, as discussed in part 576, subpart A, of this chapter, which must outline the intended use of the incentive payments and voluntary early retirement; or

(3) The agency’s human capital plan, which must outline its intended use of voluntary separation incentive payments and voluntary early retirement authority, and the changes in organizational structure it expects to make as the result of projected separations and early retirements.

(f) Regardless of the method used, the request must include all of the information required by paragraph (d) of this section.

(g) OPM may approve an agency’s request for voluntary early retirement authority to cover the entire period of the substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping described by the agency, or the initial portion of that period with a requirement for subsequent information and justification if the period covers multiple years.

(h) After OPM approves an agency’s request, the agency must immediately notify OPM of any subsequent changes in the conditions that served as the basis for the approval of the voluntary early retirement authority. Depending upon the circumstances involved, OPM will modify the authority as necessary to better suit the agency’s needs.

(i) The agency may limit voluntary early retirement offers based on:

(1) An established opening and closing date that is announced to employees at the time of the offer; or

(2) The acceptance of a specified number of applications for voluntary early retirement, provided that, at the time of the offer, the agency notified employees that it retained the right to limit the number of voluntary early retirements.

(j) Within the timeframe specified for its approved VERA, the agency may subsequently establish a new or revised closing date, or reduce or increase the number of early retirement applications it will accept, if management’s downsizing and/or reshaping needs change. If the agency issues a revised closing date, or a revised number of applications to be accepted, the new date or number of applications must be announced to the same group of employees included in the original announcement. If the agency issues a

new window period with a new closing date, or a new instance of a specific number of applications to be accepted, the new window period or number of applications to be accepted may be announced to a different group of employees as long as they are covered by the approved VERA.

(k) An employee who separates from the service voluntarily 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:

(1) Is serving in a position covered by a voluntary early retirement offer; and

(2) Meets the conditions covered in 5 U.S.C. 8336(d)(2).

(l) Agencies are responsible for ensuring that employees are not coerced into voluntary early retirement. If an agency finds any instances of coercion, it must take appropriate corrective action.

(m) An agency may not offer or process voluntary early retirements beyond the stated expiration date of a VERA or offer early retirements to employees who are not within the scope of the VERA approved by OPM.

(n) OPM may terminate a voluntary early retirement authority if it determines that the agency is no longer undergoing the condition(s) that formed the basis for its approval.

(o) OPM may amend, limit, or terminate a voluntary early retirement authority to ensure that voluntary early retirement authority regulations are being properly followed.

(p) Agencies must provide OPM with interim and final reports for each voluntary early retirement authority, as covered in OPM's approval letter to the agency. OPM may suspend or cancel a voluntary early retirement authority if the agency is not in compliance with the reporting requirements or reporting schedule specified in OPM's voluntary early retirement authority approval letter.

(q) The terms, conditions, and procedures in this section do not apply to the General Accounting Office.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

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

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under sections 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by

section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 842.107 also issued under section 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and section 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under section 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under section 4005 of Pub. L. 101–239, 103 Stat. 2106 and section 7001 of Pub. L. 101–508, 104 Stat. 1388; subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under Appendix C to Pub. L. 106–554, 114 Stat. 2763A–125.

Subpart B—Eligibility

■ 4. Section 842.213 is revised to read as follows:

§ 842.213 Voluntary early retirement—substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring.

(a) A “specific designee” is defined as a senior officer or official within an agency who has been specifically designated to sign requests for voluntary early retirement authority for or in place of the head of the agency. Examples include the Chief Human Capital Officer or the Assistant Secretary for Administration.

(b) 5 U.S.C. 8414(b)(1)(B) covers both the basis for an agency's request for voluntary early retirement authority and OPM's subsequent determination concerning the request.

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

(d) The request must contain the following information:

(1) Identification of the agency or organizational unit(s) for which the agency requests the authority;

(2) Reasons why the agency needs voluntary early retirement authority. This must include a detailed summary of the agency's personnel and/or budgetary situation that will result in an excess of personnel because of a substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping, consistent with agency human capital goals;

(3) The date on which the agency expects to effect the substantial delayering, reorganization, reduction in

force, transfer of function, or other workforce restructuring or reshaping;

(4) The time period during which the agency plans to offer voluntary early retirement;

(5) The total number of non-temporary employees in the agency (or specified component(s));

(6) The total number of non-temporary employees in the agency (or specified component(s)) who may be involuntarily separated, downgraded, transferred, or reassigned as a result of the substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping;

(7) The total number of employees in the agency (or specified component(s)) who are eligible for voluntary early retirement;

(8) An estimate of the total number of employees in the agency (or specified component(s)) who are expected to retire early during the period covered by the request for voluntary early retirement authority; and

(9) A description of the types of personnel actions anticipated as a result of the agency's need for voluntary early retirement authority. (Examples include separations, transfers, reassignments, and downgradings.)

(e) OPM will evaluate a request for voluntary early retirement based on:

(1) A specific request to OPM from the agency for voluntary early retirement authority;

(2) A voluntary separation incentive payment implementation plan, as discussed in part 576, subpart A, of this chapter, which must outline the intended use of the incentive payments and voluntary early retirement; or

(3) The agency's human capital plan, which must outline its intended use of voluntary separation incentive payments and voluntary early retirement authority, and the changes in organizational structure it expects to make as the result of projected separations and early retirements.

(f) Regardless of the method used, the request must include all of the information required by paragraph (d) of this section.

