



Benefits Administration Letter

Number 10 - 105

Date: July 7, 2010

Subject: Enhanced Disability and Survivor Annuity Computations Under CSRS and FERS

Introduction

A series of court cases have changed the way the Office of Personnel Management (OPM) calculates disability annuities and survivor annuities that are based in whole or in part on service in positions that are usually tied to higher retirement deduction rates and to higher annuity accrual rates. This Benefits Administration Letter (BAL) provides information and guidance relating to those changes. The information in this BAL applies to both disability claims and survivor annuity claims (based on a death-in-service) under the Civil Service Retirement System (CSRS) and under the Federal Employees Retirement System (FERS) that involve employees who have performed service in the following positions:

- Law Enforcement Officer, Firefighter, and Nuclear Materials Courier, that is qualifying for retirement under 5 U.S.C. § 8336(c) or § 8412(d);
- Custom and Border Protection Officer that is qualifying for retirement under 5 U.S.C. § 8336(c) or § 8412(d);
- Member of the Supreme Court Police;
- Member of the Capitol Police; and
- Air Traffic Controller that is qualifying for retirement under 5 U.S.C. § 8336(e) or § 8412(e).

The information in this BAL supersedes the information in chapters 61 and 70 of the CSRS and FERS Handbook that references disability and survivor annuity computations for the employees working in positions listed above. It also supersedes the guidance provided in BAL 95-106, dated October 20, 1995, and BAL 02-104, dated May 10, 2002.

Background

In the case of Springer v. Adkins, 525 F.3d 1363 (Fed. Cir. 2008), the United States Court of Appeals for the Federal Circuit (the court or the Federal Circuit) awarded a firefighter retiring on disability under FERS an enhanced annuity computation pro-rated for firefighter service, even though the firefighter did not meet the age or service requirement to qualify for an enhanced firefighter retirement under 5 U.S.C. § 8412(d) at the time of his disability retirement. The court found that the use of the 1.7 percent annuity accrual rate for firefighter service under 5 U.S.C. § 8415(d) is not tied to the age and service thresholds in 5 U.S.C. § 8412(d) when an employee retires on a disability retirement. This decision follows a decision that the court made relating to the calculations of annuities for disabled law enforcement officers and firefighters under CSRS (Pitsker v. Office of Personnel Management, 234 F.3d 1378 (Fed. Cir. 2000)). It also follows a series of judicial decisions relating to computation of survivor annuities for survivors of law

enforcement officers or firefighters who died in service while covered under CSRS (Wassenaar v. Office of Personnel Management, 21 F.3d 1090 (Fed. Cir. 1994), and Moore v. Office of Personnel Management, 113 F.3d 216 (Fed. Cir. 1997) – decisions that were extended to FERS by OPM interpretation of the reasoning of the Federal Circuit in those decisions). The holdings and rationale of the Federal Circuit as expressed in these decisions over the better part of two decades has had a broad impact, directly affecting CSRS and FERS law enforcement officers and firefighters and their survivors. OPM has determined that the rationale of the Federal Circuit in Pitsker and Adkins extends to other employees who have performed service in positions that could qualify for an enhanced annuity. As stated above, OPM had already determined that the decisions affecting the CSRS survivor annuity computations under CSRS must also be extended to FERS survivor annuitants.

Agency Requirements to Certify Service

Law Enforcement Officer/Firefighter/Customs and Border Protection Officer

Currently, when a law enforcement officer, firefighter, and customs and border protection officer separate for immediate retirement under the retirement provisions unique to those positions (5 U.S.C. § 8336(c) and 5 U.S.C. § 8412(d)), agencies are required to provide certification, signed by a responsible official of the human resources office, documenting the service used to meet the service requirements of those retirement provisions. (The Department of Homeland Security must complete the certification for customs and border protection officers.) The certification lists in chronological order the title of each position and the beginning and ending dates the employee served in each position. It also indicates whether each position was covered as a primary or rigorous position, or as a secondary position.

OPM is now requiring that agencies provide certification of this service anytime an employee separates from an agency after performing service as a law enforcement officer, firefighter, or customs and border protection officer in the agency, regardless of the reason for separation. If the employee's separation is for retirement or death, the certification should be forwarded to OPM with the employee's Individual Retirement Record, SF 2806 or SF 3100. If the separation is for any reason other than retirement or death (resignation, separation/transfer, etc), the certification should be placed on the permanent side of the employee's Official Personnel Folder (OPF) until the employee separates for retirement or death.

