

DEPARTMENT OF THE TREASURY**31 CFR Part 29****Federal Benefit Payments Under Certain District of Columbia Retirement Plans****AGENCY:** Departmental Offices, Treasury.**ACTION:** Final rule.

SUMMARY: The Department of the Treasury, Departmental Offices, is issuing final regulations to implement the provisions of Title XI of the Balanced Budget Act of 1997, as amended (Act). The Act assigns the Secretary of the Treasury responsibility for payment of benefits under the District of Columbia (District) retirement plan for judges regardless of when accrued and under the District retirement plans for police and firefighters, and teachers for benefits based on credit for service accrued as of June 30, 1997. The regulations establish the general rules for the Department of the Treasury's administration of its program responsibilities and the methodology for determining the amount of Federal Benefit Payments.

DATE: This final rule is effective January 11, 2001, except § 29.102(a)(3) and subpart C of part 29 are effective March 31, 2001.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On December 13, 1999, the Department of the Treasury published (at 64 FR 69432) proposed regulations to implement Title XI of the Balanced Budget Act of 1997, Public Law 105-33, 111 Stat. 251, 712-731, 756-759, enacted August 5, 1997, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law 105-277, 112 Stat. 2681, 2681-530 through 538, 2681-552. The Act transferred certain unfunded pension liabilities from the District of Columbia (District) government to the Federal Government. The Act also required the Federal Government to assume responsibility for payment of benefits under the District retirement plan for judges regardless of when accrued and under the District retirement plans for police and firefighters, and teachers for benefits based on credit for service accrued as of June 30, 1997.

The proposed regulations addressed both the general rules for the Department of the Treasury's

administration of its program responsibilities and the methodology for determining the amount of Federal Benefit Payments for police, firefighters, and teachers. The Department has determined that it is impracticable to end the interim benefits administration period described in section 11041(a) of the Act until it has developed an automated data processing system that will make Federal Benefit Payments calculations in accordance with these regulations. Consequently, the effective date of the final regulations concerning the methodology for determining the amount of Federal Benefit Payments must be delayed until the automated system becomes operational, which is expected to occur on March 31, 2001. Accordingly, the regulations pertaining to the methodology for determining the amount of Federal Benefit Payments (subpart C of the proposed rules) are scheduled to become effective on March 31, 2001.

The general rules for the Department of the Treasury's administration of its program responsibilities (subparts A and B of the proposed rules) will be effective 30 days after publication of this rule, with the exception of section 29.102(a)(3), which shall become effective on March 31, 2001. The general rules establish the regulatory framework for other regulations the Department is preparing pursuant to section 11083 of the Act.

In the notice of proposed rulemaking (NPRM), subparts A through C were designated to become a new part 28 of Title 31, Code of Federal Regulations. However, before publication of the NPRM, proposed regulations on Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving Federal Financial Assistance were published (at 64 FR 58568) on October 29, 1999, as part 28. The final regulations on Federal Benefit Payments Under Certain District of Columbia Retirement Plans have been renumbered as part 29. The following discussion of the comments received under the proposed rule uses the old section numbers for convenience.

The Department received two comments on the proposed regulations. The Department has accepted 9 of the 10 suggestions made in the comments.

Proposed section 28.105(a) provided the rule for computing the end date for a period of time for filing documents under these regulations. One comment observed that District offices are closed on District holidays as well as Saturday, Sunday, and Federal holidays. Since the regulations generally require that documents be filed with the District, the last day of the filing must be extended

by a day if the last day for filing falls on a District holiday. Section 29.105(a) has been changed to treat District holidays in the same manner as Federal holidays for filing time limits.

Proposed section 28.105(c) provided the rule for computing the amount of unused sick leave creditable for annuity computation purposes. One comment noted that paragraph (c)(1) of that section incorrectly stated the rule under the Police and Firefighters Plan. Under section 4-622 of the D.C. Code, survivors of participants who die in service do not receive credit for unused sick leave. The calculation of a survivor annuity in such cases depends only on the average salary of the policeman or firefighter at the time of death. Similarly, certain disability annuity calculations, which are based on a disability percentage rather than the length of service, do not include credit for unused sick leave. The regulatory text has been corrected by deleting references to unused sick leave in such circumstances.

Proposed section 28.106 provided for recognition of representative payees for recipients of Federal Benefit Payments under the same rules as apply to other benefits under each plan. The section includes a reference to section 4-629(b) of the DC Code as an example of a plan provision for payment to a representative payee. One comment suggested that the reference be clarified to indicate that section 4-629(b) applies to the Police and Firefighter Plan. The reference has been changed to so indicate.

Proposed section 28.203 provided that legal process to affect Federal Benefit Payments should be served upon District officials in three specific situations. The supplementary information to the proposed regulations stated that in all other situations service of process was to be made upon the United States and the Department of the Treasury. One comment requested an explanation of the extent to which legal process should be served upon the United States and the Department of the Treasury in disputes over annuity amounts.

The Department of the Treasury has reconsidered the entire issue of service of process affecting Federal Benefit Payments. The Department has concluded that legal process under section 659 of title 42, United States Code and part 581 of Title 5, Code of Federal Regulations, that is, process implementing an order for alimony or child support; or any request for or notice of appointment of a custodian, guardian, or other fiduciary to receive Federal Benefit Payments as

representative payees under section 29.106 must be served upon the Department of the Treasury. The address for service of these types of process has been added as an appendix to subpart B of part 29. The Department will also request the U.S. Office of Personnel Management to make a similar change to appendix A of part 581 of Title 5, Code of Federal Regulations. Any qualifying court order under chapter 30 of title 1 of the DC Code (1997) must be served upon the District of Columbia in accordance with any rules issued under section 1-3005 of the DC Code. All other process regarding Federal Benefit Payments must be served upon the United States in accordance with applicable law. Process involving retirement benefits payable by the District of Columbia must be served upon the District in accordance with applicable law.

Proposed section 28.302 defined the term disability retirement for use in subpart C of part 28. One comment noted that the definition should have referred to the statutory provision for teacher disability retirement for teachers who retired after June 30, 1946. The statutory reference in the final regulation has been changed to reflect the statute applicable to teachers who retire on disability retirement after June 30, 1946.

Proposed section 28.302 also defined the term military service for use in subpart C of part 28. One comment noted that the definition erroneously included a deposit requirement for a teacher to be eligible for credit for honorable active military service. The definition has been corrected to eliminate the error.

Proposed section 28.322 provided service credit rules concerning disability retirement after June 30, 1997. Paragraph (b) of that section also contained information about the commencing date of Federal Benefit Payments in such cases. One comment noted that paragraph (b) of that section contained an incorrect reference to proposed section 28.342 that pertains to maximum annuity calculations. The reference should have been to proposed section 28.343, which relates to the calculation of the Federal Benefit Payment in disability retirement cases. The supplementary information to the proposed regulation contained several similar errors that appear to be the result of a change in section numbering late in the drafting process. The references have been corrected in the final regulations.

One comment objected to proposed section 28.322(b) and suggested that Federal Benefit Payments should

commence at separation in cases of disability retirement where the former employee has not met the criteria for optional retirement. The relevant language in the proposed regulation states:

If an employee separates for disability retirement after June 30, 1997, and, on the date of separation, the employee * * * [d]oes not satisfy the age and service requirements for optional retirement, the Federal Benefit Payment begins when the disability retiree reaches deferred retirement age.

The suggested change would not be consistent with the statutory language that the regulation implements. Section 11012(c) of the Balanced Budget Act states, in pertinent part:

Special Rule Regarding Disability Benefits.—To the extent that any portion of a benefit payment to which an individual is entitled under a District Retirement Program is based on a determination of disability made by the District of Columbia Retirement Board or the Trustee after [June 30, 1997], the Federal benefit payment with respect to the individual shall be in an amount equal to the deferred retirement benefit * * * the individual would receive if the individual left service on the day before the commencement of the disability retirement benefits.

Since the disability retiree is not entitled to any amount of deferred retirement benefit until he or she reaches the appropriate age for deferred retirement, there is no “amount equal to the deferred retirement benefit” for the period between separation and the commencing date for the deferred retirement benefit. Accordingly, the proposed regulation correctly reflects the statutory provision.

Moreover, if Federal Benefit Payments began at separation in cases of disability retirement where the employee had not yet reached the age for deferred retirement, the District government would control the commencement of such benefits by finding the employee eligible for disability retirement. This would be contrary to sections 11021 and 11035(d) of the Act, which provide that only the Secretary or the Trustee shall determine whether an individual is eligible to receive a Federal Benefit Payment under the Act.

