

(b) REQUIREMENT.—The head of each agency shall, in a manner consistent with the guidelines prescribed under subsection (c), provide for the assignment of a post-combat case coordinator in the case of any employee of such agency who suffers an injury or disability incurred, or an illness contracted, while in the performance of such employee's duties, as a result of a war-risk hazard or during or as a result of capture, detention, or other restraint by a hostile force or individual.

(c) GUIDELINES.—The Office of Personnel Management shall, after such consultation as the Office considers appropriate, prescribe guidelines for the operation of this section. Under the guidelines, the responsibilities of a post-combat case coordinator shall include—

(1) acting as the main point of contact for qualified employees seeking administrative guidance or assistance relating to benefits under chapter 81 or 89;

(2) assisting qualified employees in the collection of documentation or other supporting evidence for the expeditious processing of claims under chapter 81 or 89;

(3) assisting qualified employees in connection with the receipt of prescribed medical care and the coordination of benefits under chapter 81 or 89;

(4) resolving problems relating to the receipt of benefits under chapter 81 or 89; and

(5) ensuring that qualified employees are properly screened and receive appropriate treatment—

(A) for post-traumatic stress disorder or other similar disorder stemming from combat trauma; or

(B) for suicidal or homicidal thoughts or behaviors.

(d) DURATION.—The services of a post-combat case coordinator shall remain available to a qualified employee until—

(1) such employee accepts or declines a reasonable offer of employment in a position in the employee's agency for which the employee is qualified, which is not lower than 2 grades (or pay levels) below the employee's grade (or pay level) before the occurrence or onset of the injury, disability, or illness (as referred to in subsection (a)), and which is within the employee's commuting area; or

(2) such employee gives written notice, in such manner as the employing agency prescribes, that those services are no longer desired or necessary.

(Added Pub. L. 112–81, div. A, title XI, §1106(a), Dec. 31, 2011, 125 Stat. 1613.)

Subpart G—Insurance and Annuities

CHAPTER 81—COMPENSATION FOR WORK INJURIES

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AMENDMENTS

2008—Pub. L. 110–181, div. A, title XI, §1105(b), Jan. 28, 2008, 122 Stat. 349, added item 8102a.

¹ So in original. Does not conform to section catchline.

1995—Pub. L. 104-66, title I, §1102(b)(3)(B), Dec. 21, 1995, 109 Stat. 723, added item 8152.

1994—Pub. L. 103-333, title I, §101(a)(2), Sept. 30, 1994, 108 Stat. 2547, added item 8148.

1979—Pub. L. 96-70, title III, §3302(e)(12), Sept. 27, 1979, 93 Stat. 499, substituted “Panama Canal Commission” for “Canal Zone” in item 8146.

1974—Pub. L. 93-416, §§12(b), 23(a), Sept. 7, 1974, 88 Stat. 1146, 1150, substituted “Notice of injury or death” for “Notice of injury; failure to give” in item 8119, and added item 8151.

1968—Pub. L. 90-291, §1(b), Apr. 19, 1968, 82 Stat. 100, added subchapter III consisting of items 8191, 8192, and 8193.

1967—Pub. L. 90-83, §1(59), (66)(B), (67)(B), (70), Sept. 11, 1967, 81 Stat. 211, 212, 213, inserted “; hearings” in item 8124, added item 8143a relating to members of the National Teachers Corps and item 8146a relating to cost-of-living adjustment of compensation, and struck out item 8148 relating to reports.

SUBCHAPTER I—GENERALLY

§ 8101. Definitions

For the purpose of this subchapter—

(1) “employee” means—

(A) a civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States;

(B) an individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual;

(C) an individual, other than an independent contractor or an individual employed by an independent contractor, employed on the Menominee Indian Reservation in Wisconsin in operations conducted under a statute relating to tribal timber and logging operations on that reservation;

(D) an individual employed by the government of the District of Columbia; and

(E) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838);

but does not include—

(i) a commissioned officer of the Regular Corps of the Public Health Service;

(ii) a commissioned officer of the Reserve Corps of the Public Health Service on active duty;

(iii) a commissioned officer of the Environmental Science Services Administration; or

(iv) a member of the Metropolitan Police or the Fire Department of the District of Columbia who is pensioned or pensionable under sections 521-535 of title 4, District of Columbia Code; and

(F)¹ an individual selected pursuant to chapter 121 of title 28, United States Code, and serving as a petit or grand juror;

(2) “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optom-

etrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term “physician” includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist, and subject to regulation by the Secretary;

(3) “medical, surgical, and hospital services and supplies” includes services and supplies by podiatrists, dentists, clinical psychologists, optometrists, chiropractors, osteopathic practitioners and hospitals within the scope of their practice as defined by State law. Reimbursable chiropractic services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist, and subject to regulation by the Secretary;

(4) “monthly pay” means the monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than 6 months after the injured employee resumes regular full-time employment with the United States, whichever is greater, except when otherwise determined under section 8113 of this title with respect to any period;

(5) “injury” includes, in addition to injury by accident, a disease proximately caused by the employment, and damage to or destruction of medical braces, artificial limbs, and other prosthetic devices which shall be replaced or repaired, and such time lost while such device or appliance is being replaced or repaired; except that eyeglasses and hearing aids would not be replaced, repaired, or otherwise compensated for, unless the damages or destruction is incident to a personal injury requiring medical services;

(6) “widow” means the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion;

(7) “parent” includes stepparents and parents by adoption;

(8) “brother” and “sister” mean one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support, and include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but do not include married brothers or married sisters;

(9) “child” means one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support, and includes stepchildren, adopted children, and posthumous children, but does not include married children;

(10) “grandchild” means one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support;

(11) “widower” means the husband living with or dependent for support on the decedent at the time of her death, or living apart for reasonable cause or because of her desertion;

(12) “compensation” includes the money allowance payable to an employee or his depend-