Air Traffic Controllers

After Public Law 108-176, the "Vision 100-Century of Aviation Reauthorization Act," was enacted on December 12, 2003, OPM required the Departments of Transportation and Defense to certify all air traffic controller service, broken down by the type of air traffic controller service that was performed. For the purpose of this certification, there were four types of ATC service:

- "Frontline" service in which the ATC was actively engaged in the separation and control of air traffic (that is, service described in 5 U.S.C. § 2109(1)(a)(i));
- Preflight/Inflight/Airport Advisor service (that is, service described in 5 U.S.C. § 2109(1)(a)(ii));
- First level supervisor service (that is, service described in 5 U.S.C. § 2109(1)(B)); and
- Second level supervisor service (that is, service described in 5 U.S.C. § 8331(29) and § 8401(35)).

OPM asked those agencies to certify the service any time an employee separates from the agency after performing any of such service and to forward the certification to OPM if the separation was for retirement or death. If the separation was for some other reason, OPM asked the agencies to file the certification in the employee's Official Personnel Folder (OPF) so it will be available if the individual retires at a later date. The Departments of Transportation and Defense should continue to follow this procedure.

CSRS Enhanced Disability Annuity and Survivor Annuity Computations

Disability and Survivor Computations – General

Three separate calculations must be performed to determine the amount of a CSRS employee's disability benefit: an earned benefit calculation and two separate guaranteed minimum benefit calculations. The earned benefit is computed using the high-3 average pay the employee earned and the amount of creditable service the employee performed prior to retirement. The guaranteed minimum benefit equals the lesser of 40 percent of the employee's high-3 average pay, or a benefit based on the employee's high-3 average pay and the amount of creditable service the employee would have performed had the employee continued working until age 60 (hereinafter called the projected to age 60 benefit). (The additional time to age 60 credited in the projected to age 60 benefit is credited as service in the position the employee officially occupied at the time of retirement.) The amount of the CSRS disability benefit payable to the disability annuitant equals the greater of the earned benefit or the guaranteed minimum benefit (refer to 5 U.S.C. § 8337(a) and § 8339(g)).

The amount of the survivor annuity payable to a spouse or a former spouse of an employee who dies as an employee of the Federal government is derived from the disability computation. The survivor annuity equals 55 percent of the annuity the employee would have received had the separation from Federal service been for disability retirement rather than death.

The CSRS General Formula outlined in 5 U.S.C. § 8339(a) is commonly used to compute the earned benefit and the projected to age 60 benefit. Under the General Formula, there are three annuity accrual rates: 1.5 percent, 1.75 percent, and 2.0 percent. Five years of an employee's service is subject to the 1.5 percent annuity accrual rate, five years is subject to the 1.75 percent annuity accrual rate, and the amount of creditable service in excess of 10 years is subject to the 2.0 percent annuity accrual rate. For example, if an employee retires on disability with 20 years of service, the earned annuity under the General Formula would be computed as follows:

<i>1.5 percent x 5 years x high-3 average pay</i>	<i>=</i>	<i>7.5 percent of high-3 average pay</i>
<i>+ 1.75 percent x 5 years x high-3 average pay</i>	<i>=</i>	<i>8.75 percent of high-3 average pay</i>
<i>+ 2.0 percent x 10 years x high-3 average pay</i>	<i>=</i>	<i>20 percent of high-3 average pay</i>
<hr style="width: 100%;"/>		
<i>Basic Annuity:</i>	<i>=</i>	<i>36.25 percent of high-3 average pay</i>

As the result of the court decisions referenced earlier in this BAL, an additional annuity accrual rate – 2.5 percent – must be included in the computation of the earned annuity if an employee has performed service as a law enforcement officer, firefighter, nuclear materials courier, customs and border protection officer on and after July 6, 2008, member of the Supreme Court Police, or member of the Capitol Police. The 2.5 percent annuity accrual rate will be applied to all such

service, up to 20 years. (There are some circumstances pertaining to employees who have performed service as a member of the Capitol Police where the 2.5 percent annuity accrual rate will not be used in the calculation of the earned annuity, and where the 2.5 percent annuity accrual rate will not be limited to just 20 years of service. See the discussion on Capitol Police below for additional information.)