Proposed section 28.344 provided the rule for calculating Federal Benefit Payments in cases involving death benefits. Examples 13A through 13C of appendix A to proposed part 28 illustrated the death-benefit calculations. One comment noted that no example illustrates the survivor annuity calculation in cases in which the guaranteed minimum is based on a projection of service to age 60. Example 13D has been added in the final

regulations to illustrate such a case. The projection to age 60 only affects the total survivor-annuity computation. As in 40-percent guaranteed minimum cases, Federal Benefit Payments are in the same proportion to the total survivor annuity as the amount of service as of June 30, 1997, is to the amount of total service.

Example 10B in appendix A to proposed part 28 illustrated the computation of a reduced annuity to provide a survivor annuity. One comment noted an error in the amount labeled “Total Reduced.” The annual amount should have been \$42,374.13, but was published as \$43,374.13. The annual amount has been corrected in the final regulations. The monthly amount was correctly computed based on the lower amount.

Executive Order 12866, Regulatory Review

Because this rule is not a significant regulatory action for purposes of Executive Order 12866, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation will only affect the determination of the Federal portion of retirement benefits to certain former employees of the District of Columbia. Accordingly, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 31 CFR Part 29

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Intergovernmental relations, Law enforcement officers, Pensions, Retirement, Teachers.

Department of the Treasury.

Lisa G. Ross,

Acting Assistant Secretary of the Treasury.

Accordingly, the Department of the Treasury, is amending subtitle A of title 31 of the Code of Federal Regulations to add part 29 to read as follows:

PART 29—FEDERAL BENEFIT PAYMENTS UNDER CERTAIN DISTRICT OF COLUMBIA RETIREMENT PROGRAMS

Subpart A—General Provisions

Sec.

29.101 Purpose and scope.

29.102 Related regulations.

29.103 Definitions.

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- 29.105 Computation of time.
29.106 Representative payees.

Subpart B—Coordination With the District Government

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Appendix A to Subpart B of Part 29—Addresses for Service of Process Under § 29.203

Subpart C—Split Benefits

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General Principles for Determining Service Credit To Calculate Federal Benefit Payments

- 29.311 Credit only for service performed on or before June 30, 1997.
29.312 All requirements for credit must be satisfied by June 30, 1997.
29.313 Federal Benefit Payments are computed based on retirement eligibility as of the separation date and service creditable as of June 30, 1997.

Service Performed After June 30, 1997

- 29.321 General principle.
29.322 Disability benefits.

All Requirements for Credit Must be Satisfied by June 30, 1997

- 29.331 General principle.
29.332 Unused sick leave.
29.333 Military service.
29.334 Deposit service.
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- 29.341 General principle.
29.342 Computed annuity exceeds the statutory maximum.
29.343 Disability benefits.
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29.345 Cost-of-living adjustments.
29.346 Reduction for survivor benefits.

Appendix A to Subpart C of Part 29—Examples

Authority: Sections 11083 and 11251(a) of Pub. L. 105–33, 111 Stat. 730 and 756, as amended by Pub. L. 105–277, 112 Stat. 2681–530 through 2681–538.

Subpart A—General Provisions

§ 29.101 Purpose and scope.

(a) This part contains the Department's regulations implementing Title XI of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251, enacted August 5, 1997, as amended.

(b) This subpart contains general information to assist in the use of this part including—

- (1) Information about related regulations (§ 29.102),
- (2) Definitions of terms used in more than one subpart of this part (§ 29.103), and
- (3) The Department's general rules and procedures, applicable to the

retirement plans for District of Columbia teachers, police and fire fighters, and judges that concern the administration of Federal Benefit Payments (§§ 29.104–29.106).

(c) This part applies to all Federal Benefit Payments made on or after October 1, 1997.

(d) This part does not apply to the program of annuities, other retirement benefits, or medical benefits for members and officers, retired members and officers, and survivors thereof, of the United States Park Police force, the United States Secret Service, or the United States Secret Service Uniformed Division.

§ 29.102 Related regulations.

(a) This part contains the following subparts:

- (1) General Provisions (Subpart A);
- (2) Coordination With the District Government (Subpart B); and
- (3) Split Benefits (Subpart C).

(b) Part 581 of Title 5, Code of Federal Regulations, contains information about garnishment of certain Federal payments to enforce awards of alimony or child support.

(c) Part 831 of Title 5, Code of Federal Regulations, contains information about benefits under the Civil Service Retirement System.

(d) Part 870 of Title 5, Code of Federal Regulations, contains information about benefits under the Federal Employees Group Life Insurance Program.

(e) Part 890 of Title 5, Code of Federal Regulations, contains information about benefits under the Federal Employees Health Benefits Program.

§ 29.103 Definitions.

(a) In this part—
District government means the government of the District of Columbia.

Department means the United States Department of the Treasury.

Federal Benefit Payment means a payment for which the Department is responsible under Title XI of the Balanced Budget Act of 1997 (Public Law 105–33, 111 Stat. 251), as amended, to which an individual is entitled under the Judges Plan, the Police and Firefighters Plan, or the Teachers Plan, in such amount and under such terms and conditions as may apply under such plans.

Freeze date means June 30, 1997.

Judges Plan means the retirement program (under subchapter III of chapter 15 of title 11 of the D.C. Code) for judges of the District of Columbia Court of Appeals or Superior Court or with judicial service with the former Juvenile Court of the District of Columbia, District of Columbia Tax Court, police

court, municipal court, Municipal Court of Appeals, or District of Columbia Court of General Sessions.

OPM means the United States Office of Personnel Management.

Police and Firefighters Plan means any of the retirement programs (under chapter 6 of title 4 of the D.C. Code) for members of the Metropolitan Police Force and Fire Department in effect on June 29, 1997.

Secretary means the Secretary of the United States Department of the Treasury or his or her designee.

Teachers Plan means any of the retirement programs for teachers (under chapter 12 of title 31 of the D.C. Code) in effect on June 29, 1997.

(b) In this subpart—

Legal process means—

(1) Any document that qualifies as legal process as defined in § 581.103 of Title 5, Code of Federal Regulations; or

(2) Any court order that Federal or District of Columbia law permits to cause all or any portion of a payment under the Judges Plan, the Police and Firefighters Plan, or the Teachers Plan to be made to a former spouse under chapter 30 of title 1 of the D.C. Code (1997).

Representative payee means a fiduciary to whom a payment under the Judges Plan, the Police and Firefighters Plan, or the Teachers Plan is made for the benefit of a plan participant or a survivor.

§ 29.104 Schedule for Federal Benefit Payments.

Federal Benefit Payments are payable on the first business day of the month following the month in which the benefit accrues. (See § 29.105(b).)

§ 29.105 Computation of time.

(a) *For filing documents.* In computing the number of days allowed for filing a document, the first day counted is the day after the action or event from which the period begins to run. If the date that ordinarily would be the last day for filing falls on a Saturday, a Sunday, a Federal holiday, or a District holiday, the period runs until the end of the next day that is not a Saturday, a Sunday, or a Federal or a District holiday.

(b) *For benefit accrual.* (1) Annuity accrues on a daily basis; one-thirtieth of the monthly rate constitutes the daily rate.

(2) Annuity does not accrue on the 31st day of any month except that annuity accrues on the 31st day of the initial month if the employee's annuity commences on the 31st day of a 31-day month.

(3) For accrual purposes the last day of a 28-day month counts as 3 days and

the last day of a 29-day month counts as 2 days.

(c) *For counting unused sick leave.* (1) For annuity computation purposes—

(i) The service of a participant under the Police and Firefighters Plan who retires on an immediate annuity is increased by the number of days of unused sick leave to the participant's credit under a formal leave system; and

(ii) The service of a participant under the Teachers Plan who retires on an immediate annuity or dies leaving a survivor entitled to an annuity is increased by the number of days of unused sick leave to the participant's credit under a formal leave system.

(2) In general, 8 hours of unused sick leave increases total service by 1 day. In cases where more or less than 8 hours of sick leave would be charged for a day's absence, total service is increased by the number of days in the period between the date of separation and the date that the unused sick leave would have expired had the employee used it (except that holidays falling within the period are treated as work days, and no additional leave credit is earned for that period).

(3) If an employee's tour of duty changes from part time to full time or full time to part time within 180 days before retirement, the credit for unused sick leave is computed as though no change had occurred.

(d) *For counting leave without pay (LWOP) that is creditable service.* (1) Under the Police and Firefighters Plan, credit is allowed for no more than 6 months of LWOP in each calendar year.

(2)(i) Under the Teachers Plan, credit is allowed for no more than 6 months of LWOP in each fiscal year.

(ii)(A) For years prior to fiscal year 1976, each fiscal year started on July 1 and ended on the following June 30.

(B) Fiscal year 1976 started on July 1, 1975, and ended on September 30, 1976.

(C) For years starting in fiscal year 1977, each fiscal year starts on October 1 and ends on the following September 30.

