of the Government Accountability Office for at least the 31-
day period immediately preceding the start of the pe-
riod referred to in subparagraph (D);''

``(B) has been employed continuously by the
Government Accountability Office for at least the 31-
day period immediately preceding the start of the pe-
riod referred to in clause (iv);''

``(ii) is serving under an appointment that is not
time limited;''

``(iii) has not received a notice of involuntary sep-
oration, for misconduct or unacceptable performance,
with respect to which final action remains pending;''

``(IV) is serving under an appointment that is not
time limited;''

``(ii) is serving under an appointment that is not
time limited;''

``(ii) is serving under an appointment that is not
time limited;''

``(i) realigning the Government Accountability
Office's workforce in order to meet budgetary con-
straints or mission needs;''

``(i) correcting skill imbalances; or

``(ii) reducing high-grade, managerial, or super-
visory positions;''

``(b) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Ef-
fective October 13, 2000, subparagraph (B) of section
8414(b)(1) of title 5, United States Code, shall, with re-
spect to officers and employees of the Government Ac-
countability Office, be applied as if it had been amend-
ed to read as follows:

``(ib) has been employed continuously by the
Government Accountability Office for at least the 31-
day period immediately preceding the start of the pe-
riod referred to in clause (iv);''

``(i) realigning the Government Accountability
Office's workforce in order to meet budgetary con-
straints or mission needs;''

``(II) realigning the Government Accountability
Office's workforce in order to meet budgetary con-
straints or mission needs;''

``(b) R
EGLATIONS.—The Comptroller General shall
prescribe any regulations necessary to carry out this
section, including regulations under which an early re-

tirement offer may be made to any employee or group
of employees based on—

``(c) NUMERICAL LIMITATION.—Not to exceed 10 percent
of the Government Accountability Office's workforce
(as of the start of a fiscal year) shall be permitted to take
voluntary early retirement in such fiscal year pursuant
to this section.

``(d) REGULATIONS.—The Comptroller General shall
prescribe any regulations necessary to carry out this
section, including regulations under which an early re-
tirement offer may be made to any employee or group
of employees based on—

``(1) geographic area, organizational unit, or occupa-
tional series or level;

``(2) skills, knowledge, or performance; or

``(3) such other similar factors (or combination of
factors described in this or any other paragraph of
this subsection) as the Comptroller General considers
necessary and appropriate in order to achieve the
purpose involved.

``(e) SENSE OF CONGRESS.—It is the sense of Congress
that the implementation of this section is intended to
reshape the Government Accountability Office work-
force and not downsize the Government Accountability
Office workforce.''

APPLICATION OF SUBSECTION (d)(2)
Stat. 91, as amended by Pub. L. 106–58, title VI, §651(a),
Sept. 29, 1999, 113 Stat. 480, which provided that, effec-
tive May 1, 1998, subsec. (d)(2) of this section was to be
applied as if it read as specified in Pub. L. 105–174,
(c) An annuitant receiving disability retirement annuity from the Fund shall be examined under the direction of the Office of the Deputy Secretary of Defense: at the end of 1 year from the date of the disability retirement; and

(2) annually thereafter until he becomes 60 years of age;

unless his disability is permanent in character. If the annuitant fails to submit to examination as required by this section, payment of the annuity shall be suspended until continuance of the disability is satisfactorily established.

(d) If an annuitant receiving disability retirement annuity from the Fund, before becoming 60 years of age, recovers from his disability, payment of the annuity terminates on reemployment by the Government or 1 year after the date of the medical examination showing the recovery, whichever is earlier. If an annuitant receiving disability retirement annuity from the Fund, before becoming 60 years of age, is restored to an earning capacity fairly comparable to the current rate of pay of the position occupied at the time of retirement, payment of the annuity terminates on reemployment by the Government or 180 days after the end of the calendar year in which earning capacity is so restored, whichever is earlier. Earning capacity is deemed restored if in any calendar year the income of the annuitant from wages or self-employment or both equals at least 80 percent of the current rate of pay of the position occupied immediately before retirement.

(e) If an annuitant whose annuity is terminated under subsection (d) of this section is not reemployed in a position in which he is subject to this subchapter, he is deemed, except for service credit, to have been involuntarily separated from the service for the purpose of this subchapter as of the date of termination of the disability annuity, and after that termination is entitled to annuity under the applicable provisions of this subchapter. If an annuitant whose annuity is heretofore or hereafter terminated because of an earning capacity provision of this subchapter or an earlier statute—

(1) is not reemployed in a position in which he is subject to this subchapter; and

(2) has not recovered from the disability for which he was retired;

his annuity shall be restored at the same rate effective the first of the year following any calendar year in which his income from wages or self-employment or both is less than 80 percent of the current rate of pay of the position occupied immediately before retirement. If an annuitant whose annuity is heretofore or hereafter terminated because of a medical finding that he has recovered from disability is not reemployed in a position in which he is subject to this subchapter, his annuity shall be restored at the same rate effective from the date of medical examination showing a recurrence of the disability. The second and third sentences of this sub-section do not apply to an individual who has become 62 years of age and is receiving or is eligible to receive annuity under the first sentence of this subsection.