(g) OPM may approve an agency's request for voluntary early retirement authority to cover the entire period of the substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping described by the agency, or the initial portion of that period with a requirement for subsequent information and justification if the period crosses multiple years.

(h) After OPM approves an agency's request, the agency must immediately

notify OPM of any subsequent changes in the conditions that served as the basis for the approval of the voluntary early retirement authority. Depending upon the circumstances involved, OPM will modify the authority as necessary to better suit the agency's needs.

(i) The agency may limit voluntary early retirement offers based on:

(1) An established opening and closing date that is announced to employees at the time of the offer; or

(2) The acceptance of a specified number of applications for voluntary early retirement, provided that, at the time of the offer, the agency notified employees that it retained the right to limit the number of voluntary early retirements.

(j) Within the timeframe specified for its approved VERA, the agency may subsequently establish a new or revised closing date, or reduce or increase the number of early retirement applications it will accept, if management's downsizing and/or reshaping needs change. If the agency issues a revised closing date, or a revised number of applications to be accepted, the new date or number of applications must be announced to the same group of employees included in the original announcement. If the agency issues a new window period with a new closing date, or a new instance of a specific number of applications to be accepted, the new window period or number of applications to be accepted may be announced to a different group of employees as long as they are covered by the approved VERA.

(k) An employee who separates from the service voluntarily 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:

(1) Is serving in a position covered by a voluntary early retirement offer; and

(2) Meets the conditions covered in 5 U.S.C. 8414(b)(1)(B).

(l) Agencies are responsible for ensuring that employees are not coerced into voluntary early retirement. If an agency finds any instances of coercion, it must take appropriate corrective action.

(m) An agency may not offer or process voluntary early retirements beyond the stated expiration date of a VERA or offer early retirements to employees who are not within the scope of the VERA approved by OPM.

(n) OPM may terminate a voluntary early retirement authority if it determines that the agency is no longer undergoing the condition(s) that formed the basis for its approval.

(o) OPM may amend, limit, or terminate a voluntary early retirement authority to ensure that voluntary early retirement authority regulations are being properly followed.

(p) Agencies must provide OPM with interim and final reports for each voluntary early retirement authority, as covered in OPM's approval letter to the agency. OPM may suspend or cancel a voluntary early retirement authority if the agency is not in compliance with the reporting requirements or reporting schedule specified in OPM's voluntary early retirement authority approval letter.

(q) The terms, conditions, and procedures in this section do not apply to the General Accounting Office.

(r) The authority to VERA to restructure the workforce terminates June 14, 2004.

[FR Doc. 03-14970 Filed 6-10-03; 4:46 pm]

BILLING CODE 6325-38-P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 1, 103, 239 and 287

[ICE No. 2274-03]

RIN 1653 AA26

Powers and Authority of Officers and Employees; Revisions to the Internal Review Process for Alleged Violations of the Standards for Enforcement Activities

AGENCY: Department of Homeland Security.

ACTION: Final rule.

SUMMARY: On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (Pub. L. 107-296) (HSA), which created the new Department of Homeland Security (Department or DHS). Pursuant to the provisions of the HSA, DHS came into existence on January 24, 2003. The functions of the Immigration and Naturalization Service (Service) and all authorities with respect to those functions, transferred to DHS on March 1, 2003, and the Service was abolished on that date, pursuant to the HSA and the Department of Homeland Security Reorganization Plan, as modified (Reorganization Plan). The transition and savings provisions of the HSA, including sections 1512(d) and 1517, provide that references relating to the Service in statutes, regulations, directives or delegations of authority shall be deemed to refer to the appropriate official or component of DHS. DHS is promulgating this rule to

continue the process of conforming the text of Title 8 of the Code of Federal Regulations to the governmental structures established in the HSA and Reorganization Plan. This rule is not intended to and does not restrict or otherwise limit the authority of any DHS officer.

DATES: This final rule is effective June 13, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Muhletaler, Bureau of Immigration and Customs Enforcement, Office of General Counsel, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone (202) 514-2895.

SUPPLEMENTARY INFORMATION

Explanation of Changes

First, the final rule expands the definitions of the terms "Service," "Commissioner," and "director" at 8 CFR 1.1. Definitions for the terms "Department," "Secretary," and "Bureau" have been added. Definitions have also been added for "BCIS," "CBP," and "ICE," which are the acronyms for the bureaus within DHS that have been delegated the authorities of the former Service. The definitions provide clarification that the functions of the legacy components of the Service continue under the Department. The definitions refer to the "Service" in recognition that the term "Service" continues to be used throughout Title 8 of the Code of Federal Regulations, and this final rule amends only limited portions of that title.

Second, the term "immigration enforcement agent" has been added to 8 CFR 103.1(b) in recognition of an ongoing modification to the field structure of the Bureau of Immigration and Customs Enforcement (ICE). As part of a position reclassification the immigration agent position (within the investigations program of ICE) and the detention enforcement officer position (within the detention and removal program of ICE) will be combined and reclassified into the immigration enforcement agent position. Immigration enforcement agents will have responsibilities that include the identification and processing of detained criminal aliens within the institutional removal program.

Third, the final rule revises the regulation at 8 CFR 239.1 that delegates authority to issue notices to appear. In his discretion, the Secretary of Homeland Security has published this delegation of authority to issue notices to appear in the Code of Federal Regulations, cross-referencing his general delegation authority under 8 CFR 2.1. The list of officers authorized