§ 29.106 Representative payees.

For Federal Benefit Payments, representative payees will be authorized to the same extent and under the same circumstances as each plan permits for non-Federal Benefit Payments under the plan. (See *e.g.*, section 4–629(b) of the D.C. Code (1997) (applicable to the Police and Firefighters Plan).)

Subpart B—Coordination With the District Government

§ 29.201 Purpose and scope.

This subpart contains information concerning the relationship between the

Department and the District government in the administration of Title XI of the Balanced Budget Act of 1997, as amended, and the functions of each in the administration of that Act.

§ 29.202 Definitions. [Reserved]

§ 29.203 Service of Process.

To affect Federal Benefit Payments—

(a) Service must be made upon the Department at the address provided in appendix A to this subpart for—

(1) Legal process under section 659 of title 42, United States Code, and part 581 of Title 5, Code of Federal Regulations, or

(2) Any request for or notice of appointment of a custodian, guardian, or other fiduciary to receive Federal Benefit Payments as representative payees under § 29.106;

(b)(1) Service must be made upon the District government in accordance with any rules issued under section 1–3005 of the D.C. Code for any qualifying court order under chapter 30 of title 1 of the D.C. Code (1997), and

(2) The District government must notify the Department and forward a copy of such an order to the address provided in appendix A to this subpart within 3 days of receipt of the order; and

(c) All other process regarding Federal Benefit Payments must be served upon the United States in accordance with applicable law.

Appendix A to Subpart B of Part 29—Addresses for Service Under § 29.203

1. The mailing address for delivery of documents described in § 29.203(a) by the United States Postal Service is: Office of DC Pensions, Department of the Treasury, Metropolitan Square Building, Room 6250, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

2. The address for delivery of documents described in § 29.203(a) by process servers, express carriers, or other forms of handcarried delivery is: Office of DC Pensions, Department of the Treasury, Metropolitan Square Building, Room 6250, 655 15th Street (F Street side), NW., Washington, DC.

Subpart C—Split Benefits

§ 29.301 Purpose and scope.

(a) The purpose of this subpart is to address the legal and policy issues that affect the calculation of the Federal and District of Columbia portions of benefits under subtitle A of Title XI of the Balanced Budget Act of 1977, Public Law 105–33, 111 Stat. 251, 712–731, enacted August 5, 1997, as amended.

(1) This subpart states general principles for the calculation of Federal Benefit Payments in cases in which the Department and the District government

are both responsible for paying a portion of an employee's total retirement benefits under the Police and Firefighters Plan or the Teachers Plan.

(2) This subpart provides illustrative examples of sample computations to show the application of the general principles to specific problems.

(b)(1) This subpart applies only to benefits under the Police and Firefighters Plan or the Teachers Plan for individuals who have performed service creditable under these programs on or before June 30, 1997.

(2) This subpart addresses only those issues that affect the split of fiscal responsibility for retirement benefits (that is, the calculation of Federal Benefit Payments).

(3) Issues relating to determination and review of eligibility and payments, and financial management, are beyond the scope of this subpart.

(c) This subpart does not apply to benefit calculations under the Judges Plan.

§ 29.302 Definitions.

In this subpart (including appendix A of this subpart)—

Deferred retirement means retirement under section 4–623 of the D.C. Code (1997) (under the Police and Firefighters Plan) or section 31–1231(a) of the D.C. Code (1997) (under the Teachers Plan).

Deferred retirement age means the age at which a deferred annuity begins to accrue, that is, age 55 under the Police and Firefighters Plan and age 62 under the Teachers Plan.

Department service or *departmental service* means any period of employment in a position covered by the Police and Firefighters Plan or Teachers Plan. *Department service* or *departmental service* may include certain periods of military service that interrupt a period of employment under the Police and Firefighters Plan or the Teachers Plan.

Disability retirement means retirement under section 4–615 or section 4–616 of the D.C. Code (1997) (under the Police and Firefighters Plan) or section 31–1225 of the D.C. Code (1997) (under the Teachers Plan), regardless of whether the disability was incurred in the line of duty.

Enter on duty means commencement of employment in a position covered by the Police and Firefighters Plan or the Teachers Plan.

Excess leave without pay or *excess LWOP* means a period of time in a non-pay status that in any year is greater than the amount creditable as service under § 29.105(d).

Hire date means the date the employee entered on duty.

Military service means—

(1) For the Police and Firefighters Plan, military service as defined in section 4–607 of the D.C. Code (1997) that is creditable as other service under section 4–602 or section 4–610 of the D.C. Code (1997); and

(2) For the Teachers Plan, military service as described in section 31–1230(a)(4) of the D.C. Code (1997).

Optional retirement means regular longevity retirement under section 4–618 of the D.C. Code (1997) (under the Police and Firefighters Plan) or section 31–1224(a) of the D.C. Code (1997) (under the Teachers Plan).

Other service means any period of creditable service other than departmental service or unused sick leave. *Other service* includes service that becomes creditable upon payment of a deposit, such as service in another school system under the Teachers Plan (under section 31–1208 of the D.C. Code (1997)); and service that is creditable without payment of a deposit, such as military service occurring prior to employment under the Police and Firefighters Plan.

Pre-80 hire means an individual whose annuity is computed using the formula under the Police and Firefighters Plan applicable to individuals hired before February 15, 1980.

Pre-96 hire means an individual whose annuity is computed using the formula under the Teachers Plan applicable to individuals hired before November 10, 1996.

Sick leave means unused sick leave, which is creditable in a retirement computation, as calculated under § 29.105(c).

General Principles for Determining Service Credit to Calculate Federal Benefit Payments

§ 29.311 Credit only for service performed on or before June 30, 1997.

Only service performed on or before June 30, 1997, is credited toward Federal Benefit Payments.

§ 29.312 All requirements for credit must be satisfied by June 30, 1997.

Service is counted toward Federal Benefit Payments only if all requirements for the service to be creditable are satisfied as of June 30, 1997.

§ 29.313 Federal Benefit Payments are computed based on retirement eligibility as of the separation date and service creditable as of June 30, 1997.

Except as otherwise provided in this subpart, the amount of Federal Benefit Payments is computed based on

retirement eligibility as of the separation date and service creditable as of June 30, 1997.

Service Performed After June 30, 1997

§ 29.321 General principle.

Any service performed after June 30, 1997, may never be credited toward Federal Benefit Payments.

§ 29.322 Disability benefits.

If an employee separates for disability retirement after June 30, 1997, and, on the date of separation, the employee—

(a) Satisfies the age and service requirements for optional retirement, the Federal Benefit Payment commences immediately, that is, the Federal Benefit Payment is calculated as though the employee retired under optional retirement rules using only service through June 30, 1997 (See examples 7A and 7B of appendix A of this subpart); or

(b) Does not satisfy the age and service requirements for optional retirement, the Federal Benefit Payment begins when the disability retiree reaches deferred retirement age. (See § 29.343.)

All Requirements for Credit Must Be Satisfied by June 30, 1997

§ 29.331 General principle.

To determine whether service is creditable for the computation of Federal Benefit Payments under this subpart, the controlling factor is whether all requirements for the service to be creditable under the Police and Firefighters Plan or the Teachers Plan were satisfied as of June 30, 1997.

§ 29.332 Unused sick leave.

(a) For employees separated for retirement as of June 30, 1997, Federal Benefit Payments include credit for any unused sick leave that is creditable under the applicable plan.

(b) For employees separated for retirement after June 30, 1997, no unused sick leave is creditable toward Federal Benefit Payments.

§ 29.333 Military service.

(a) For employees who entered on duty on or before June 30, 1997, and whose military service was performed prior to that date, credit for military service is included in Federal Benefit Payments under the terms and conditions applicable to each plan.

(b) For employees who enter on duty after June 30, 1997, military service is not creditable toward Federal Benefit Payments, even if performed as of June 30, 1997.

(c) For employees who entered on duty on or before June 30, 1997, but who perform military service after that date, the credit for military service is not included in Federal Benefit Payments.

§ 29.334 Deposit service.

(a) *Teachers Plan.* (1) Periods of civilian service that were not subject to retirement deductions at the time they were performed are creditable for Federal Benefit Payments under the Teachers Plan if the deposit for the service was paid in full to the Teachers Plan as of June 30, 1997.

(2) No credit is allowed for Federal Benefit Payments under the Teachers Plan for any period of civilian service that was not subject to retirement deductions at the time it was performed if the deposit for the service was not paid in full as of June 30, 1997.

(b) *Police and Firefighters Plan.* No credit is allowed for Federal Benefit Payments under the Police and Firefighters Plan for any period of civilian service that was not subject to retirement deductions at the time that the service was performed. (See definition of “governmental service” at D.C. Code section 4–607(15) (1997).)