(f)(1) An individual is not entitled to receive—

(A) an annuity under this subchapter, and

(B) compensation for injury to, or disability of, such individual under subchapter I of chapter 81, other than compensation payable under section 8107, covering the same period of time.

(2) An individual is not entitled to receive an annuity under this subchapter and a concurrent benefit under subchapter I of chapter 81 on account of the death of the same person.

(3) Paragraphs (1) and (2) do not bar the right of a claimant to the greater benefit conferred by either this subchapter or subchapter I of chapter 81.

(g) If an individual is entitled to an annuity under this subchapter, and the individual receives a lump-sum payment for compensation under section 8135 based on the disability or death of the same person, so much of the compensation as has been paid for a period extended beyond the date payment of the annuity commences, as determined by the Department of Labor, shall be refunded to that Department for credit to the Employees' Compensation Fund. Before the individual may receive the annuity, the individual shall—

(1) refund to the Department of Labor the amount representing the commuted compensation payments for the extended period; or

(2) authorize the deduction of the amount from the annuity.

Deductions from the annuity may be made from accrued or accruing payments. The amounts deducted and withheld from the annuity shall be transmitted to the Department of Labor for reimbursement to the Employees' Compensation Fund. When the Department of Labor finds that the financial circumstances of an individual entitled to an annuity under this subchapter warrant deferred refunding, deductions from the annuity may be prorated against and paid from accruing payments in such manner as the Department determines appropriate.

(b)(1) As used in this subsection, the term 'technician' means an individual employed under section 709(a) of title 32 or section 10216 of title 10 who, as a condition of the employment, is required under section 709(b) of title 32 or section 10216 of title 10, respectively, to be a member of the Selected Reserve.

(2)(A) Except as provided in subparagraph (B) of this paragraph, an individual shall be retired under this section if the individual—

(i) is separated from employment as a technician under section 709(e)(1) of title 32 or title 10 by reason of a disability that disqualifies the individual from membership in the Selected Reserve;

(ii) is not considered to be disabled under the second sentence of subsection (a) of this section;

(iii) is not appointed to a position in the Government (whether under paragraph (3) of this subsection or otherwise); and

(iv) has not declined an offer of an appointment to a position in the Government under paragraph (3) of this subsection.

(B) Payment of any annuity for an individual pursuant to this subsection terminates—
(i) on the date the individual is appointed to a position in the Government (whether pursuant to paragraph (3) of this subsection or otherwise);

(ii) on the date the individual declines an offer of appointment to a position in the Government under paragraph (3); or

(iii) as provided under subsection (d).

(3) Any individual applying for or receiving any annuity pursuant to this subsection shall, in accordance with regulations prescribed by the Office, be considered by any agency of the Government before any vacant position in the agency is filled if—

(A) the position is located within the commuting area of the individual’s former position;

(B) the individual is qualified to serve in such position, as determined by the head of the agency; and

(C) the position is at the same grade or equivalent level as the position from which the individual was separated under section 709(e)(1) of title 32 or section 10216 of title 10.


HISTORICAL AND REVISION NOTES

1965 ACT

<table>
<thead>
<tr>
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<th>Revised Statutes and Statutes at Large</th>
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<tbody>
<tr>
<td></td>
<td>§ 5 U.S.C. 2257</td>
<td>[Showing changes from previous version of the Act]</td>
</tr>
<tr>
<td></td>
<td>July 31, 1966, ch. 804, §401</td>
<td>[Revised Statutes]</td>
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</tbody>
</table>

In subsection (c), the words “receiving disability retirement annuity from the Fund” are coextensive with and substituted for “retired under this section or under section 6 of the Act of May 29, 1930, as amended”.

In subsection (g), the words “Notwithstanding any provision of law to the contrary” are omitted as unnecessary. The words “Employees’ Compensation Fund” are substituted for “Federal Employees’ Compensation Fund” to conform to the title of that Fund as set forth in section 8147. Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section amends 5 U.S.C. 837(e) for consistency within the subchapter and to reflect that it is the individual, rather than the position, that is subject to the subchapter.
1982—Subsec. (d). Pub. L. 97–253, §302(a)(1), (2), substituted “180 days” for “1 year” in provision relating to restoration of an annuitant to an earning capacity fairly comparable to the current rate of pay of the position occupied at the time of retirement, and “and any calendar year” for “each of 2 succeeding calendar years”.