¹ So in original. Pub. L. 93-416 added par. (F) immediately after par. (iv), rather than after par. (E).

ents and any other benefits paid for from the Employees' Compensation Fund, but this does not in any way reduce the amount of the monthly compensation payable for disability or death;

(13) "war-risk hazard" means a hazard arising during a war in which the United States is engaged; during an armed conflict in which the United States is engaged, whether or not war has been declared; or during a war or armed conflict between military forces of any origin, occurring in the country in which an individual to whom this subchapter applies is serving; from—

(A) the discharge of a missile, including liquids and gas, or the use of a weapon, explosive, or other noxious thing by a hostile force or individual or in combating an attack or an imagined attack by a hostile force or individual;

(B) action of a hostile force or individual, including rebellion or insurrection against the United States or any of its allies;

(C) the discharge or explosion of munitions intended for use in connection with a war or armed conflict with a hostile force or individual;

(D) the collision of vessels on convoy or the operation of vessels or aircraft without running lights or without other customary peacetime aids to navigation; or

(E) the operation of vessels or aircraft in a zone of hostilities or engaged in war activities;

(14) "hostile force or individual" means a nation, a subject of a foreign nation, or an individual serving a foreign nation—

(A) engaged in a war against the United States or any of its allies;

(B) engaged in armed conflict, whether or not war has been declared, against the United States or any of its allies; or

(C) engaged in a war or armed conflict between military forces of any origin in a country in which an individual to whom this subchapter applies is serving;

(15) "allies" means any nation with which the United States is engaged in a common military effort or with which the United States has entered into a common defensive military alliance;

(16) "war activities" includes activities directly relating to military operations;

(17) "student" means an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is—

(A) a school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

(B) a school or college or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body;

(C) a school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the

same basis as if transferred from an institution so accredited; or

(D) an additional type of educational or training institution as defined by the Secretary of Labor.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 4 months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period;

(18) "price index" means the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics; and

(19) "organ" means a part of the body that performs a special function, and for purposes of this subchapter excludes the brain, heart, and back; and

(20) "United States medical officers and hospitals" includes medical officers and hospitals of the Army, Navy, Air Force, Department of Veterans Affairs, and United States Public Health Service, and any other medical officer or hospital designated as a United States medical officer or hospital by the Secretary of Labor.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 532; Pub. L. 90-83, §1(4), (48), Sept. 11, 1967, 81 Stat. 196, 209; Pub. L. 93-416, §1, Sept. 7, 1974, 88 Stat. 1143; Pub. L. 96-499, title IV, §421(b), Dec. 5, 1980, 94 Stat. 2608; Pub. L. 97-463, §4, Jan. 12, 1983, 96 Stat. 2532; Pub. L. 102-54, §13(b)(1), June 13, 1991, 105 Stat. 274.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(1)-(5), (12)-(16).	5 U.S.C. 790.	Sept. 7, 1916, ch. 458, §40, 39 Stat. 750. June 5, 1924, ch. 261, §2, 43 Stat. 389. May 31, 1938, ch. 293, 52 Stat. 586. Apr. 11, 1940, ch. 79, §1, 54 Stat. 105. July 1, 1944, ch. 373, §605(b), 58 Stat. 712. Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049. Oct. 14, 1949, ch. 691, §108, 63 Stat. 860. July 30, 1956, ch. 779, §3(b), 70 Stat. 721. Aug. 1, 1956, ch. 837, §501(e), 70 Stat. 883. Aug. 8, 1958, Pub. L. 85-608, §302, 72 Stat. 539. Sept. 13, 1960, Pub. L. 86-767, §208, 74 Stat. 908. Sept. 4, 1964, Pub. L. 88-581, §4(b), 78 Stat. 919. July 11, 1919, ch. 7, §11 (1st sentence), 41 Stat. 104.
	5 U.S.C. 794 (1st sentence).	

HISTORICAL AND REVISION NOTES—CONTINUED
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(6)–(10)	[Uncodified]. 5 U.S.C. 760(H).	Aug. 25, 1958, Pub. L. 85-745, §1(b) (last sentence, as applicable to the Federal Employees' Compensation Act), 72 Stat. 838. Sept. 7, 1916, ch. 458, §10(H), 39 Stat. 745. Feb. 12, 1927, ch. 110, §2, 44 Stat. 1087.
(11)	5 U.S.C. 760(B) (last 23 words of 1st sentence).	Sept. 7, 1916, ch. 458, §10(B) (last 15 words of 1st sentence), 39 Stat. 744. Oct. 14, 1949, ch. 691, §106(c) "(B) (last 23 words of 1st sentence)", 63 Stat. 859.

Former section 790(a) is omitted as unnecessary in view of section 1 of title 1, United States Code.

Former section 790(c) is omitted as unnecessary as the term "commission" is not used in this subchapter.

Former section 790(i) is omitted as unnecessary as the title "Secretary of Labor" (substituted for "Federal Security Administrator" by 1950 Reorg. Plan No. 19, §1, eff. May 24, 1950, 64 Stat. 1271) is fully set out the first time it is used in each section.

In paragraph (1)(B), the words "to the United States" are substituted for "to any department, independent establishment, or agency thereof (including instrumentalities of the United States wholly owned by it)".

In paragraph (1)(C), the words "subsequent to September 7, 1916" are omitted as obsolete.

In paragraph (1)(iv), the words "under sections 521-535 of title 4, District of Columbia Code" are substituted for "under the provisions of the District of Columbia Appropriation Act approved September 1, 1916".

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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8101(17)	5 App.: 760(M).	July 4, 1966, Pub. L. 89-488,
8101(18)	5 App.: 793a(c)(1).	§§7(c), 14 "Sec. 43(c)", 480
8101(19)	5 App.: 793a(c)(2).	Stat. 254, 256.

