

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 831 and 842

RIN 3206-AM20

#### Presumption of Insurable Interest for Same-Sex Domestic Partners

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) proposes to amend its regulations to include same-sex domestic partners to the class of persons for which an insurable interest is presumed to exist. The proposed rule, therefore, is designed to relieve federal employees with same-sex domestic partners from the evidentiary requirements in existing regulations for persons outside this class. Additionally, OPM is taking this step to recognize that individuals with same-sex domestic partners have the same presumption of an insurable interest in the continued life of employees or Members as the class of persons listed in the existing rule.

**DATES:** We must receive your comments by April 4, 2011.

**ADDRESSES:** You may submit comments, identified by docket number and/or RIN number 3206-AM20 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [combox@opm.gov](mailto:combox@opm.gov). Include RIN number 3206-AM20 in the subject line of the message.

- *Mail:* John Panagakos, Retirement Policy, Retirement Services, Office of Personnel Management, 1900 E. Street, NW., Washington, DC 20415-3200.

**FOR FURTHER INFORMATION CONTACT:** Kristine Prentice or Roxann Johnson, (202) 606-0299.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management (OPM) is amending 5 CFR 831.613(e) and 5 CFR 842.605(e) to add persons in same-sex

domestic partnerships to the relationships listed as having a presumption of an insurable interest under §§ 831.613(e)(1) and 842.605(e)(1). Retiring employees and Members of Congress (Members), who submit evidence to demonstrate that they are in good health and who are not retiring on disability are generally able to elect a reduced annuity to provide an insurable interest survivor annuity. However, the employee or Member must establish that the person elected has an insurable interest in the continued life of the employee or Member. An insurable interest in the continued life of a retiring employee or Member is presumed to exist for certain relationships listed under §§ 831.613(e)(1) and 842.605(e)(1). Currently, the relationships listed under §§ 831.613(e)(1) and 842.605(e)(1) include the following: Spouses, former spouses, blood or adopted relatives closer than first cousins, common law spouses, or persons to whom employees or Members are engaged to be married. If employees or Members elect an insurable interest annuity for a person who does not fall under one of these categories, the employee or Member must submit affidavits along with his or her election to establish the existence of a relationship between the named beneficiary of the election and the employee or Member, the extent to which the named beneficiary is dependent on the employee or Member, and the reasons why the named beneficiary might reasonably expect to derive financial benefit from the continued life of the employee or Member. Without such proof, the employee or Member will fail to meet the statutory requirement to establish the insurable interest relationship and the election will be denied.

Pursuant to the President's June 2, 2010, Memorandum for the Heads of Executive Departments and Agencies on Extension of Benefits to Same-Sex Domestic Partners of Federal Employees, OPM proposes to add to the relationships listed in §§ 831.613(e) and 842.605(e) of the United States Code of Federal Regulations those individuals who have entered into a domestic partnership with an individual of the same sex who is a retiring employee or Member. For the purposes of these regulations, an insurable interest will be presumed to exist for employees or

Members having a same-sex domestic partner. The term "domestic partnership" has the same meaning as that ascribed to it in the Memorandum issued by OPM Director Berry on June 2, 2010, to Heads of Executive Departments and Agencies concerning Implementation of the President's Memorandum Regarding Extension of Benefits to Same-Sex Domestic Partners of Federal Employees. See <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=2982>.

To demonstrate eligibility to elect an insurable interest annuity, at retirement, OPM will ask employees and Members to provide proof to establish the existence of, or former existence of, his or her domestic partnership, in addition to evidence of his or her good health.

#### Executive Order 12866, Regulatory Review

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

#### 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 payments to retired employees or Members who elect an insurable interest annuity for a person with whom they have entered into a domestic partnership or civil union.

#### List of Subjects in 5 CFR Parts 831 and 842

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.

Office of Personnel Management.

**John Berry,**  
*Director.*

For the reasons discussed in the preamble, the Office of Personnel Management is proposing to amend 5 CFR parts 831 and 842 as follows:

#### PART 831—RETIREMENT

1. The authority citation for part 831 continues 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 Sec. 1313(b)(5) of Public Law 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 Secs. 11202(f), 11232(e), and 11246(b) of Public Law 105–33, 111 Stat. 251; Sec. 831.201(g) also issued under Secs. 7(b) and (e) of Public Law 105–274, 112 Stat. 2419; Sec. 831.201(i) also issued under Secs. 3 and 7(c) of Public Law 105–274, 112 Stat. 2419; Sec. 831.204 also issued under Sec. 102(e) of Public Law 104–8, 109 Stat. 102, as amended by Sec. 153 of Public Law 104–134, 110 Stat. 1321; Sec. 831.205 also issued under Sec. 2207 of Public Law 106–265, 114 Stat. 784; Sec. 831.206 also issued under Sec. 1622(b) of Public Law 104–106, 110 Stat. 515; Sec. 831.301 also issued under Sec. 2203 of Public Law 106–265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and Sec. 2203 of Public Law 106–235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337; Sec. 831.502 also issued under Sec. 1(3), E.O. 11228, 3 CFR 1965–1965 Comp. p. 317; Sec. 831.663 also issued under Secs. 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under Sec. 11004(c)(2) of Public Law 103–66, 107 Stat. 412; Sec. 831.682 also issued under Sec. 201(d) of Public Law 99–251, 100 Stat. 23; Sec. 831.912 also issued under Sec. 636 of Appendix C to Public Law 106–554, 114 Stat. 2763A–164; Subpart V also issued under 5 U.S.C. 8343a and Sec. 6001 of Public Law 100–203, 101 Stat. 1330–275; Sec. 831.2203 also issued under Sec. 7001(a)(4) of Public Law 101–508, 104 Stat. 1388–328.