§ 29.335 Refunded service.

(a) Periods of civilian service that were subject to retirement deductions but for which the deductions were refunded to the employee are creditable for Federal Benefit Payments if the redeposit for the service was paid in full to the District government as of June 30, 1997.

(b) No credit is allowed for Federal Benefit Payments for any period of civilian service that was subject to retirement deductions but for which the deductions were refunded to the employee if the redeposit for the service was not paid in full to the District government as of June 30, 1997.

Calculation of the Amount of Federal Benefit Payments

§ 29.341 General principle.

Except for disability retirements after June 30, 1997, and certain death benefits based on deaths after June 30, 1997, in which the calculation is not based upon length of service (see § 29.344); for cases in which some service is creditable on or before June 30, 1997, and some service is creditable after June 30, 1997, Federal Benefit Payments are computed under the rules of the applicable plan as though—

(a) The employee were eligible to retire effective July 1, 1997, under the same conditions as the actual retirement (that is, using the annuity computation

formula that applies under the plan in effect on June 29, 1997, and the actual retirement age, including any applicable age reduction, based on the age at actual retirement);

(b) The service that became creditable after June 30, 1997, did not exist; and

(c) The average salary is the average salary at separation.

Note to § 29.341: See examples 7B, 9, and 13 of appendix A of this subpart.

§ 29.342 Computed annuity exceeds the statutory maximum.

(a) In cases in which the total computed annuity exceeds the statutory maximum:

(1) Federal Benefit Payments may equal total benefits even if the employee had service after June 30, 1997.

(2) If the employee had sufficient service as of June 30, 1997, to qualify for the maximum annuity under the plan, the Federal Benefit Payment is the maximum annuity under the plan. This will be the entire benefit except for any amount in excess of the normal maximum due to unused sick leave, which is the responsibility of the District. (See example 3, of appendix A of this subpart.)

(b) If the employee did not perform sufficient service as of June 30, 1997, to reach the statutory maximum benefit, but has sufficient service at actual retirement to exceed the statutory maximum, the Federal Benefit Payment is the amount earned through June 30, 1997. The non-Federal-Benefit-Payment portion of the total benefit consists of only the amount by which the total benefit payable exceeds the Federal Benefit Payment.

§ 29.343 Disability benefits.

(a) The general rule that Federal Benefit Payments are calculated under the applicable retirement plan as though the employee were eligible for optional retirement and separated on June 30, 1997, does not apply to disability benefits prior to optional retirement age.

(b) In cases involving disability benefits prior to optional retirement age, no Federal Benefit Payment is payable until the retiree reaches the age of eligibility to receive a deferred annuity (age 55 under the Police and Firefighters Plan and age 62 under the Teachers Plan). When the age for deferred annuity is reached, the Federal Benefit Payment is paid using creditable service accrued as of June 30, 1997, and average salary (computed under the rules for the applicable plan) as of the date of separation. (See examples 6 and 7 of appendix A of this subpart.)

§ 29.344 Survivor benefits.

(a) The general rule that Federal Benefit Payments are calculated under the applicable retirement plan as though the employee were eligible for optional retirement and separated on June 30, 1997, does not apply to death benefits that are not determined by length of service.

(b) In cases in which the amount of death benefits is not determined by length of service, the amount of Federal Benefit Payments is calculated by multiplying the amount of the total benefit payable by the number of full months of service through June 30, 1997, and then dividing by the number of months of total service at retirement (for elected survivor benefits) or death (for guaranteed-minimum death-in-service survivor benefits). (See example 13 of appendix A of this subpart.)

§ 29.345 Cost-of-living adjustments.

Cost-of-living increases are applied directly to Federal Benefit Payments, rather than computed on the total benefit and then prorated. (See example 14 of appendix A of this subpart.)

§ 29.346 Reduction for survivor benefits.

(a) If a retiree designates a base for a survivor annuity that is greater than or equal to the unreduced Federal Benefit Payment, the applicable plan's annuity reduction formula is applied to the unreduced Federal Benefit Payment to determine the reduced Federal Benefit Payment. (See example 10 of appendix A of this subpart.)

(b) If a retiree designates a base for a survivor annuity that is less than the amount of the Federal Benefit Payment, the entire survivor reduction applies to the Federal Benefit Payment to determine the reduced Federal Benefit Payment.

Appendix A to Subpart C of Part 29—Examples

This appendix contains sample calculations of Federal Benefit Payments in a variety of situations.

Optional Retirement Examples

Example 1: No Unused Sick Leave

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires in October 1997. At retirement, he is age 51 with 20 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of military service that preceded the departmental service. The Federal Benefit Payment begins at retirement. It is based on the 19 years, 8 months, and 22 days of departmental service and 3 years, 4 months, and 21 days of military service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 23 years and 1 month of service, all at the 2.5 percent accrual rate. The total annuity is based on 23

years and 4 months of service, all at the 2.5 percent accrual rate.

EXAMPLE 1A.—POLICE OPTIONAL [Pre-80 hire]

Total Annuity Computation

Birth date: 09/10/46
Hire date: 10/09/77
Separation date: 10/11/97
Department service: 20/00/03
Other service: 03/04/21
Sick leave:
.025 service: 23.333333
.03 service:
Average salary: \$45,680.80
Total: \$26,647.12
Total/month: \$2,221.00

Federal Benefit Payment Computation

Birth date: 9/10/46
Hire date: 10/09/77
Freeze date: 06/30/97
Department service: 19/08/22
Other service: 03/04/21
Sick leave:
.025 service: 23.083333
.03 service:
Average salary: \$45,680.80
Total: \$26,361.61
Total/month: \$2,197.00

B. In this example, the individual covered by the Police and Firefighters Plan was hired earlier than in example 1A and thus performed more service as of both June 30, 1997, and retirement in October 1997. At retirement, he is age 51 with 21 years, 11 months and 29 days of departmental service plus 3 years, 4 months, and 21 days of military service that preceded the departmental service. The Federal Benefit Payment begins at retirement. It is based on the 21 years, 8 months, and 18 days of departmental service and 3 years, 4 months, and 21 days of military service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 25 years and 1 month of service, 1 year and 8 months at the 3.0 percent accrual rate and 23 years and 5 months at the 2.5 percent accrual rate (including 1 month consisting of 18 days of departmental service and 21 days of other service). The total annuity is based on 25 years and 4 months of service, 1 year and 11 months at the 3.0 percent accrual rate and 23 years and 5 months at the 2.5 percent accrual rate (including 1 month consisting of 29 days of departmental service and 21 days of other service).

EXAMPLE 1B.—POLICE OPTIONAL [Pre-80 hire]

Total Annuity Computation

Birth date: 09/10/46
Hire date: 10/13/75
Separation date: 10/11/97
Department service: 21/11/29
Other service: 03/04/21
Sick leave:
.025 service: 23.416667

EXAMPLE 1B.—POLICE OPTIONAL—
Continued
 [Pre-80 hire]

.03 service: 1.916667
 Average salary: \$45,680.80
 Total: \$29,368.96
 Total/month \$2,447.00

Federal Benefit Payment Computation

Birth date: 09/10/46
 Hire date: 10/13/75
 Freeze date: 06/30/97
 Department service: 21/08/18
 Other service: 03/04/21
 Sick leave:
 .025 service: 23.416667
 .03 service: 1.666667
 Average salary: \$45,680.80
 Total: \$29,026.36
 Total/month: \$2,419.00

Example 2: Unused Sick Leave Credit

In this example, an individual covered by the Police and Firefighters Plan and hired before 1980 retires in March 1998. At retirement, she is age 48 with 24 years, 8 months, and 6 days of departmental service plus 6 months and 4 days of other service (deposit paid before June 30, 1997) and 11 months and 11 days of unused sick leave. For a police officer (or a non-firefighting division firefighter) such an amount of sick leave would be 1968 hours (246 days, based on a 260-day year, times 8 hours per day). For a firefighting division firefighter, such an amount would be 2069 hours (341 days divided by 360 days per year times 2184 hours per year). The Federal Benefit Payment begins at retirement. It is based on the 23 years, 11 months, and 23 days of departmental service performed as of June 30, 1997, and 6 months and 4 days of other service. Thus, the Federal Benefit Payment is based on 20 years departmental and 6 months of other service at the 2.5 percent accrual rate and 3 years and 11 months of service at the 3.0 percent accrual rate. The total annuity is based on 20 years and 6 months of service at the 2.5 percent accrual rate and 5 years and 7 months of service at the 3 percent accrual rate.