Paragraph (17) is reorganized and restated for clarity and to conform to the style of title 5, United States Code. In clause (D), the words "Secretary of Labor" are substituted for "Secretary" on authority of section 40(i) of the Federal Employees' Compensation Act.

In paragraph (19), the words "July 1966 and each later month" are substituted for "the month this section becomes effective and each month thereafter". The words "section 8146a of this title" are substituted for "this section" to reflect the codification of section 43 in title 5.

REFERENCES IN TEXT

Act of August 25, 1958, 72 Stat. 838, referred to in par. (1)(E), is set out as a note under section 102 of Title 3, The President.

AMENDMENTS

1991—Par. (20). Pub. L. 102-54 substituted "Department of Veterans Affairs" for "Veterans' Administration".

1983—Par. (1)(F). Pub. L. 97-463 struck out "and who is otherwise an employee for the purposes of this subchapter as defined by paragraph (A), (B), (C), (D), and (E) of this subsection" after "petit or grand juror".

1980—Pars. (19) to (21). Pub. L. 96-499 struck out par. (19) which defined "base month" as the month of July 1966 and each later month which was used as a basis for calculating an increase under section 8146a of this title,

and redesignated pars. (20) and (21) as (19) and (20), respectively.

1974—Par. (1)(D). Pub. L. 93-416, §1(g), struck out "and" after the semicolon.

Par. (1)(F). Pub. L. 93-416, §1(a), added par. (1)(F).

Par. (2). Pub. L. 93-416, §1(b), expanded definition of "physician" to include podiatrists, dentists, clinical psychologists, optometrists, and chiropractors and inserted provision limiting the extent to which chiropractors are included.

Par. (3). Pub. L. 93-416, §1(c), included within "medical, surgical, and hospital services and supplies" those supplied by podiatrists, dentists, clinical psychologists, optometrists, and chiropractors and limited the reimbursable services of chiropractors.

Par. (5). Pub. L. 93-416, §1(d), added to definition of "injury" damage to or destruction of medical braces, artificial limbs, and other prosthetic devices and excepted eyeglasses and hearing aids unless damage or destruction is incidental to a personal injury requiring medical services.

Par. (11). Pub. L. 93-416, §1(e), substituted "the husband living with or dependent for support on the decedent at the time of her death, or living apart for reasonable cause because of her desertion" for "one who, because of physical or mental disability, was wholly dependent for support on the employee at the time of her death" as definition of "widower".

Pars. (20), (21). Pub. L. 93-416, §1(f), added pars. (20) and (21).

1967—Par. (1)(iii). Pub. L. 90-83, §1(4), substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey". See Historical and Revision Notes under section 2101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 422 of Pub. L. 96-499 provided that: "The amendments made by section 421 [amending this section and section 8146a of this title] shall take effect on the date of the enactment of this Act [Dec. 5, 1980] with respect to any adjustments which are to be made on or after that date; except that the period specified in such section as extending from December to December shall, with respect to the adjustment to be made on March 1, 1981, extend instead from the last month in which the price index resulted in an adjustment prior to enactment to December of 1980."

EFFECTIVE DATE OF 1974 AMENDMENT

Section 28(a) of Pub. L. 93-416 provided that: "Except as otherwise provided by this section this Act [enacting section 8151 of this title, amending this section and sections 8103, 8104, 8107, 8110, 8111, 8113, 8116, 8117, 8118, 8119, 8121, 8122, 8132, 8135, 8142, 8143, 8146a of this title, repealing section 3315a of this title, and enacting provisions set out as notes under this section and section 8116 of this title] shall take effect on the date of enactment [Sept. 7, 1974] and be applicable to any injury or death occurring on or after such effective date [Sept. 7, 1974]. The amendments made by sections 1(b) and (c) [amending this section], 2 [amending section 8103 of this title], 3 [amending section 8104 of this title], 7(a) and (b) [amending section 8111 of this title], 8(a) [amending section 8113 of this title], 8(b) [amending section 8143 of this title], 9 [amending section 8116 of this title], 16(a) [amending section 8133 of this title], 16(b) [amending section 8135 of this title], 17 [amending section 8133 of this title], 19 [amending section 8135 of this title], 20 [amending section 8135 of this title], 21 [amending section 8146a of this title], 22 [enacting section 8151 of this title], 24 [amending section 8146a of this title], and 25 [amending section 8147 of this title], shall be applicable to cases where the injury or death occurred prior to the date of enactment [Sept. 7, 1974] but the provisions of these sections shall be applicable only to a period beginning on or after the date of enactment [Sept. 7, 1974]."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-534, §1, Nov. 7, 1990, 104 Stat. 2352, provided that: "This Act [amending section 8111 of this

title and enacting provisions set out as a note under section 8111 of this title) may be cited as the 'Attendant Allowance Adjustment Act'."

TRANSFER OF FUNCTIONS

Environmental Science Services Administration in Department of Commerce, including offices of Administrator and Deputy Administrator thereof, abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to this title, which created National Oceanic and Atmospheric Administration in Department of Commerce and transferred personnel, property, records, and unexpended balances of funds of Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. Components of Environmental Science Services Administration thus transferred included Weather Bureau [now National Weather Service], Coast and Geodetic Survey [now National Ocean Survey], Environmental Data Services, National Environmental Satellite Center, and ESSA Research Laboratories.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service, transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 3508 of Title 20, Education.

PROCESSING OF CLAIMS FILED BY DISTRICT OF COLUMBIA EMPLOYEES

Pub. L. 93-198, title II, §204(e), Dec. 24, 1973, 87 Stat. 783, provided that: "All functions of the Secretary under chapter 81 of title 5 of the United States Code, with respect to the processing of claims filed by employees of the government of the District for compensation for work injuries, are transferred to and shall be exercised by the Commissioner, effective the day after the day on which the District establishes an independent personnel system or systems." An independent personnel system was established for the District by D.C. Law 2-139, Mar. 3, 1979, 25 DCR 5740.