The amount of time subject to the 2.5 percent annuity accrual rate replaces the amount of time that would normally be creditable at the 1.5 percent and 1.75 percent annuity accrual rates of the General Formula. For example, if an employee retires on disability with 20 years of service, including 5 years of service as a firefighter, the earned annuity would be computed as follows:

$$\begin{array}{rcl}
 2.5 \text{ percent} \times 5 \text{ years} \times \text{high-3 average pay} & = & 12.5 \text{ percent of high-3 average pay} \\
 + 1.75 \text{ percent} \times 5 \text{ years} \times \text{high-3 average pay} & = & 8.75 \text{ percent of high-3 average pay} \\
 + \underline{2.0 \text{ percent} \times 10 \text{ years} \times \text{high-3 average pay}} & = & \underline{20 \text{ percent of high-3 average pay}} \\
 \text{Basic Annuity:} & = & 41.25 \text{ percent of high-3 average pay}
 \end{array}$$

Likewise, if an employee retires on disability with 20 years of service, including 10 years of service as a firefighter, the earned annuity would be computed as follows:

$$\begin{array}{rcl}
 2.5 \text{ percent} \times 10 \text{ years} \times \text{high-3 average pay} & = & 25 \text{ percent of high-3 average pay} \\
 + \underline{2.0 \text{ percent} \times 10 \text{ years} \times \text{high-3 average pay}} & = & \underline{20 \text{ percent of high-3 average pay}} \\
 \text{Basic Annuity:} & = & 45 \text{ percent of high-3 average pay}
 \end{array}$$

In the computation of the projected to age 60 benefit, the 2.5 percent annuity accrual rate may be applied to service performed as a member of the Supreme Court Police or member of a Capitol Police, not to exceed 20 years. The 2.5 percent annuity accrual rate, however, cannot be applied to service as a law enforcement officer, firefighter, nuclear materials courier, or customs and border protection officer.

Any unused sick leave included in the computation of the earned benefit and the projected to age 60 benefit may be subject to the 2.5 percent annuity accrual rate, subject to the 20 year limitation, if the employee retires from (or dies while in) a position that is subject to the 2.5 percent annuity accrual rate.

Additional details relating to the computation of the CSRS disability annuity for employees who have performed service as a law enforcement officer, firefighter, nuclear materials courier, customs and border protection officer, member of the Capitol Police, member of the Supreme Court Police, or air traffic controller are provided below.

Law Enforcement Officer/Firefighter/Nuclear Materials Courier

The earned benefit calculation of employees retiring on CSRS disability who have performed service as law enforcement officers, firefighters, or nuclear materials couriers that qualifies for retirement under 5 U.S.C. §8336(c), will be based in part on the 2.5 percent annuity accrual rate found in 5 U.S.C. § 8339(d). All service as a law enforcement officer, firefighter, or nuclear materials courier, not to exceed 20 years, will be subject to the 2.5 percent annuity accrual rate. Unused sick leave credit may also be credited at the 2.5 percent annuity accrual rate, subject to

the 20 year limitation, if the employee retires from a law enforcement officer, firefighter, or nuclear material courier position. Any creditable service not subject to the 2.5 percent annuity accrual rate will be subject to the appropriate rates of the General Formula.

The projected to age 60 guaranteed minimum disability benefit calculation for employees who have performed service as law enforcement officers, firefighters, or nuclear materials couriers that qualifies for retirement under 5 U.S.C. § 8336(c), will be based on the General Formula annuity accrual rates. The projected to age 60 guaranteed minimum calculation provision (5 U.S.C. §8339(g)(2)) does not allow the 2.5 percent annuity accrual rate in 5 U.S.C. § 8339(d) to be used in the calculation of that guaranteed minimum benefit for law enforcement officers, firefighters, and nuclear materials couriers.

Example 1 in the attachment to this BAL illustrates the calculation of the disability annuity for an employee who retires on disability as a firefighter. Service as a law enforcement officer or a nuclear materials courier could be substituted for service as a firefighter.

Members of the Capitol Police

Annuity accrual rates from three separate computation provisions, 5 U.S.C. § 8339(a), § 8339(b), and § 8339(q), may apply to the calculation of the earned benefit and the projected to age 60 guaranteed minimum disability benefit for a member or a former member of the Capitol Police. If more than one provision applies in a single case, the disability benefit will be based on the provision that yields the highest annuity rate.