2. Revise 831.613(e) to read as follows:

**§ 831.613 Election of insurable interest annuities.**

\* \* \* \* \*

(e) An insurable interest annuity may be elected to provide a survivor benefit only for a person who has an insurable interest in the retiring employee or Member.

(1) An insurable interest is presumed to exist with—

- (i) The current spouse;
- (ii) The current same-sex domestic partner;
- (iii) A blood or adopted relative closer than first cousins;
- (iv) A former spouse;
- (v) A former same-sex domestic partner;
- (vi) A person to whom the employee or Member is engaged to be married, or a person with whom the employee or Member has agreed to enter into a same-sex domestic partnership;
- (vii) A person with whom the employee or Member is living in a relationship that would constitute a common-law marriage in jurisdictions recognizing common-law marriages;

(2) For purposes of this section, the term “same-sex domestic partner” means a person in a domestic partnership with an employee or annuitant of the same sex and the term “domestic partnership” is defined as a committed relationship between two adults, of the same sex, in which the partners—

- (i) Are each other’s sole domestic partner and intend to remain so indefinitely;
- (ii) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);
- (iii) Are at least 18 years of age and mentally competent to consent to contract;
- (iv) Share responsibility for a significant measure of each other’s financial obligations;
- (v) Are not married or joined in a civil union to anyone else;
- (vi) Are not the domestic partner of anyone else;
- (vii) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed; and
- (viii) Are willing to certify, if required by OPM, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001.

(3) When an insurable interest is not presumed, the employee or Member must submit affidavits from one or more persons with personal knowledge of the named beneficiary’s insurable interest in the employee or Member. The affidavits must set forth the relationship, if any, between the named beneficiary and the employee or Member, the extent to which the named beneficiary is dependent on the employee or Member, and the reasons why the named beneficiary might reasonably expect to derive financial benefit from the continued life of the employee or Member.

(4) The employee or Member may be required to submit documentary evidence to establish the named beneficiary’s date of birth.

\* \* \* \* \*

**PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY**

3. The authority citation for part 842 continues 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 Secs. 3 and 7(c) of Public Law 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 Sec. 102(e) of Public Law 104–8, 109 Stat. 102, as amended by Sec. 153 of Public Law 104–134, 110 Stat. 1321–102; Sec. 842.107 also issued under Secs. 11202(f), 11232(e), and 11246(b) of Public Law 105–33, 111 Stat. 251, and Sec. 7(b) of Public Law 105–274, 112 Stat. 2419; Sec. 842.108 also issued under Sec. 7(e) of Public Law 105–274, 112 Stat. 2419; Sec. 842.109 also issued under Sec. 1622(b) of Public Law 104–106, 110 Stat. 515; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and Sec. 1313(b)(5) of Public Law 107–296, 116 Stat. 2135; Secs. 842.304 and 842.305 also issued under Sec. 321(f) of Public Law 107–228, 116 Stat. 1383, 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 Sec. 7001(a)(4) of Public Law 101–508, 104 Stat. 1388; Sec. 842.707 also issued under Sec. 6001 of Public Law 100–203, 101 Stat. 1300; Sec. 842.708 also issued under Sec. 4005 of Public Law 101–239, 103 Stat. 2106 and Sec. 7001 of Public Law 101–508, 104 Stat. 1388; Subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under Sec. 636 of Appendix C to Public Law 106–554 at 114 Stat. 2763A–164; Sec. 842.811 also issued under Sec. 226(c)(2) of Public Law 108–176, 117 Stat. 2529.

4. Revise 842.605(e) to read as follows:

**§ 842.605 Election of insurable interest rate.**

\* \* \* \* \*

(e) An insurable interest rate may be elected to provide a survivor benefit only for a person who has an insurable interest in the retiring employee or Member.