STUDY AND REPORT TO CONGRESS BY SECRETARY OF LABOR OF PROVISIONS AND PROGRAMS UNDER SUBCHAPTER

Section 27 of Pub. L. 93-416 directed Secretary of Labor to conduct a study of the provisions of this subchapter and its programs which was to include: hearings, research, and other activities necessary to formulate recommendations; an examination of need for authority to increase allowances for services of attendants above the maximum fixed by section 8111 of this title in exceptional circumstances; an examination of the effectiveness of this subchapter; and recommendations as to survivor benefits; report results of the study together with his findings and recommendations not later than 12 months after Sept. 7, 1974.

§ 8102. Compensation for disability or death of employee

(a) The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty, unless the injury or death is—

- (1) caused by willful misconduct of the employee;
- (2) caused by the employee's intention to bring about the injury or death of himself or of another; or
- (3) proximately caused by the intoxication of the injured employee.

(b) Disability or death from a war-risk hazard or during or as a result of capture, detention, or other restraint by a hostile force or individual, suffered by an employee who is employed outside the continental United States or in Alaska or in the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979), is deemed to have resulted from personal injury sustained while in the performance of his duty, whether or not the employee was engaged in the course of employment when the disability or disability resulting in death occurred or when he was taken by the hostile force or individual. This subsection does not apply to an individual—

- (1) whose residence is at or in the vicinity of the place of his employment and who was not living there solely because of the exigencies of his employment, unless he was injured or taken while engaged in the course of his employment; or
- (2) who is a prisoner of war or a protected individual under the Geneva Conventions of 1949 and is detained or utilized by the United States.

This subsection does not affect the payment of compensation under this subchapter derived otherwise than under this subsection, but compensation for disability or death does not accrue for a period for which pay, other benefit, or gratuity from the United States accrues to the disabled individual or his dependents on account of detention by the enemy or because of the same disability or death, unless that pay, benefit, or gratuity is refunded or renounced.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 534; Pub. L. 96-70, title I, §1231(d), Sept. 27, 1979, 93 Stat. 470.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 751.	Sept. 7, 1916, ch. 458, §1, 39 Stat. 742. Aug. 8, 1958, Pub. L. 85-608, §301, 72 Stat. 538.

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

REFERENCES IN TEXT

Section 3(a) of the Panama Canal Act of 1979, referred to in subsec. (b), is classified to section 3602(a) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-70 substituted "areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979)" for "Canal Zone".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96-70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

§ 8102a. Death gratuity for injuries incurred in connection with employee's service with an Armed Force

(a) **DEATH GRATUITY AUTHORIZED.**—The United States shall pay a death gratuity of up to \$100,000 to or for the survivor prescribed by subsection (d) immediately upon receiving official notification of the death of an employee who dies of injuries incurred in connection with the employee's service with an Armed Force in a contingency operation.

(b) **RETROACTIVE PAYMENT IN CERTAIN CASES.**—At the discretion of the Secretary concerned, subsection (a) may apply in the case of an employee who died, on or after October 7, 2001, and before the date of enactment of this section, as a result of injuries incurred in connection with the employee's service with an Armed Force in the theater of operations of Operation Enduring Freedom or Operation Iraqi Freedom.

(c) **RELATIONSHIP TO OTHER BENEFITS.**—The death gratuity payable under this section shall be reduced by the amount of any death gratuity provided under section 413 of the Foreign Service Act of 1980, section 1603 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, or any other law of the United States based on the same death.

(d) **ELIGIBLE SURVIVORS.**—

(1) Subject to paragraph (5), a death gratuity payable upon the death of a person covered by subsection (a) shall be paid to or for the living survivor highest on the following list:

(A) The employee's surviving spouse.

(B) The employee's children, as prescribed by paragraph (2), in equal shares.

(C) If designated by the employee, any one or more of the following persons:

(i) The employee's parents or persons in loco parentis, as prescribed by paragraph (3).

(ii) The employee's brothers.

(iii) The employee's sisters.

(D) The employee's parents or persons in loco parentis, as prescribed by paragraph (3), in equal shares.

(E) The employee's brothers and sisters in equal shares.

Subparagraphs (C) and (E) of this paragraph include brothers and sisters of the half blood and those through adoption.

(2) Paragraph (1)(B) applies, without regard to age or marital status, to—

(A) legitimate children;

(B) adopted children;

(C) stepchildren who were a part of the decedent's household at the time of death;

(D) illegitimate children of a female decedent; and

(E) illegitimate children of a male decedent—

(i) who have been acknowledged in writing signed by the decedent;

(ii) who have been judicially determined, before the decedent's death, to be his children;

(iii) who have been otherwise proved, by evidence satisfactory to the employing agency, to be children of the decedent; or

(iv) to whose support the decedent had been judicially ordered to contribute.

(3) Subparagraphs (C) and (D) of paragraph (1), so far as they apply to parents and persons in loco parentis, include fathers and mothers through adoption, and persons who stood in loco parentis to the decedent for a period of not less than one year at any time before the decedent became an employee. However, only one father and one mother, or their counterparts in loco parentis, may be recognized in any case, and preference shall be given to those who exercised a parental relationship on the date, or most nearly before the date, on which the decedent became an employee.

(4) A person covered by this section may designate another person to receive an amount payable under this section. The designation shall indicate the percentage of the amount, to be specified only in 10 percent increments, that the designated person may receive. The balance of the amount of the death gratuity shall be paid to or for the living survivors of the person concerned in accordance with subparagraphs (A) through (E) of paragraph (1).

(5) If a person entitled to all or a portion of a death gratuity under paragraph (1) or (4) dies before the person receives the death gratuity, it shall be paid to the living survivor next in the order prescribed by paragraph (1).