Members of the Capitol Police are also congressional employees. Congressional employee service, including service as a member of the Capitol Police, may be subject to the 2.5 percent annuity accrual rate as provided in 5 U.S.C. § 8339(b) if the employee has had:

- at least 5 years' service as a congressional employee (including service as a member of the Capitol Police) or Member of Congress or any combination thereof; and
- deductions withheld from pay or has made a deposit covering the last 5 years of civilian service.

If both requirements are met, all congressional employee service (including service as a member of the Capitol Police), and creditable military service up to 5 years, will be subject to the 2.5 percent annuity accrual rate in the computation of the earned annuity and the projected to age 62 guaranteed minimum annuity. Any creditable service not subject to the 2.5 percent annuity accrual rate will be subject to the General Formula annuity accrual rates found in 5 U.S.C. § 8339(a) as appropriate.

Examples 2 and 3 in the attachment to this BAL illustrate the calculation of the disability annuity for a member and former member of the Capitol Police under 5 U.S.C. § 8339(b).

If a member or former member of the Capitol Police has not performed at least 5 years of service as a congressional employee but has had deductions withheld from pay (or has made a deposit) covering the last 5 years of civilian service, his or her service as a member of the Capitol Police will be subject to the 2.5 percent annuity accrual rate under 5 U.S.C. § 8339(q) in the computation of the disability earned annuity and the projected to age 60 guaranteed minimum benefit. Any creditable service not subject to the 2.5 percent annuity accrual rate will be subject

to the General Formula annuity accrual rates found in § 8339(a) as appropriate. Military service is not subject to the 2.5 percent accrual rate under § 8339(q).

Example 4 in the attachment to this BAL illustrates the calculation of the disability annuity using the 2.5 percent annuity accrual rate from 5 U.S.C. § 8339(q) for a former member of the Capitol Police.

If a member or former member of the Capitol Police does not have retirement deductions or service credit deposits in the retirement fund covering the last 5 years of service, the earned benefit and the projected to age 60 benefit will be computed entirely from the General Formula annuity accrual rates found in 5 U.S.C. § 8339(a).

Example 5 in the attachment to this BAL illustrates the calculation of the disability annuity for a former member of the Capitol Police under 5 U.S.C. § 8339(a).

If the disability computation for a member of the Capitol Police is computed under either 5 U.S.C. § 8339(b) or § 8339(q), unused sick leave credit may also be credited at the 2.5 percent annuity accrual rate if the employee retires as a member of the Capitol Police.

Member of the Supreme Court Police

The earned benefit calculation and the projected to age 60 guaranteed minimum calculation of employees retiring on CSRS disability who have performed service as members of the Supreme Court Police will be based in part on the 2.5 percent annuity accrual rate found in 5 U.S.C. § 8339(d). All service as a member of the Supreme Court Police, not to exceed 20 years, will be subject to the 2.5 percent annuity accrual rate. Any creditable service not subject to the 2.5 percent annuity accrual rate will be subject to the General Formula annuity accrual rates found in § 8339(a) as appropriate.

The additional time to age 60 credited in the projected to age 60 benefit is credited as service in the position the employee officially occupied at the time of retirement. That additional time will be subject to the 2.5 percent annuity accrual rate, subject to the 20 year limit, if the employee retires as a member of the Supreme Court Police.

Unused sick leave credit may also be credited at the 2.5 percent annuity accrual rate, subject to the 20 year limitation, if the employee retires as a member of the Supreme Court Police.

Example 6 in the attachment to this BAL illustrates the computation of the disability annuity for an employee who retires on disability and who has performed service as a member of the Supreme Court Police.

Air Traffic Controllers

The disability annuity for an employee who has performed service as an air traffic controller will generally equal the greater of the earned annuity, computed using the General Formula annuity accrual rates in 5 U.S.C. § 8339(a), or the guaranteed minimum benefit for air traffic controllers under 5 U.S.C. § 8339(e) – 50 percent of the employee’s high-3 average pay. The 50 percent

guaranteed minimum benefit for air traffic controllers will not apply, however, to employees who have received refunds of retirement contributions covering service during which they performed air traffic controller service if they have not repaid or redeposited that refund. If the 50 percent guaranteed minimum benefit does not apply because of a refund of CSRS deductions, the disability annuity payable to the annuitant will equal the greater of the earned annuity benefit or the guaranteed minimum disability benefit.