EXAMPLE 2.—POLICE OPTIONAL
 [Pre-80 hire]

Total Annuity Computation

Birth date: 05/01/49
 Hire date: 07/08/73
 Separation date: 03/13/98
 Department service: 24/08/06
 Other service: 00/06/04
 Sick leave: 00/11/11
 .025 service: 20.5
 .03 service: 5.583333
 Average salary: \$61,264.24
 Total: \$41,659.68
 Total/month: \$3,472.00

Federal Benefit Payment Computation

Birth date: 05/01/49
 Hire date: 07/08/73

EXAMPLE 2.—POLICE OPTIONAL—
Continued
 [Pre-80 hire]

Freeze date: 06/30/97
 Department service: 23/11/23
 Other service: 00/06/04
 Sick leave:
 .025 service: 20.5
 .03 service: 3.916667
 Average salary: \$61,264.24
 Total: \$38,596.47
 Total/month: \$3,216.00

Example 3: Calculated Benefit Exceeds Statutory Maximum

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires in March 1998. At retirement, he is age 55 with 32 years and 17 days of departmental service. The Federal Benefit Payment begins at retirement. It is based on the 31 years, 3 months, and 17 days of departmental service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 20 years of service at the 2.5 percent accrual rate and 11 years and 3 months of service at the 3.0 percent accrual rate. However, the annuity is limited to 80 percent of the basic salary at time of retirement. (This limitation does not apply to the unused sick leave credit.) The annuity computed as of June 30, 1997, equals the full benefit payable; therefore, the Federal Benefit Payment is the total benefit.

EXAMPLE 3A.—POLICE OPTIONAL
 [Pre-80 hire]

Total Annuity Computation

Birth date: 06/12/42
 Hire date: 03/14/66
 Separation date: 03/30/98
 Department service: 32/00/17
 Other service:
 Sick leave:
 .025 service: 20
 .03 service: 12
 Average salary: \$75,328.30
 Final salary: \$77,180.00
 Total: \$64,782.34
 Total/month: \$5,399.00
 Maximum: \$61,744.00
 \$5,145.00

Federal Benefit Payment Computation

Birth date: 06/12/42
 Hire date: 03/14/66
 Freeze date: 03/30/97
 Department service: 31/03/17
 Other service:
 Sick leave:
 .025 service: 20
 .03 service: 11.25
 Average salary: \$75,328.30
 Final salary: \$77,180.00
 Total: \$63,087.45
 Total/month: \$5,257.00
 Maximum: \$61,744.00
 \$5,145.00

B. In this example, the individual in example 3A also has 6 months of unused sick

leave at retirement. The sick leave credit is not subject to the 80% limitation and does not become creditable service until the date of separation. For a police officer (or a non-firefighting division firefighter) such an amount of sick leave would be 1040 hours (130 days, based on a 260-day year, times 8 hours per day). For a firefighting division firefighter, such an amount would be 1092 hours (180 days divided by 360 days per year times 2184 hours per year). Six months of unused sick leave increases the annual total benefit by 1.5 percent of the average salary, or in the example by \$94 per month. The District is responsible for the portion of the annuity attributable to the unused sick leave because it became creditable at retirement, that is, after June 30, 1997.

EXAMPLE 3B.—POLICE OPTIONAL
 [Pre-80 hire]

Total Annuity Computation

Birth date: 06/12/42
 Hire date: 03/14/66
 Separation date: 03/30/98
 Department service: 32/00/17
 Other service:
 Sick leave:
 .025 service: 20
 .03 service: 12
 Average salary: \$75,328.30
 Final salary: \$77,180.00
 Total w/sl credit: \$64,782.34
 Total/month: \$5,399.00
 Max w/sl credit: \$61,744.00
 Max w/sl credit: \$62,873.92
 Monthly benefit: \$5,239.00

Federal Benefit Payment Computation

Birth date: 06/12/42
 Hire date: 03/14/66
 Freeze date: 06/30/97
 Department service: 31/03/17
 Other service:
 Sick leave: none
 .025 service: 20
 .03 service: 11.25
 Average salary: \$75,328.30
 Final salary: \$77,180.00
 Total: \$63,087.45
 Total/month: \$5,257.00
 Maximum: \$61,744.00
 Monthly benefit: \$5,145.00

Example 4: Excess Leave Without Pay

In this example, an individual covered by the Teachers Plan hired before 1996 retires in February 1998. At retirement, she is age 64 with 27 years of departmental service and 6 years, 7 months, and 28 days of other service (creditable before June 30, 1997). However, only 6 months of leave in a fiscal year without pay may be credited toward retirement under the Teachers Plan. She had 3 months and 18 days of excess leave without pay as of June 30, 1997. Since the excess leave without pay occurred before June 30, 1997, the time attributable to the excess leave without pay is subtracted from the service used in both the Federal Benefit Payment and the total benefit computations. The Federal Benefit Payment begins at retirement. It is

based on the 32 years and 8 months of service (32 years, 11 months, and 28 days minus 3 months and 18 days and the partial month dropped); 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 22 years and 8 months of service at the 2 percent accrual rate. The total annuity is based on 33 years and 4 months of service (33 years, 7 months and 28 days minus 3 months and 18 days and the partial month dropped) 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

Note: For the Teachers Plan, section 1230(a) of title 31 of the DC Code (1997) allows for 6 months leave without pay in any fiscal year. For the Police and Firefighters Plan, section 610(d) of title 4 of the DC Code (1997) allows for 6 months leave without pay in any calendar year.

EXAMPLE 4.—TEACHERS OPTIONAL [Pre-96 hire]

Total Annuity Computation

Birth date: 11/04/33
Hire date: 03/01/71
Separation date: 02/28/98
Department service: 27/00/00
Other service: 06/07/28
Excess LWOP: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: \$53,121.00
Total: \$33,421.98
Total/month: \$2,785.00

Federal Benefit Payment Computation

Birth date: 11/04/33
Hire date: 03/01/71
Freeze date: 06/30/97
Department service: 26/04/00
Other service: 06/07/28
Excess LWOP: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 22.666667
Average salary: \$53,121.00
Total: \$32,713.66
Total/month: \$2,726.00

Example 5: Service Credit Deposits

A. An individual covered by the Teachers Plan hired before 1996 retires in October 1997. At retirement, he is age 61 with 30 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of other service that preceded the departmental service for which the deposit was fully paid on or before June 30, 1997. The Federal Benefit Payment begins at retirement. It is based on the 29 years, 8 months, and 22 days of departmental service and 3 years, 4 months, and 21 days of service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 33 years and 1 month of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 23 years and 1 month of service at the 2 percent accrual

rate. The total annuity is based on 33 years and 4 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

EXAMPLE 5A.—TEACHERS OPTIONAL [Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
Department Service: 30/00/03
Other service: 03/04/21
Deposit paid before freeze date:
Other service credit allowed:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: \$45,680.80
Total: \$28,740.85
Total/month: \$2,395.00

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67
Freeze date: 06/30/97
Department service: 29/08/22
Other service: 03/04/21
Deposit paid before freeze date:
Other service credit allowed:
Sick Leave:
.015 service: 5
.0175 service: 5
.02 service: 23.083333; 13 days dropped
Average salary: \$45,680.80
Total: \$28,512.45
Total/month: \$2,376.00

B. In this example, the employee in example 5A did not pay any of the deposit to obtain credit for the 3 years, 4 months, and 21 days of other service as of June 30, 1997. Thus, none of the other service is used in the computation of the Federal Benefit Payment. An individual covered by the Teachers Plan hired before 1996 retires in October 1997. At retirement, he is age 61 with 30 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of other service that preceded the departmental service for which the deposit was paid in full in October 1997 (at retirement). The Federal Benefit Payment begins at retirement. It is based on only the 29 years, 8 months, and 22 days of departmental service performed as of June 30, 1997; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 19 years and 8 months of service at the 2 percent accrual rate. The total annuity is based on 33 years and 4 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

EXAMPLE 5B.—TEACHERS OPTIONAL [Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
\$0.00
Department service: 30/00/03
Other service: 03/04/21
Total deposit paid after 6/30/97
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: \$45,680.80
Total: \$28,740.85
Total/month: \$2,395.00

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67
Freeze date: 06/30/97
Department service: 29/08/22
Other service: none
Total deposit paid after 6/30/97:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 19.666667; 22 days dropped
Average salary: \$45,680.80
Total: \$25,390.90
Total/month: \$2,116.00

C. In this example, the employee in examples 5A and B began installment payments on the deposit to obtain credit for the 3 years, 4 months, and 21 days of other service as of June 30, 1997, but did not complete the deposit until October 1997 (at retirement). The other service is not used in the computation of the Federal Benefit Payment because the payment was not completed as of June 30, 1997. Thus, the result is the same as in example 5B.