(6) If a person covered by this section has a spouse, but designates a person other than the spouse to receive all or a portion of the amount payable under this section, the head of the agency, or other entity, in which that person is employed shall provide notice of the designation to the spouse.

(e) **DEFINITIONS.**—(1) The term "contingency operation" has the meaning given to that term in section 1482a(c) of title 10, United States Code.

(2) The term "employee" has the meaning provided in section 8101 of this title, but also includes a nonappropriated fund instrumentality employee, as defined in section 1587(a)(1) of title 10.

(Added Pub. L. 110-181, div. A, title XI, §1105(a), Jan. 28, 2008, 122 Stat. 347; amended Pub. L. 112-81, div. A, title XI, §1121(a)(1), (b), Dec. 31, 2011, 125 Stat. 1616.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (b), is the date of enactment of Pub. L. 110-181, which was approved Jan. 28, 2008.

Section 413 of the Foreign Service Act of 1980, referred to in subsec. (c), is classified to section 3973 of Title 22, Foreign Relations and Intercourse.

Section 1603 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, referred to in subsec. (c), is section 1603 of Pub. L. 109-234, title I, June 15, 2006, 120 Stat. 443, which is not classified to the Code.

The date of the enactment of this paragraph, referred to in subsec. (d)(4), is the date of enactment of Pub. L. 110-181, which was approved Jan. 28, 2008.

AMENDMENTS

2011—Subsec. (d)(4). Pub. L. 112-81, §1121(a)(1), substituted "A person covered by this section may designate another person to receive an amount payable under this section." for "Beginning on the date of the

enactment of this paragraph, a person covered by this section may designate another person to receive not more than 50 percent of the amount payable under this section.” and struck out “up to the maximum of 50 percent” after “increments”.

Subsec. (d)(6). Pub. L. 112-81, §1121(b), added par. (6).

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112-81, div. A, title XI, §1121(a)(2), Dec. 31, 2011, 125 Stat. 1616, provided that: “The amendments made by this subsection [amending this section] shall take effect on the date of enactment of this Act [Dec. 31, 2011] and apply to the payment of a death gratuity based on any death occurring on or after that date.”

§ 8103. Medical services and initial medical and other benefits

(a) The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation. These services, appliances, and supplies shall be furnished—

(1) whether or not disability has arisen;

(2) notwithstanding that the employee has accepted or is entitled to receive benefits under subchapter III of chapter 83 of this title or another retirement system for employees of the Government; and

(3) by or on the order of United States medical officers and hospitals, or, at the employee's option, by or on the order of physicians and hospitals designated or approved by the Secretary.

The employee may initially select a physician to provide medical services, appliances, and supplies, in accordance with such regulations and instructions as the Secretary considers necessary, and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances, and supplies. These expenses, when authorized or approved by the Secretary, shall be paid from the Employees' Compensation Fund.

(b) The Secretary, under such limitations or conditions as he considers necessary, may authorize the employing agencies to provide for the initial furnishing of medical and other benefits under this section. The Secretary may certify vouchers for these expenses out of the Employees' Compensation Fund when the immediate superior of the employee certifies that the expense was incurred in respect to an injury which was accepted by the employing agency as probably compensable under this subchapter. The Secretary shall prescribe the form and content of the certificate.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 535; Pub. L. 90-83, §1(49), Sept. 11, 1967, 81 Stat. 209; Pub. L. 93-416, §2, Sept. 7, 1974, 88 Stat. 1144.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 759(a).	Sept. 7, 1916, ch. 458, §9, 39 Stat. 743.

HISTORICAL AND REVISION NOTES—CONTINUED
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
		June 26, 1926, ch. 695, §1, 44 Stat. 772. Oct. 14, 1949, ch. 691, §202(b), 63 Stat. 862. Sept. 13, 1960, Pub. L. 86-767, §203, 74 Stat. 907.

In subsection (b), the words “when the immediate superior of the employee certifies” are substituted for “upon certification by the person required by section 774 of this title to make reports of injury”.

The last sentence of former section 759(a) is omitted as executed.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8103(a)(2) ...	5 App.: 759(a).	July 4, 1966, Pub. L. 89-488, §5(b), 80 Stat. 253.

The words “another retirement system for employees of the Government” are substituted for “any other Federal Act or program providing retirement benefits for employees”.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-416 substituted “at the employee's option” for “when this is not practicable”, struck out “private” before “physicians and hospitals” in par. (3), and, in provision following par. (3), added authorization for the employee to initially select a physician in accordance with such regulations and instructions considered necessary by the Secretary.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-416 applicable to cases where injury or death occurred prior to Sept. 7, 1974, but only to a period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Section 7 of Pub. L. 90-83 provided that: “Nothing in this or any other Act makes the increases authorized by section 1(49)–(52) [amending this section and sections 8107, 8108, and 8109 of this title], 53(B) and (C) [amending section 8110 of this title], (54)–(58) [amending section 8111, 8112, 8116, 8122, and 8124 of this title], (60) [amending section 8131 of this title], (61) [amending section 8132 of this title], (62) (B) [amending section 8133(e) of this title], (63) [amending section 8135 of this title], (67) [adding section 8146a of this title], (68) [amending section 8147 of this title], and (71) [amending section 8149 of this title] of this Act applicable to—

“(1) an employee or individual not within the definition of ‘employee’ in section 8101(1)(A), (B), or (D) of title 5, United States Code;

“(2) a member of the Metropolitan Police or the Fire Department of the District of Columbia who is pensioned or pensionable under sections 521–535 of title 4, District of Columbia Code; or

“(3) a member of a uniformed service.”