Examples 7 and 8 in the attachment to this BAL illustrate the computation of the disability annuity for an employee who retires on disability and who has performed service as an air traffic controller.

Customs and Border Protection Officers

The earned benefit calculation of employees retiring on disability who have performed service as a customs and border protection officer (CBPO) on or after July 6, 2008, that qualifies for retirement under the provisions of 5 U.S.C. § 8336(c) as the result of the amendments made in section 535 of Public Law 110-161,* will be based in part on the 2.5 percent annuity accrual rate found in 5 U.S.C. § 8339(d). All service as a CBPO on and after July 6, 2008, not to exceed 20 years, will be subject to the 2.5 percent annuity accrual rate. Any creditable service not subject to the 2.5 percent annuity accrual rate, including any service as a CBPO performed before July 6, 2008, will be subject to the General Formula annuity accrual rates found in 5 U.S.C. § 8339(a), as appropriate.

Unused sick leave credit may also be credited at the 2.5 percent annuity accrual rate in the earned annuity computation, subject to the 20 year limitation, if the employee retires from a CBPO position on or after July 6, 2008.

The projected to age 60 guaranteed minimum disability benefit calculation for employees who have performed service as a CBPO on or after July 6, 2008, that qualifies for retirement under the provisions of 5 U.S.C. § 8336(c) will be based entirely on the General Formula annuity accrual rates found in 5 U.S.C. § 8339(a). The projected to age 60 guaranteed minimum calculation provision (5 U.S.C. §8339(g)(2)) does not allow the 2.5 percent annuity accrual rate in 5 U.S.C.

* Section 535 of Division E of Public Law 110-161, the Department of Homeland Security Appropriations Act, 2008, December 26, 2007, established that service as a CBPO performed on or after July 6, 2008, would be creditable service for immediate retirement benefits under the provisions of 5 U.S.C. § 8336(c), the immediate retirement provisions for law enforcement officers, firefighters, and nuclear materials couriers – and now, CBPOs. Under the provisions of that section, however, employees serving in a CBPO position on December 26, 2007, were permitted to opt out of the provisions that made CBPO creditable service for immediate retirement under the provisions of § 8336(c). If an employee who opted out of those provisions retires on disability retirement from a CBPO position, no CBPO service can be applied to the 2.5 percent annuity accrual rate. The earned annuity and the projected to age 60 guaranteed minimum disability annuity will be computed using the General Formula annuity accrual rates in 5 U.S.C. § 8339(a). **Example 10** in the attachment to this BAL illustrates the calculation of the disability annuity for an employee in a CBPO position who opted out of the provisions for CBPOs established in section 535 of Division E of Public Law 110-161.

§ 8339(d) to be used in the calculation of that guaranteed minimum benefit for customs and border protection officers.

Example 9 in the attachment to this BAL illustrates the calculation of the disability annuity for an employee who retires on disability as a CBPO (assuming the service as a CBPO qualifies for retirement under the provisions of 5 U.S.C. § 8336(c)).

FERS Enhanced Disability Annuity and Survivor Annuity Computations

Disability and Survivor Computation – General

The FERS disability annuity computation typically requires several calculations for employees who are under the age of 62 when they retire on disability retirement (refer to 5 U.S.C. § 8452). When the disability retirement begins, the annuity equals the higher of the following computations:

- the earned annuity based on the amount of creditable service the employee performed and the employee's high-3 average pay, or
- 60 percent of the employee's high-3 average pay, less 100 percent of any social security disability benefit the employee may be entitled to receive.

After the first year, the disability retirement annuity equals the higher of the following computations:

- the earned annuity, or
- 40 percent of the employee's average pay, less 60 percent of any social security disability benefit the employee may be entitled to receive.

At age 62, the disability retirement benefit is recalculated again. The annuity at age 62 is based on the amount of creditable service the employee performed before retirement, plus the amount of time the employee received disability annuity benefits prior to age 62. (The additional time on the annuity rolls credited in the recalculation at age 62 is credited as service in the position the employee officially occupied at the time of retirement.) The average pay used in the recalculation of the disability at age 62 is equal to the average pay computed at retirement updated by all FERS cost-of-living adjustments that took effect while the individual received the disability annuity.