EXAMPLE 5C.—TEACHERS OPTIONAL [Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
Department service: 30/00/03
Other service: 03/04/21
Partial deposit paid as of 6/30/97:
Deposit completed after 6/30/97:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: \$45,680.80
Total: \$28,740.85
Total/month: \$2,395.00

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67
Freeze date: 06/30/97
Department service: 29/08/22
Other service: none

**EXAMPLE 5C.—TEACHERS
OPTIONAL—Continued**
[Pre-96 hire]

Partial deposit paid as of 6/30/97:
Deposit completed after 6/30/97:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 19.666667; 22 days dropped
Average salary: \$45,680.80
Total: \$25,390.90
Total/month: \$2,116.00

Disability Retirement Examples

**Example 6: Disability Occurs Before
Eligibility for Optional Retirement**

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires based on a disability in the line of duty in October 1997. At retirement, he is age 45 with 18 years, 5 months, and 11 days of departmental service. Since he had performed less than 20 years of service and had not reached the age of eligibility for an optional retirement, the Federal Benefit Payment does not begin at retirement. When the disability annuitant reaches age 55, he satisfies the age and service requirements for deferred retirement. At that time (August 20, 2007), the Federal Benefit Payment begins. It is based on the 18 years, 1 month, and 17 days of departmental service performed as of June 30, 1997, all at the 2.5 percent accrual rate.

**EXAMPLE 6A.—POLICE DISABILITY IN
LINE OF DUTY, AGE 45**
[Pre-80 hire]

Total Annuity Computation

Birth date: 08/20/52
Hire date: 05/14/79
Separation date: 10/24/97
Department service: 18/05/11
Other service:
Sick leave:
.025 service: 18.416667
.03 service:
Average salary: \$47,788.64
Final salary: \$50,938.00
Total: \$22,002.70
Total/month: \$1,834.00
 $\frac{2}{3}$ of average pay: \$31,859.11
Monthly: \$2,655.00

Federal Benefit Payment Computation

Birth date: 08/20/52
Hire date: 05/14/79
Freeze date: 06/30/97
Department service: 18/01/17
Other service:
Sick leave:
.025 service: 18.083333
.03 service:
Average salary: \$47,788.64
Final salary: \$50,938.00
Total: \$21,604.43
Total/month: \$1,800.00; deferred

B. In this example, an individual covered by the Teachers Plan hired before 1996

retires based on a disability in December 1997. At retirement, she is age 49 with 27 years and 4 months of departmental service which includes 3 years, 3 months and 14 days of excess leave without pay (prior to June 30, 1997). Since she does not qualify for optional retirement at separation, the Federal Benefit Payment does not begin at separation. When the disability annuitant reaches age 62, she will satisfy the age and service requirements for deferred retirement. At that time (March 9, 2010), the Federal Benefit Payment begins. The time attributable to the excess leave without pay is subtracted from the service used to compute the Federal Benefit Payment. Since the excess leave without pay occurred before June 30, 1997, the deferred Federal Benefit Payment is based on the 23 years and 6 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 13 and 6 months of service at the 2 percent accrual rate.

**EXAMPLE 6B.—TEACHERS DISABILITY
AGE 49**
[Pre-96 hire]

Total Annuity Computation

Birth date: 03/09/48
Hire date: 09/01/70
Separation date: 12/31/97
Department service: 27/04/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 14
Average salary: \$53,121.00
Total: \$23,506.04
Total/month: \$1,959.00

Federal Benefit Payment Computation

Birth date: 03/09/48
Hire date: 09/01/70
Freeze date: 06/30/97
Department service: 26/10/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 13.5
Average salary: \$53,121.00
Total: \$22,974.83
Total/month: \$1,915.00; deferred

**Example 7: Disability Occurs After Eligibility
for Optional Retirement**

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires based on a disability in the line of duty in October 1997. At retirement, she is age 55 with 24 years, 5 months, and 11 days of departmental service. Since she was also eligible for optional retirement at the time of separation, the Federal Benefit Payment commences at retirement. It is based on the 24 years, 1 month, and 17 days of departmental service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 20 years of service at the 2.5 percent accrual rate and 4 years and 1 month of service at the 3

percent accrual rate. The total annuity is based on the disability formula and is equal to two-thirds of average pay because that amount is higher than the 63.25 percent payable based on total service.

**EXAMPLE 7A.—POLICE DISABILITY IN
LINE OF DUTY AGE 55**
[Pre-80 hire]

Total Annuity Computation

Birth date: 10.01/42
Hire date: 05/14/73
Separation date: 10/24/97
Department service: 24/05/11
Other service:
Sick leave:
.025 service: 20
.03 service: 4.416667
Average salary: \$47,788.64
Final salary: \$50,938.00
Total: \$30,226.31
Total/month: \$2,519.00
 $\frac{2}{3}$ of average pay: \$31,859.11
Monthly: \$2,655.00

Federal Benefit Payment Computation

Birth date: 10/01/42
Hire date: 05/14/73
Freeze date: 06/30/97
Department service: 24/01/17
Other service:
Sick leave:
.025 service: 20
.03 service: 4.083333
Average salary: \$47,788.64
Final salary: \$50,938.00
Total: \$29,748.43
Total/month: \$2,479.00

B. In this example, an individual covered by the Teachers Plan hired before 1996 retires based on a disability in December 1997. At retirement, he is age 60 with 27 years and 4 months of departmental service which includes 3 years, 3 months and 14 days of excess leave without pay (prior to June 30, 1997). Since he qualifies for optional retirement at separation, the Federal Benefit Payment begins at retirement. Since the excess leave without pay occurred before June 30, 1997, and the total annuity is based on actual service (that is, exceeds the guaranteed disability minimum), the time attributable to the excess leave without pay is subtracted from the service used to compute the Federal Benefit Payment and total benefit. The Federal Benefit Payment is based on 23 years and 6 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 13 years and 6 months of service at the 2 percent accrual rate. The total annuity payable is based on 24 years of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 14 years of service at the 2 percent accrual rate.

**EXAMPLE 7B.—TEACHERS DISABILITY
AGE 60**
[Pre-96 hire]

Total Annuity Computation

Birth date: 03/09/37
Hire date: 09/01/70
Separation date: 12/31/97
Department service: 27/04/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 14
Average salary: \$53,121.00
Total: \$23,506.04
Total/month: \$1,959.00

Federal Benefit Payment Computation

Birth date: 03/09/37
Hire date: 09/01/70
Freeze date: 06/30/97
Department service: 26/10/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 13.5
Average salary: \$53,121.00
Total: \$22,974.83
Total/month: \$1,915.00

Deferred Retirement Examples

Example 8: All Service Before June 30, 1997

In this example, an individual covered by the Police and Firefighters Plan hired before 1980 separated in March 1986 with title to a deferred annuity. In November 1997, he reaches age 55 and becomes eligible for the deferred annuity based on his 15 years, 9 months, and 8 days of departmental service, all at the 2.5 percent accrual rate. The total annuity is based on the same 15 years, 9 months, and 8 days of service all at the 2.5 percent accrual rate. Since all the service is creditable as of June 30, 1997, the Federal Benefit Payment equals the total annuity.

EXAMPLE 8.—POLICE DEFERRED
[Pre-80 hire]

Total Annuity Computation

Birth date: 11/20/42
Hire date: 06/01/70
Separation date: 03/08/86
Department service: 15/09/08
Other service:
Sick leave:
.025 service: 15.75
.03 service: 0
Average salary: \$30,427.14
Final salary: \$45,415.00
Total: \$11,980.69
Total/month: \$998.00

Federal Benefit Payment Computation

Birth date: 11/20/42
Hire date: 06/01/70
Freeze date: 03/08/86
Department service: 15/09/08

**EXAMPLE 8.—POLICE DEFERRED—
Continued**
[Pre-80 hire]

Other service:
Sick leave:
.025 service: 15.75
.03 service: 0
Average salary: \$30,427.14
Final salary: \$45,415.00
Total: \$11,980.69
Total/month: \$998.00

Example 9: Service Straddles June 30, 1997

In this example, an individual covered by the Police and Firefighters Plan hired before 1980 separated in December 1997 with title to a deferred annuity. In November 2007, he will reach age 55 and becomes eligible to receive a deferred annuity. At that time, the Federal Benefit Payment begins. It is based on the 18 years and 1 month of departmental service performed as of June 30, 1997, all at the 2.5 percent accrual rate. The total annuity begins at the same time, based on his 18 years, 6 months, and 8 days of departmental service, all at the 2.5 percent accrual rate.