1980—Subsec. (a). Pub. L. 96–499 provided that an employee was to be considered disabled only if the employee were found by the Office of Personnel Management to be unable to render useful and efficient service in the employee’s position and was not qualified for reassignment to a vacant position in the agency at the same grade or level and provided that an employee in the Postal Service was to be considered not qualified for such reassignment if such reassignment were to a position in a different craft or were inconsistent with the terms of the appropriate collective bargaining agreement.


**Effective Date of 2000 Amendment**
Amendment by Pub. L. 106–533 effective on the first day of the first applicable pay period that begins on Dec. 21, 2000, and applicable only to an individual who is employed as a member of the Supreme Court Police after Dec. 21, 2000, see section 1a(2) (title III, §308(e), (j) of Pub. L. 106–533, set out in a Supreme Court Police Retirement note under section 8331 of this title.

**Effective Date of 1997 Amendment**
Amendment by Pub. L. 105–61 applicable to any annuity commencing before, on, or after Oct. 10, 1997, and effective with regard to any payment made after the first month following Oct. 10, 1997, see section 516(b) of Pub. L. 105–61, set out as a note under section 8331 of this title.

**Effective Date of 1988 Amendment**
Section 124(c) of Pub. L. 100–238 provided that:
“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 8464a of this title, amending this section, renumbering section 8457 of this title as section 8456, and repealing former section 8456 of this title] shall be effective as of January 1, 1987, and shall apply with respect to benefits payable based on a death or disability occurring on or after that date.

“(2) EXCEPTION.—The amendment made by subsection (a)(1)(A) [amending this section] shall take effect on the date of the enactment of this Act [Jan. 8, 1988] and shall apply with respect to benefits payable based on a death or disability occurring on or after that date.

**Effective Date of 1982 Amendment**
Section 302(c) of Pub. L. 97–253, as amended by Pub. L. 97–346, §3(1), Oct. 15, 1982, 96 Stat. 1649, provided that:
“(1) Except as provided in paragraphs (2) and (3), the amendments made by subsections (a) and (b) [amending this section and section 3037 of this title] shall take effect effective October 1, 1982.

“(2) The amendments made by paragraphs (1) and (2) of subsection (a) [amending this section] shall take effect with respect to income earned after December 31, 1982.

“(3) Subsection (h) of section 8337 of title 5, United States Code (as added by subsection (a)) shall apply to any technician (as defined in paragraph (1) of such subsection) who is separated from employment as a technician on or after October 1, 1982. Such subsection (h) shall also apply to any technician separated from employment as a technician on or after December 31, 1979, and before October 1, 1982, if application therefor is made to the Office of Personnel Management within 12 months after the date of the enactment of this Act [Sept. 8, 1982]. Any annuity resulting from such application shall commence as of the day after the date such application is received by the Office.”

**Effective Date of 1980 Amendment**
Amendment by Pub. L. 96–499 effective on 90th day after Dec. 5, 1980, see section 403(c) of Pub. L. 96–499, set out as a note under section 8331 of this title.

**Effective Date of 1978 Amendment**

§ 8338. Deferred retirement

(a) An employee who is separated from the service or transferred to a position in which he does not continue subject to this subchapter after completing 5 years of civilian service is entitled to an annuity beginning at the age of 62 years.

(b) A Member who, after December 31, 1955, is separated from the service as a Member after completing 5 years of civilian service is entitled to an annuity beginning at the age of 62 years.

(c) A judge of the United States Court of Appeals for the Armed Forces who is separated from the service after completing 5 years of civilian service is entitled to an annuity beginning at the age of 62 years. A Member who is separated from the service after completing 20 or more years of service, including 10 or more years of Member service, is entitled to a reduced annuity beginning at the age of 50 years.

(d) An annuity or reduced annuity authorized by this section is computed under section 8339 of this title.


### Historical and Revision Notes

#### 1966 Act

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<td>5 U.S.C. 2256</td>
<td>July 31, 1956, ch. 804, §401</td>
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<tr>
<td>“Sec. 8”</td>
<td>70 Stat. 751</td>
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<tr>
<td>July 12, 1960, Pub. L. 86–622, §2(a), 74 Stat. 410</td>
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In subsection (b), the words “after December 31, 1955” are substituted for “on or after January 1, 1956”. The word “hereafter” is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### 1967 Act

This section amends 5 U.S.C. 8338(a) for consistency within the subchapter and to reflect that it is the indi-