When a disability annuitant who has elected a survivor annuity for a spouse or former spouse dies before attaining age 62, the amount of the survivor annuity payable is based on the annuity recalculated as if the annuitant had attained age 62. The amount of creditable service the annuitant performed before retirement is combined with the amount of time the individual received disability annuity before his or her death, and the amount of time from the date of death until the annuitant would have turned age 62. The high-3 average pay calculated at retirement is updated by all FERS cost-of-living adjustments that took effect while the annuitant received disability benefits prior to death.

If an employee who has performed at least 10 years of creditable service dies while still an employee, the employee's spouse or former spouse may receive a survivor annuity based on the amount of annuity the employee had earned (based on the amount of creditable service the employee had performed and the employee's high-3 average pay) at the time of his or her death.

The earned annuity benefit in the disability computation is commonly based on the annuity accrual rate and formula found in 5 U.S.C. § 8415(a) – 1 percent times years and months of

creditable service times high-3 average pay. When recalculating the disability annuity at age 62 for an annuitant who has at least 20 years of creditable service (including the time the annuitant was receiving the disability retirement that is credited in the age 62 recalculation), the annuity accrual rate found in 5 U.S.C. § 8415(h) – 1.1 percent – is used in place of the 1 percent annuity accrual rate in the annuity formula unless the employee, at the time of retirement, was working as a congressional employee (including service as a member of the Capitol Police), a law enforcement officer, a firefighter, a nuclear materials courier, a customs and border protection officer, a member of the Supreme Court Police, an air traffic controller, or a military technician (dual status).

As the result of the court decisions referenced earlier in this BAL, an additional annuity accrual rate – 1.7 percent – must be included in the computation of the earned annuity if an employee has performed service as a law enforcement officer, firefighter, nuclear materials courier, customs and border protection officer on and after July 6, 2008, member of the Supreme Court Police, member of the Capitol Police, or air traffic controller. The 1.7 percent annuity accrual rate will be applied to all such service, up to 20 years. (There are some circumstances pertaining to employees who have performed service as air traffic controllers where the 1.7 percent annuity accrual rate is not limited to 20 years of air traffic controller service. See the discussion on air traffic controllers below for additional information.)

Credit for a FERS employee's unused sick leave may be included in the earned annuity computation and the recalculation at age 62 if the date of separation for disability or death is on or after October 28, 2009. Credit is allowed for 50 percent of the employee's unused sick leave balance for separations and deaths occurring before January 1, 2014, and 100 percent of the employee's unused sick leave balance for separations and deaths occurring on or after January 1, 2014. The additional time credited from the unused sick leave balance is credited as service in the position the employee officially occupied at the time of retirement.

Additional details relating to the computation of the FERS disability annuity for employees who have performed service as law enforcement officers, firefighters, nuclear materials couriers, customs and border protection officers, members of the Capitol Police, members of the Supreme Court Police, or air traffic controllers are provided below.

Law Enforcement Officer/Firefighter/Nuclear Materials Courier/Member of the Capitol Police/Member of the Supreme Court Police

The 1.7 percent annuity accrual rate in 5 U.S.C. § 8415(d) will be used to compute the earned disability benefit for employees who have performed service as law enforcement officers, firefighters, nuclear materials couriers, members of the Capitol Police, or members of the Supreme Court Police that is qualifying for retirement under 5 U.S.C. § 8412(d). All such service, up to 20 years, will be subject to the 1.7 percent annuity accrual rate, regardless of the employee's age at retirement. Unused sick leave credit may also be credited at the 1.7 percent annuity accrual rate, subject to the 20 year limitation, if the employee is a law enforcement officer, firefighter, nuclear materials courier, member of the Capitol Police, or member of the Supreme Court Police at the time of retirement. Any creditable service not subject to the 1.7 percent annuity accrual rate will be subject to the 1.0 percent annuity accrual rate found in 5 U.S.C. § 8415(a).