§ 8104. Vocational rehabilitation

(a) The Secretary of Labor may direct a permanently disabled individual whose disability is compensable under this subchapter to undergo

vocational rehabilitation. The Secretary shall provide for furnishing the vocational rehabilitation services. In providing for these services, the Secretary, insofar as practicable, shall use the services or facilities of State agencies and corresponding agencies which cooperate with the Secretary of Health, Education, and Welfare in carrying out the purposes of chapter 4 of title 29, except to the extent that the Secretary of Labor provides for furnishing these services under section 8103 of this title. The cost of providing these services to individuals undergoing vocational rehabilitation under this section shall be paid from the Employees' Compensation Fund. However, in reimbursing a State or corresponding agency under an arrangement pursuant to this section the cost to the agency reimbursable in full under section 32(b)(1) of title 29 is excluded.

(b) Notwithstanding section 8106, individuals directed to undergo vocational rehabilitation by the Secretary shall, while undergoing such rehabilitation, receive compensation at the rate provided in sections 8105 and 8110 of this title, less the amount of any earnings received from remunerative employment, other than employment undertaken pursuant to such rehabilitation.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 535; Pub. L. 93-416, § 3, Sept. 7, 1974, 88 Stat. 1144.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 759(b).	Oct. 14, 1949, ch. 691, § 202(a), 63 Stat. 862.

In the third sentence, the words "the Secretary of Health, Education, and Welfare" are substituted for "him", referring to the Administrator, on authority of section 1 (proviso) of 1950 Reorg. Plan No. 19, 64 Stat. 1271, and section 5 of 1953 Reorg. Plan No. 1, 67 Stat. 632.

The words "State agencies or corresponding agencies" are substituted for "State agencies (or corresponding agencies in Territories or possessions)" as the agencies available for cooperation are set out in the Vocational Rehabilitation Act (chapter 4 of title 29).

The words "section 32(b)(1) of title 29" are substituted for "section 33(a) (4) of title 29" on authority of the Act of Aug. 3, 1954, ch. 655, § 2, 68 Stat. 652. Reference is limited to section 32(b)(1) since section 32(b) (2), (3) is obsolete.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

REFERENCES IN TEXT

Chapter 4 of title 29, referred to in subsec. (a), refers to the Vocational Rehabilitation Act, act June 2, 1920, ch. 219, 41 Stat. 735, as amended. Section 32(b)(1) of title 29, also referred to in subsec. (a) (enacted Sept. 6, 1966), did not reflect amendment of section 32(b) by Pub. L. 89-333 § 2(a), Nov. 8, 1965, 79 Stat. 1282, which eliminated obsolete pars. (2) and (3) and redesignated par. (1) provisions as subsec. (b) and amended such subsection. Section 32(b) of title 29, refers to section 2(b) of act June 2, 1920, as amended. Such provisions were repealed by former section 500(a) of Pub. L. 93-112, title V, Sept. 26, 1973, 87 Stat. 390, and pursuant to former section 500(a) of Pub. L. 93-112, which also provided that references to the Vocational Rehabilitation Act in other provisions of law were to be deemed a reference to the Rehabilita-

tion Act of 1973, and were covered by sections 701 et seq. and 731(a), respectively, of Title 29, Labor.

AMENDMENTS

1974—Pub. L. 93-416 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-416 applicable to cases where injury or death occurred prior to Sept. 7, 1974, but only to a period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions and offices (relating to Rehabilitation Act of 1973) of Secretary and Department of Health, Education, and Welfare to Secretary and Department of Education, see section 3441 of Title 20, Education.

§ 8105. Total disability

(a) If the disability is total, the United States shall pay the employee during the disability monthly monetary compensation equal to 66% percent of his monthly pay, which is known as his basic compensation for total disability.

(b) The loss of use of both hands, both arms, both feet, or both legs, or the loss of sight of both eyes, is prima facie permanent total disability.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 535.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 753.	Sept. 7, 1916, ch. 458, § 3, 39 Stat. 743. Oct. 14, 1949, ch. 691, § 102, 63 Stat. 855.

In subsection (a), the words "Except as otherwise provided in sections 751-756, 757-781, 783-791, and 793 of this title" are omitted as surplusage.

In subsection (b), the words "Loss, or" are omitted as included in "loss of use of". The words "or the loss of sight of both eyes" are substituted for "or both eyes or the sight thereof".

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

§ 8106. Partial disability

(a) If the disability is partial, the United States shall pay the employee during the disability monthly monetary compensation equal to 66% percent of the difference between his monthly pay and his monthly wage-earning capacity after the beginning of the partial disability, which is known as his basic compensation for partial disability.

(b) The Secretary of Labor may require a partially disabled employee to report his earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies. The employee shall include in the affidavit or report the value of housing, board, lodging, and other advantages which are part of his earnings in employment or self-employment and which can be estimated in money. An employee who—

(1) fails to make an affidavit or report when required; or

(2) knowingly omits or understates any part of his earnings;

forfeits his right to compensation with respect to any period for which the affidavit or report was required. Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee or otherwise recovered under section 8129 of this title, unless recovery is waived under that section.

- (c) A partially disabled employee who—
 - (1) refuses to seek suitable work; or
 - (2) refuses or neglects to work after suitable work is offered to, procured by, or secured for him;

is not entitled to compensation.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 536.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 754.	Sept. 7, 1916, ch. 458, § 4, 39 Stat. 743. Oct. 14, 1949, ch. 691, § 103(a), 63 Stat. 855.

In subsection (a), the words “Except as otherwise provided in sections 751-756, 757-781, 783-791, and 793 of this title” are omitted as surplusage.

In subsection (b), the word “remuneration” is omitted as covered by the word “earnings”.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

§ 8107. Compensation schedule

(a) If there is permanent disability involving the loss, or loss of use, of a member or function of the body or involving disfigurement, the employee is entitled to basic compensation for the disability, as provided by the schedule in subsection (c) of this section, at the rate of 66⅔ percent of his monthly pay. The basic compensation is—

- (1) payable regardless of whether the cause of the disability originates in a part of the body other than that member;
- (2) payable regardless of whether the disability also involves another impairment of the body; and
- (3) in addition to compensation for temporary total or temporary partial disability.