(1) An insurable interest is presumed to exist with—

- (i) The current spouse;
- (ii) The same-sex domestic partner;
- (iii) A blood or adopted relative closer than first cousins;
- (iv) A former spouse;
- (v) A former same-sex domestic partner;
- (vi) A person to whom the employee or Member is engaged to be married, or a person with whom the employee or Member has agreed to enter into a same-sex domestic partnership;
- (vii) A person with whom the employee or Member is living in a relationship that would constitute a common-law marriage in jurisdictions recognizing common-law marriages;

(2) For purposes of this section, the term “same-sex domestic partner” means a person in a domestic partnership with

an employee or annuitant of the same sex, and the term “domestic partnership” is defined as a committed relationship between two adults, of the same sex, in which the partners—

(i) Are each other’s sole domestic partner and intend to remain so indefinitely;

(ii) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(iii) Are at least 18 years of age and mentally competent to consent to contract;

(iv) Share responsibility for a significant measure of each other’s financial obligations;

(v) Are not married or joined in a civil union to anyone else;

(vi) Are not the domestic partner of anyone else;

(vii) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed; and

(viii) Are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001, and that the method for securing such certification, if required, shall be determined by the agency.

(3) When an insurable interest is not presumed, the employee or Member must submit affidavits from one or more persons with personal knowledge of the named beneficiary’s having an insurable interest in the employee or Member. The affidavits must set forth the relationship, if any, between the named beneficiary and the employee or Member, the extent to which the named beneficiary is dependent on the employee or Member, and the reasons why the named beneficiary might reasonably expect to derive financial benefit from the continued life of the employee or Member.

(4) The employee or Member may be required to submit documentary evidence to establish the named beneficiary’s date of birth.

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[FR Doc. 2011-4791 Filed 3-2-11; 8:45 am]

BILLING CODE 6325-39-P

## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Parts 214 and 299

[CIS No. 2443-08; DHS Docket No. USCIS-2008-0014]

RIN 1615-AB71

#### Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Aliens Subject to the Numerical Limitations

**AGENCY:** U.S. Citizenship and Immigration Services, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security is proposing to amend its regulations governing petitions filed on behalf of H-1B alien workers subject to annual numerical limitations or exempt from numerical limitations by virtue of having earned a U.S. master’s or higher degree (also referred to as the “65,000 cap” and “20,000 cap” respectively, or the “cap” collectively). This rule proposes to require employers seeking to petition for H-1B workers subject to the cap to first file electronic registrations with U.S. Citizenship and Immigration Services (USCIS) during a designated registration period. Under this proposed rule, if USCIS anticipates that the H-1B cap will not be reached by the first day that H-1B petitions may be filed for a particular fiscal year, USCIS would notify all registered employers that they are eligible to file H-1B petitions on behalf of the beneficiaries named in the selected registrations. USCIS would continue to accept and select registrations until the H-1B cap is reached. On the other hand, if USCIS anticipates that the H-1B cap will be reached by the first day that H-1B petitions may be filed for a particular fiscal year, USCIS would close the registration before such date and randomly select a sufficient number of timely filed registrations to meet the applicable cap. USCIS proposes to allow only those petitioners whose registrations are randomly selected to file H-1B petitions for the cap-subject prospective worker named in the registration. USCIS would create a waitlist containing some or all of the remaining registrations, based on USCIS statistical estimates of how many more registrations may be needed to fill the caps should the initial pool of selected registrations fall short. USCIS would notify the employers of those registrations placed on the waitlist *when* and if they are eligible to file an H-1B petition. Employers whose registrations were neither randomly selected to file

petitions nor placed on the waitlist *would receive notification* that they were not selected to file petitions in that fiscal year.

USCIS anticipates that this new process will reduce administrative burdens and associated costs on employers who currently must spend significant time and resources compiling the petition and supporting documentation for each potential beneficiary without certainty that the statutory cap has not been reached. The proposed mandatory registration process also will alleviate administrative burdens on USCIS service centers that process H-1B petitions.

**DATES:** Written comments must be submitted on or before May 2, 2011.

**ADDRESSES:** You may submit comments, identified by DHS Docket No. USCIS-2008-0014 by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* You may submit comments directly to USCIS by e-mail at [rfs.regs@dhs.gov](mailto:rfs.regs@dhs.gov). Include DHS Docket No. USCIS-2008-0014 in the subject line of the message.

- *Mail:* Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529-2020. To ensure proper handling, please reference DHS Docket No. USCIS-2008-0014 on your correspondence. This mailing address may also be used for paper, disk, or CD-ROM submissions.

- *Hand Delivery/Courier:* U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529-2020. Contact Telephone Number is (202) 272-8377.

**FOR FURTHER INFORMATION CONTACT:** Shelly Sweeney, Adjudications Officer, Business Employment Services Team, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529-2060, telephone (202) 272-8410.

**SUPPLEMENTARY INFORMATION:** This supplementary information section is organized as follows:

I. Public Participation

II. Background

A. Current H-1B Petition Process

B. H-1B Nonimmigrants Subject to H-1B Caps

C. Current Random Selection Process

D. Fiscal Year 2009 Filings

III. Proposed Registration Program