When the disability annuity is recalculated at age 62, the 1.7 percent annuity accrual rate from § 8415(d) will continue to be used with the service that it applied to in the computation of the earned disability benefit. In addition, if the employee retired while serving as a law enforcement officer, firefighter, nuclear materials courier, member of the Capitol Police, or member of the Supreme Court Police, the additional time during which the individual received disability annuity that is credited in the recalculation will also be subject to the 1.7 percent annuity accrual rate in § 8415(d), subject to the 20 year limitation. Any creditable time not subject to the 1.7 percent annuity accrual rate will be subject to the 1.0 percent annuity accrual rate in § 8415(a). (The 1.1 percent annuity accrual rate in § 8415(h) may be used in lieu of the 1.0 percent annuity accrual rate if the annuitant has at least 20 years of creditable service, including the time the annuitant was receiving the disability retirement that is credited in the age 62 recalculation, and the annuitant at the time of retirement was not working as a congressional employee (including service as a member of the Capitol Police), a law enforcement officer, a firefighter, a nuclear materials courier, a customs and border protection officer, a member of the Supreme Court Police, an air traffic controller, or a military technician (dual status)).

Example 11 in the attachment to this BAL illustrates the calculation of the disability annuity for an employee who retires on disability as a law enforcement officer. Service as a firefighter, a nuclear materials courier, a member of the Capitol Police, or a member of the Supreme Court Police could be substituted for service as a law enforcement officer.

Customs and Border Protection Officer

The earned benefit calculation of employees retiring on disability who have performed service as a customs and border protection officer (CBPO) on or after July 6, 2008, that qualifies for retirement under the provisions of 5 U.S.C. § 8412(d) as the result of the amendments made in section 535 of Public Law 110-161,** will be based on the 1.7 percent annuity accrual rate found in 5 U.S.C. § 8415(d) and the 1.0 percent annuity accrual rate found in 5 U.S.C. § 8415(a). All service as a CBPO on and after July 6, 2008, not to exceed 20 years, will be subject to the 1.7 percent annuity accrual rate. Unused sick leave credit may also be credited at the 1.7 percent annuity accrual rate, subject to the 20 year limitation, if the employee retires from a CBPO

** Section 535 of Division E of Public Law 110-161, the Department of Homeland Security Appropriations Act, 2008, December 26, 2007, established that service as a CBPO performed on or after July 6, 2008, would be creditable service for immediate retirement benefits under the provisions of 5 U.S.C. § 8412(d), the immediate retirement provisions for law enforcement officers, firefighters, and nuclear materials couriers, members of the Capitol Police, members of the Supreme Court Police – and now, CBPOs. Under the provisions of that that section, however, employees serving in a CBPO position on December 26, 2007, were permitted to opt out of the provisions that made CBPO creditable service for immediate retirement under the provisions of § 8412(d). If an employee who opted out of those provisions retires on disability retirement from a CBPO position, no CBPO service can be applied to the 1.7 percent annuity accrual rate. The earned annuity and the disability annuity recomputed at age 62 will be computed using the annuity accrual rate in 5 U.S.C. § 8415(a), 1.0 percent, or if applicable, the annuity accrual rate in 5 U.S.C. § 8415(h), 1.1 percent. **Example 13** in the attachment to this BAL illustrates the calculation of the disability annuity for an employee in a CBPO position who opted out of the provisions for CBPOs established in section 535 of Division E of Public Law 110-161.

position. Any creditable service not subject to the 1.7 percent annuity accrual rate will be subject to the 1.0 percent annuity accrual rate, including any service as a CBPO performed before July 6, 2008.

When the disability annuity is recalculated at age 62, the 1.7 percent annuity accrual rate from § 8415(d) will continue to be used with the service that it applied to in the computation of the earned disability benefit. In addition, if the employee retired while serving as a CBPO, the additional time during which the individual received disability annuity that is credited in the recalculation will also be subject to the 1.7 percent annuity accrual rate in § 8415(d), subject to the 20 year limitation. Any creditable time not subject to the 1.7 percent annuity accrual rate will be subject to the 1.0 percent annuity accrual rate in § 8415(a). (The 1.1 percent annuity accrual rate in § 8415(h) may be used in lieu of the 1.0 percent annuity accrual rate if the annuitant has at least 20 years of creditable service, including the time the annuitant was receiving the disability retirement that is credited in the age 62 recalculation, and the annuitant at the time of retirement was not working as a congressional employee (including service as a member of the Capitol Police), a law enforcement officer, a firefighter, a nuclear materials courier, a customs and border protection officer, a member of the Supreme Court Police, an air traffic controller, or a military technician (dual status)).

Example 12 in the attachment to this BAL illustrates the calculation of the disability annuity for an employee who retires on disability as a CBPO (assuming the service as a CBPO qualifies for retirement under the provisions of 5 U.S.C. § 8412(d)).