(b) With respect to any period after payments under subsection (a) of this section have ended, an employee is entitled to compensation as provided by—

- (1) section 8105 of this title if the disability is total; or
- (2) section 8106 of this title if the disability is partial.

(c) The compensation schedule is as follows:

- (1) Arm lost, 312 weeks’ compensation.
- (2) Leg lost, 288 weeks’ compensation.
- (3) Hand lost, 244 weeks’ compensation.
- (4) Foot lost, 205 weeks’ compensation.
- (5) Eye lost, 160 weeks’ compensation.
- (6) Thumb lost, 75 weeks’ compensation.

- (7) First finger lost, 46 weeks’ compensation.
- (8) Great toe lost, 38 weeks’ compensation.
- (9) Second finger lost, 30 weeks’ compensation.
- (10) Third finger lost, 25 weeks’ compensation.
- (11) Toe other than great toe lost, 16 weeks’ compensation.
- (12) Fourth finger lost, 15 weeks’ compensation.
- (13) Loss of hearing—
 - (A) complete loss of hearing of one ear, 52 weeks’ compensation; or
 - (B) complete loss of hearing of both ears, 200 weeks’ compensation.

(14) Compensation for loss of binocular vision or for loss of 80 percent or more of the vision of an eye is the same as for loss of the eye.

(15) Compensation for loss of more than one phalanx of a digit is the same as for loss of the entire digit. Compensation for loss of the first phalanx is one-half of the compensation for loss of the entire digit.

(16) If, in the case of an arm or a leg, the member is amputated above the wrist or ankle, compensation is the same as for loss of the arm or leg, respectively.

(17) Compensation for loss of use of two or more digits, or one or more phalanges of each of two or more digits, of a hand or foot, is proportioned to the loss of use of the hand or foot occasioned thereby.

(18) Compensation for permanent total loss of use of a member is the same as for loss of the member.

(19) Compensation for permanent partial loss of use of a member may be for proportionate loss of use of the member. The degree of loss of vision or hearing under this schedule is determined without regard to correction.

(20) In case of loss of use of more than one member or parts of more than one member as enumerated by this schedule, the compensation is for loss of use of each member or part thereof, and the awards run consecutively. However, when the injury affects only two or more digits of the same hand or foot, paragraph (17) of this subsection applies, and when partial bilateral loss of hearing is involved, compensation is computed on the loss as affecting both ears.

(21) For serious disfigurement of the face, head, or neck of a character likely to handicap an individual in securing or maintaining employment, proper and equitable compensation not to exceed \$3,500 shall be awarded in addition to any other compensation payable under this schedule.

(22) For permanent loss or loss of use of any other important external or internal organ of the body as determined by the Secretary, proper and equitable compensation not to exceed 312 weeks’ compensation for each organ so determined shall be paid in addition to any other compensation payable under this schedule.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 536; Pub. L. 90-83, §1(50), Sept. 11, 1967, 81 Stat. 210; Pub. L. 93-416, §§ 4, 5, Sept. 7, 1974, 88 Stat. 1144, 1145.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 755(a), (b).	Sept. 7, 1916, ch. 458, §5, 39 Stat. 743. Oct. 14, 1949, ch. 691, §104 "Sec. 5(a), (b)", 63 Stat. 855. Sept. 13, 1960, Pub. L. 86-767, §201, 74 Stat. 907.

The words "loss, or" are omitted throughout this section as included in "loss of use of".

In subsection (a)(B), the words "under sections 751-754 of this title" are omitted as surplusage.

In subsection (b)(1), the words "(including paragraphs (16) and (20) thereof)" are omitted as surplusage.

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

<i>Section of title 5</i>	<i>Source (U.S.Code)</i>	<i>Source (Statutes at Large)</i>
8107(a), (b).	5 App.: 755(a), (b).	July 4, 1966, Pub. L. 89-488, §2(a), (b), 80 Stat. 252.

In subsection (a), the words "If there is" are substituted for "In any case of". The words "loss, or" are omitted as included in "loss of use of" and to conform to the remainder of the section. The words "the employee is entitled to basic compensation for the disability" are substituted for "basic compensation for such disability shall be payable to the disabled employee". The words "by the schedule in subsection (c) of this section" are substituted for "in the following schedule" to reflect the codification of the schedule in subsection (c). The words "The schedule referred to in the first sentence is as follows:" are omitted as unnecessary in view of the codification of that schedule in subsection (c).

In subsection (b), the words "an employee is entitled to compensation" are substituted for "compensation shall be paid" for consistency with subsection (a). In subsections (b) (1) and (2), the words "section 8105 of this title" and "section 8106 of this title" are substituted for "section 3" and "subsection (a) of section 4", respectively, to reflect the codification of title 5.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-416, §4, substituted "involving the loss, or loss of use" for "involving the loss of use".

Subsec. (c)(22). Pub. L. 93-416, §5, added par. (22).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-416 effective Sept. 7, 1974, and applicable to any injury or death occurring on or after such effective date, see section 28(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by Pub. L. 90-83 not applicable to specified personnel, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.

§ 8108. Reduction of compensation for subsequent injury to same member

The period of compensation payable under the schedule in section 8107(c) of this title is reduced by the period of compensation paid or payable under the schedule for an earlier injury if—

- (1) compensation in both cases is for disability of the same member or function or dif-

ferent parts of the same member or function or for disfigurement; and

- (2) the Secretary of Labor finds that compensation payable for the later disability in whole or in part would duplicate the compensation payable for the preexisting disability.

In such a case, compensation for disability continuing after the scheduled period starts on expiration of that period as reduced under this section.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 538; Pub. L. 90-83, §1(51), Sept. 11, 1967, 81 Stat. 210.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 755(c).	Oct. 14, 1949, ch. 691, §104 "Sec. 5(c)", 63 Stat. 857.