EXAMPLE 9.—POLICE DEFERRED
[Pre-80 hire]

Total Annuity Computation

Birth date: 11/20/52
Hire date: 06/01/79
Separation date: 12/08/97
Department service: 18/06/08
Other service:
Sick leave:
.025 service: 18.5
.03 service: 0
Average salary: \$30,427.14
Final salary: \$45,415.00
Total: \$14,072.55
Total/month: \$1,173.00

Federal Benefit Payment Computation

Birth date: 11/20/52
Hire date: 06/01/79
Freeze date: 06/30/97
Department service: 18/01/00
Other service:
Sick leave:
.025 service: 18.083333
.03 service: 0
Average salary: \$30,427.14
Final salary: \$45,415.00
Total: \$13,755.60
Total/month: \$1,146.00; deferred

**Reduction To Provide a Survivor Annuity
Examples**

**Example 10: Survivor Reduction
Calculations**

Both of the following examples involve a former teacher who elected a reduced annuity to provide a survivor benefit:

A. In this example, the employee elected full survivor benefits. The Federal Benefit Payment is reduced by 2½ percent of the first \$3600 and 10 percent of the balance. The total annuity is also reduced by 2½ percent

of the first \$3600 and 10 percent of the balance.

**EXAMPLE 10A.—TEACHERS OPTIONAL
W/SURVIVOR REDUCTION**
[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 11/01/68
Separation date: 12/31/97
Department service: 29/02/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.666667
Average salary: \$66,785.00
Total unreduced: \$42,464.13
Reduction: \$3,976.41
Total reduced: \$38,487.72
Total/month: \$3,207.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire date: 11/01/68
Freeze date: 06/30/97
Department service: 28/08/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.166667
Average salary: \$66,785.00
Total unreduced: \$41,796.28
Reduction: \$3,909.63
Total reduced: \$37,886.65
Total/month: \$3,157.00

B. In this example, the employee elects to provide a partial survivor annuity based on \$3600 per year. The Federal Benefit Payment is reduced by \$90 per year. The total benefit is reduced by \$90 per year.

**EXAMPLE 10B.—TEACHERS OPTIONAL
W/SURVIVOR REDUCTION**
[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 11/01/68
Separation date: 12/31/97
Department service: 29/02/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.666667
Average salary: \$66,785.00
Total unreduced: \$42,464.13
Reduction: \$90.00
Total reduced: \$42,374.13
Total/month: \$3,531.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire date: 11/01/68
Freeze date: 06/30/97
Department service: 28/08/00
Other service: 03/09/18

**EXAMPLE 10B.—TEACHERS OPTIONAL
W/SURVIVOR REDUCTION—Continued**
[Pre-96 hire]

Military: 00/09/11
 .015 service: 5
 .0175 service: 5
 .02 service: 23.166667
 Average salary: \$66,785.00
 Total unreduced: \$41,796.28
 Reduction: \$90.00
 Total reduced: \$41,706.28
 Total/month: \$3,476.00

**Early Optional or Involuntary Retirement
Examples****Example 11: Early Optional With Age
Reduction**

In this example, an individual covered by the Teachers Plan hired before 1996 retires voluntarily in February 1998, under a special program that allows early retirement with at least 20 years of service at age 50 older, or at least 25 years of service at any age. At retirement, she is 6 full months short of age 55. She has 25 years and 5 months of departmental service; 6 years, 2 months, and 19 days of other service (creditable before June 30, 1997); and 2 months and 9 days of unused sick leave. Since she is not eligible for optional retirement and she is eligible to retire voluntarily only because of the District-approved special program, the Federal Benefit Payment is calculated similar to a disability retirement. It does not begin until she becomes eligible for a deferred annuity at age 62. When it commences the Federal Benefit Payment will be based on the service creditable as of June 30, 1997: 30 years and 11 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 20 years and 11 months of service at the 2 percent accrual rate. The total annuity is based on 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 21 years and 9 months of service at the 2 percent accrual rate (including the unused sick leave). Because the Federal Benefit Payment is based on the deferred annuity, rather than the early voluntary retirement, it is not reduced by the age reduction factor used to compute the total benefit.

**EXAMPLE 11.—TEACHERS EARLY OUT
W/AGE REDUCTION**
[Pre-96 hire]**Total Annuity Computation**

Birth date: 09/20/43
 Hire date: 10/01/72
 Separation date: 02/28/98
 Department service: 25/05/00
 Other service: 06/02/19
 Sick leave: 00/02/09
 .015 service: 5
 .0175 service: 5
 .02 service: 21.75
 Average salary: \$69,281.14
 Total unreduced: \$41,395.48
 Age reduction factor: 0.990000
 Total reduced: \$40,981.53

**EXAMPLE 11.—TEACHERS EARLY OUT
W/AGE REDUCTION—Continued**
[Pre-96 hire]

Total/month: \$3,415.00

Federal Benefit Payment Computation

Birth date: 09/20/43
 Hire date: 10/01/72
 Freeze date: 06/30/97
 Department service: 24/09/00
 Other service: 06/02/19
 .015 service: 5
 .0175 service: 5
 .02 service: 20.916667
 Average salary: \$69,281.14
 Total unreduced: \$40,240.80
 Reduction factor: 1.000000 no reduction
 Total reduced: \$40,240.80
 Total/month: \$3,353.00 deferred

**Example 12: Involuntary With Age
Reduction**

In this example, an individual covered by the Teachers Plan hired before 1996 retires involuntarily in February 1998. At retirement, she is 6 full months short of age 55. She has 25 years and 5 months of departmental service; 6 years, 2 months, and 19 days of other service (creditable before June 30, 1997); and 2 months and 9 days of unused sick leave. The Federal Benefit Payment begins at retirement. It is based on the 30 years and 11 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 20 years and 11 months of service at the 2 percent accrual rate. The total annuity is based on 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 21 years and 9 months of service at the 2 percent accrual rate (including the unused sick leave). Both the Federal Benefit Payment and the total benefit are reduced by the age reduction factor.

**EXAMPLE 12.—TEACHERS
INVOLUNTARY W/AGE REDUCTION**
[Pre-96 hire]**Total Annuity Computation**

Birth date: 09/20/43
 Hire date: 10/01/72
 Separation date: 02/28/98
 Department service: 25/05/00
 Other service: 06/02/19
 Sick leave: 00/02/09
 .015 service: 5
 .0175 service: 5
 .02 service: 21.75
 Average salary: \$69,281.14
 Total unreduced: \$41,395.48
 Age reduction factor: 0.990000
 Total reduced: \$40,981.53
 Total/month: \$3,415.00

Federal Benefit Payment Computation

Birth date: 09/20/43
 Hire date: 10/01/72
 Freeze date: 06/30/97

**EXAMPLE 12.—TEACHERS INVOLUN-
TARY W/AGE REDUCTION—Contin-
ued**
[Pre-96 hire]

Department service: 24/09/00
 Other service: 06/02/19
 .015 service: 5
 .0175 service: 5
 .02 service: 20.916667
 Average salary: \$69,281.14
 Total unreduced: \$40,240.80
 Age reduction factor: 0.990000
 Total reduced: \$39,838.39
 Total/month: \$3,320.00

Death Benefits Example**Example 13: Death Benefits Calculation**

Regardless of whether death occurs in service or after retirement, if the death benefit is not based on the length of service, the portion of a death benefit that is a Federal Benefit Payment is based on the ratio of the number of months of the deceased employee's service as of June 30, 1997, to the number of months of the deceased employee's total service. This proration will always apply to cases of death after retirement in which the survivor annuity is based on the reduction in the employee's annuity to provide the benefit. It also applies to lump-sum benefits and benefits computed under a guaranteed-minimum or a percentage-of-disability-at-retirement formula.

A. In this example, an individual covered by the Teachers Plan retires in April 1998 with 30 years of service and elects to provide a full survivor annuity. He dies in June 1998. The Federal Benefit Payment is 97½ percent (351 months/360 months) of the total survivor benefit.

**EXAMPLE 13A.—TEACHERS DEATH
BENEFITS**
[Pre-96 hire]**Total Annuity Computation**

Birth date: 04/01/46
 Hire date: 04/01/68
 Separation date: 04/01/98
 Death date: 06/24/98
 Department service: 30/00/00
 Other service:
 Sick leave:
 Months: 360
 Annual Benefit: \$12,000.00
 Monthly Benefit: \$1,000.00

Federal Benefit Payment Computation

Birth date: 04/01/46
 Hire date: 04/01/68
 Freeze date: 06/30/97
 Death date: 06/24/98
 Department service: 29/03/00
 Other service:
 Months: 351
 \$11,700.00
 \$975.00

B. In this example, a teacher dies in service on June 30, 1998 after 31 years of

departmental service. Since the survivor annuity is based on actual service, the Federal Benefit Payment is based on the 30 years of service as of June 30, 1997. The total benefit is based on the 31 years of total service. No proration is appropriate.