Air Traffic Controllers

The computation of the earned annuity for employees retiring on disability retirement who have performed service as an air traffic controller will be based on the 1.7 percent annuity accrual rate from 5 U.S.C. § 8415(d) and/or the 1.7 percent annuity accrual rate from 5 U.S.C. § 8415(e) in addition to the 1.0 percent annuity accrual rate from 5 U.S.C. § 8415(a). If an employee has performed at least 5 years of “front-line” air traffic controller service, that is, air traffic controller service defined in 5 U.S.C. § 2109(1)(A)(i) (“a civilian employee in the Department of Defense or the Department of Transportation who in an air traffic control facility is actively engaged in the separation and control of air traffic”), all such service will be subject to the 1.7 percent annuity accrual rate found in § 8415(e). There is no limit on how many years of front-line air traffic controller service can be applied to the 1.7 percent annuity accrual rate under § 8415(e). Other air traffic controller service that is not front-line service (for example, service as an immediate supervisor to a front-line air traffic controller) is subject to the 1.7 percent annuity accrual rate under § 8415(d), subject to the 20 year limit on service that can be applied to the 1.7 percent annuity accrual rate under § 8415(d). Front-line air traffic controller service subject to the 1.7 percent annuity accrual rate under § 8415(e) does not count toward the 20 year limit of service that may be applied to the 1.7 percent annuity accrual rate under § 8415(d), but if the employee has performed less than 5 years of front-line air traffic controller service, that service will be subject to the 1.7 percent annuity accrual rate under § 8415(d), and that time will count toward the 20 year limit that applies to the 1.7 percent annuity accrual rate in § 8415(d). Unused sick leave credit may also be credited at the 1.7 percent annuity accrual rate, subject to the 20 year limit under 5 U.S.C. § 8415(d), if applicable, if the employee retires from an air traffic controller position. Any creditable service that is not subject to the 1.7 percent annuity accrual rate will be subject to the 1.0 percent annuity accrual rate of § 8415(a).

When the disability annuity is recomputed at age 62 for employees who have performed service as an air traffic controller, the additional credit for the time the individual received disability annuity can be used to satisfy the five year service requirement referenced in 5 U.S.C. § 8415(e) if the individual retires from a front-line air traffic controller position, and the front-line air traffic controller service and the additional time on the disability annuity roll credited as front-line air traffic controller service will be subject to the 1.7 percent annuity accrual rate, without limit. Any remaining creditable air traffic controller service that is not front-line service is subject to the 1.7 percent annuity accrual rate in 5 U.S.C. § 8415(d) subject to the 20 year limit, and any remaining creditable service not subject to the 1.7 percent annuity accrual rate is subject to the 1.0 percent annuity accrual rate of § 8415(a). (Note the remaining service not subject to the 1.7 percent annuity accrual rate may be subject to the 1.1 percent annuity accrual rate in § 8415(h) if the annuitant has at least 20 years of creditable service (including credit for the time the annuitant was receiving the disability retirement that is credited in the age 62 recalculation) and the annuitant at the time of retirement was not working as a congressional employee (including service as a member of the Capitol Police), a law enforcement officer, a firefighter, a nuclear materials courier, a customs and border protection officer, a member of the Supreme Court Police, an air traffic controller, or a military technician (dual status).)

Examples 14, 15, and 16 in the attachment to this BAL illustrate the calculation of the disability annuity for an employee who retires on disability as an air traffic controller.

FERS Annuity With a CSRS Component – Computation of Disability and Survivor Annuity - General

Many FERS employees who elect to transfer from CSRS coverage or social security only coverage to FERS may be entitled to have their annuity benefit calculated under both CSRS and FERS computation provisions. The portion of a FERS annuity computed under CSRS computation provisions is commonly referred to as a CSRS component. Whenever a FERS employee entitled to a CSRS component dies while employed or retires on disability retirement, the CSRS component in the disability or survivor annuity computation is based on the CSRS earned annuity benefit computation as described in this BAL. The guaranteed minimum provisions under CSRS for disability retirement and for air traffic controller retirement cannot be used to compute the CSRS component.

Example 17 in the attachment to this BAL illustrates the calculation of the disability annuity for an FERS employee who retires on disability as an air traffic controller and who is entitled to a FERS annuity with a CSRS component.

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Retirement and Benefits

Attachment