EXAMPLE 13B.—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 07/01/39
Hire date: 07/01/67
Separation date: 06/30/98
Death date: 06/30/98
Department service: 31/00/00
Other service:
Sick leave:
Average salary: \$38,787.88
Annual Benefit: \$12,426.67
Monthly Benefit: \$1,036.00

Federal Benefit Payment Computation

Birth date: 07/01/39
Hire date: 07/01/67
Freeze date: 06/30/97
Death date: 06/30/98
Department service: 30/00/00
Other service:
Average salary: \$38,787.88
\$12,000.00
\$1,000.00

C. In this example, a teacher dies in service on April 1, 1998 after 15 years of departmental service. Since the survivor annuity is based on the guaranteed minimum, the Federal Benefit Payment is a prorated portion of the total benefit. Since the teacher had 171 months of service as of the freeze date and 180 months of service at death, the Federal Benefit Payment equals 171/180ths of the total benefit.

EXAMPLE 13C.—TEACHERS DEATH BENEFITS

[pre-96 hire]

Total Annuity Computation

Birth date: 04/01/61
Hire date: 04/01/83
Separation date: 04/01/98
Death date: 04/01/98
Department service: 15/00/01
Average salary: \$36,000.00
Months: 180
Annual Benefit: \$7,920.00
Monthly Benefit: \$660.00

Federal Benefit Payment Computation

Birth date: 04/01/61
Hire date: 04/01/83
Freeze date: 06/30/97
Death date: 04/01/98
Department Service: 14/03/00
Average salary: \$36,000.00
Months: 171
Ratio (171/180): 0.950000

EXAMPLE 13C.—TEACHERS DEATH BENEFITS—Continued

[pre-96 hire]

\$7,524.00
\$627.00

D. In this example, as in the prior example, a teacher dies in service on April 1, 1998 after 15 years of departmental service. However, in this example, the teacher was age 40 on the hire date. The amount of service used in the survivor annuity calculation equals the amount of service that the teacher would have had if the teacher continued covered employment until age 60. Since the survivor annuity is based on projected service, a form of the guaranteed minimum, the Federal Benefit Payment is a prorated portion of the total benefit. Since the teacher had 171 months of service as of the freeze date and 180 months of service at death, the Federal Benefit Payment equals 171/180ths of the total benefit.

EXAMPLE 13D.—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 04/01/43
Hire date: 04/01/83
Separation date: 04/01/98
Death date: 04/01/98
Department service: 15/00/01
Departmental Service projected to age 60: 20/00/01
.015 service: 5
.0175 service: 5
.02 service: 10
Average salary: \$36,000.00
Months: 180
Annual Benefit: \$7,177.50
Monthly Benefit: \$598.00

Federal Benefit Payment Computation

Birth date: 04/01/43
Hire date: 04/01/83
Freeze date: 06/30/97
Death date: 04/01/98
Department service: 14/03/00
Average salary: \$36,000.00
Months: 171
Ratio (171/180): 0.950000
\$6,818.63
\$568.00

Cost of Living Adjustment Examples

Example 14: Application of Cost of Living Adjustments

Cost of living adjustments are applied directly to the Federal Benefit Payment to determine the new rate of the Federal Benefit Payment after a cost of living adjustment.

A. In this example, the cost of living adjustment is the same for the Federal Benefit Payment and the non-Federal Benefit Payment portion of the total benefit. Effectively, the total cost of living adjustment is proportionally split between the Federal Benefit Payment and the non-Federal Benefit Payment.

EXAMPLE 14A.—TEACHERS COST OF LIVING ADJUSTMENT

[Pre-96 hire]

Benefit Computation (at retirement)

Total Annuity Computation

Birth date: 11/04/48
Hire date: 03/01/86
Separation date: 02/28/2013
Department service: 27/00/00
Other service paid in 1995: 06/07/28
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: \$53,121.00
Total: \$33,421.98
Total/month: \$2,785.00

Benefit Computation (at retirement)

Federal Benefit Payment Computation

Birth date: 11/04/48
Hire date: 03/01/86
Freeze date: 06/30/1997
Department service: 11/04/00
Other service paid in 1995: 06/07/28
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 7.666667
Average salary: \$53,121.00
Total: \$16,777.38
Total/month: \$1,398.00

COLA Computation

DC COLA rate 4%
Total COLA: 111
New rate: 2896
Federal COLA rate 4%
Federal COLA: 56
New rate: 1454

B. In this example, a new District plan applies a different cost of living adjustment than is provided for the Federal Benefit Payment. The Federal Benefit Payment will be unaffected by the new District plan. In such a case, the total cost of living adjustment is no longer proportionally split between the Federal Benefit Payment and the non-Federal Benefit Payment.

EXAMPLE 14B.—TEACHERS COST OF LIVING ADJUSTMENT

[Pre-96 hire]

Benefit Computation (at retirement)

Total Annuity Computation

Birth date: 11/04/48
Hire date: 03/01/86
Separation date: 02/28/2013
Department service: 27/00/00
Other service paid in 1995: 06/07/28
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: \$53,121.00

EXAMPLE 14B.—TEACHERS COST OF LIVING ADJUSTMENT—Continued
[Pre-96 hire]

Total: \$33,421.96
Total/month: \$2,785.00

Benefit Computation (at retirement)

Federal Benefit Payment Computation

Birth date: 11/04/48
Hire date: 03/01/86
Freeze date: 06/30/1997
Department service: 11/04/00
Other service paid in 1995: 06/07/28
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 7.666667
Average salary: \$53,121.00
Total: \$16,777.38
Total/month: \$1,398.00

COLA Computation Variations

Variation 1

DC COLA rate 5% of total benefit:
Total COLA: \$139.00
New rate: \$2,924.00
Federal COLA rate 4% of Federal Benefit Payment:
Federal COLA: \$56.00
New rate: \$1,454.00

Variation 2

DC COLA rate 5% of DC Payment:
Total COLA: \$125.00
New rate: \$2,910.00
Federal COLA rate 4% of Federal Benefit Payment:
Federal COLA: \$56.00
New rate: \$1,454.00

Retroactive Payment of Accrued Annuity Example

Example 15: Accrual of Federal Benefit Payment

The Federal Benefit Payment begins to accrue on the annuity commencing date, regardless of whether the employee is added to the annuity roll in time for the regular payment cycle. If the employee is due a retroactive payment of accrued annuity, the portion of the retroactive payment that would have been Federal Benefit Payment (if it were made in the regular payment cycle) is still Federal Benefit Payment. In this example, a teacher retired effective September 11, 1998. She was added to the retirement rolls on the pay date November 1, 1998 (October 1 to October 31 accrual cycle). Her Federal Benefit Payment is \$3000 per month and her total benefit payment is \$3120 per month. Her initial check is \$5200 because it includes a prorated payment for 20 days (September 11 to September 30). The Federal Benefit Payment is \$5000 of the initial check (\$3000 for the October cycle and \$2000 for the September cycle).

EXAMPLE 15.—TEACHERS ACCRUED BENEFIT
[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 09/01/66
Separation date: 09/10/98
Department service: 32/00/10
.015 service: 5
.0175 service: 5
.02 service: 22
Average salary: \$62,150.00
Total: \$37,445.38
Total/month: \$3,120.00
Sept 11–30: \$2,080.00
Oct 1–31: \$3,120.00
Nov 1–30: \$3,120.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire date: 09/01/66
Freeze date: 06/30/97
Department service: 30/10/00
.15 service: 5
.0175 service: 5
.02 service: 20.833333
Average salary: \$62,150.00
Total: \$35,995.21
Total/month: \$3,000.00
Sept 11–30: \$2,000.00
Oct 1–31: \$3,000.00
Nov 1–30: \$3,000.00

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–00–131]

RIN 2115–AE46

Special Local Regulations: Fireworks Display, Smith Bay, Saint Thomas, USVI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary Special Local Regulations are being established for the Wyndham New Years Fireworks display in Smith Bay, St. Thomas, USVI. These regulations are needed to provide for the safety of life on navigable waters by excluding vessels from the fireworks launching area.

DATES: This rule is effective from 11 a.m. AST on December 31, 2000, to 1 a.m. AST on January 1, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of the docket CGD07–00–114 and are

available for inspection or copying at Coast Guard Greater Antilles Section, La Puntilla, Old San Juan, PR 00902 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John Reyes, Greater Antilles Section at (787) 729–5381.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for these regulations. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public and the marine event request was recently received. Further, we anticipate numerous spectator craft in the area where the fireworks will be launched.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**.

Background and Purpose

These regulations are required to provide for the safety of life on navigable waters because of the inherent danger associated with storing and launching fireworks near spectator craft during the fireworks display. This rule creates a regulated area that will prohibit non-participating vessels from entering the regulated area during the event.

Regulatory Evaluation

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not “significant” under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The regulated area will only be in effect for approximately 2 hours.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic effect upon a substantial number of small entities. “Small entities” include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.