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

<i>Section of title 5</i>	<i>Source (U.S.Code)</i>	<i>Source (Statutes at Large)</i>
8108	5 App.: 755(c).	July 4, 1966, Pub. L. 89-488, §2(c), 80 Stat. 252.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by Pub. L. 90-83 not applicable to specified personnel, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.

§ 8109. Beneficiaries of awards unpaid at death; order of precedence

- (a) If an individual—
 - (1) has sustained disability compensable under section 8107(a) of this title;
 - (2) has filed a valid claim in his lifetime; and
 - (3) dies from a cause other than the injury before the end of the period specified by the schedule;

the compensation specified by the schedule that is unpaid at his death, whether or not accrued or due at his death, shall be paid—

- (A) under an award made before or after the death;
- (B) for the period specified by the schedule;
- (C) to and for the benefit of the persons then in being within the classes and proportions and on the conditions specified by this section; and
- (D) in the following order of precedence:
 - (i) If there is no child, to the widow or widower.
 - (ii) If there are both a widow or widower and a child or children, one-half to the widow or widower and one-half to the child or children.
 - (iii) If there is no widow or widower, to the child or children.
 - (iv) If there is no survivor in the above classes, to the parent or parents wholly or partly dependent for support on the decedent, or to other wholly dependent relatives listed by section 8133(a)(5) of this title, or to both in proportions provided by regulation.

(v) If there is no survivor in the above classes and no burial allowance is payable under section 8134 of this title, an amount not exceeding that which would be expendable under section 8134 of this title if applicable shall be paid to reimburse a person equitably entitled thereto to the extent and in the proportion that he has paid the burial expenses, but a compensated insurer or other person obligated by law or contract to pay the burial expenses or a State or political subdivision or entity is deemed not equitably entitled.

(b) Payments under subsection (a) of this section, except for an amount payable for a period preceding the death of the individual, are at the basic rate of compensation for permanent disability specified by section 8107(a) of this title even if at the time of death the individual was entitled to the augmented rate specified by section 8110 of this title.

(c) A surviving beneficiary under subsection (a) of this section, except one under subsection (a)(D)(v), does not have a vested right to payment and must be alive to receive payment.

(d) A beneficiary under subsection (a) of this section, except one under subsection (a)(D)(v), ceases to be entitled to payment on the happening of an event which would terminate his right to compensation for death under section 8133 of this title. When that entitlement ceases, compensation remaining unpaid under subsection (a) of this section is payable to the surviving beneficiary in accordance with subsection (a) of this section.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 538; Pub. L. 90-83, §1(52), Sept. 11, 1967, 81 Stat. 210.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 755(d).	Oct. 14, 1949, ch. 691, §104 "Sec. 5(d)", 63 Stat. 857.

The references in former section 755(d) to definitions in former section 760(B), (H) are omitted as unnecessary as the definitions are included in section 8101 for the entire subchapter.

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

<i>Section of title 5</i>	<i>Source (U.S.Code)</i>	<i>Source (Statutes at Large)</i>
8109(a)(1) ...	5 App.: 755(d)(1).	July 4, 1966, Pub. L. 89-488, §2(d), 80 Stat. 252.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by Pub. L. 90-83 not applicable to specified personnel, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.

§ 8110. Augmented compensation for dependents

(a) For the purpose of this section, "dependent" means—

- (1) a wife, if—
 - (A) she is a member of the same household as the employee;

- (B) she is receiving regular contributions from the employee for her support; or

- (C) the employee has been ordered by a court to contribute to her support;

- (2) a husband, if—

- (A) he is a member of the same household as the employee; or

- (B) he is receiving regular contributions from the employee for his support; or

- (C) the employee has been ordered by a court to contribute to his support;

- (3) an unmarried child, while living with the employee or receiving regular contributions from the employee toward his support, and who is—

- (A) under 18 years of age; or

- (B) over 18 years of age and incapable of self-support because of physical or mental disability; and

- (4) a parent, while wholly dependent on and supported by the employee.

Notwithstanding paragraph (3) of this subsection, compensation payable for a child that would otherwise end because the child has reached 18 years of age shall continue if he is a student as defined by section 8101 of this title at the time he reaches 18 years of age for so long as he continues to be such a student or until he marries.

(b) A disabled employee with one or more dependents is entitled to have his basic compensation for disability augmented—

- (1) at the rate of 8½ percent of his monthly pay if that compensation is payable under section 8105 or 8107(a) of this title; and

- (2) at the rate of 8½ percent of the difference between his monthly pay and his monthly wage-earning capacity if that compensation is payable under section 8106(a) of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 539; Pub. L. 90-83, §1(53), Sept. 11, 1967, 81 Stat. 210; Pub. L. 93-416, §6, Sept. 7, 1974, 88 Stat. 1145.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 756(a).	Sept. 7, 1916, ch. 458, §6, 39 Stat. 743. Feb. 12, 1927, ch. 110, §1, 44 Stat. 1086. May 13, 1936, ch. 382, 49 Stat. 1270. Oct. 14, 1949, ch. 691, §105 "Sec. 6(a)", 63 Stat. 858.

The references in former section 756(a)(2) to definitions in former section 760(H) are omitted as unnecessary as the definitions are included in section 8101 for the entire subchapter.

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

<i>Section of title 5</i>	<i>Source (U.S.Code)</i>	<i>Source (Statutes at Large)</i>
8110(a)	5 App.: 756(a)(2) (C).	July 4, 1966, Pub. L. 89-488, §7(b), 80 Stat. 254.
8110(b)	5 App.: 756(a)(1).	July 4, 1966, Pub. L. 89-488 §§2(e), 3(a), 80 Stat. 252.

In subsection (a), the words “Notwithstanding paragraph (3) of this subsection” are substituted for “Notwithstanding any other provision of this section” for clarity. The word “he” is substituted for “he or she” in two places on authority of 1 U.S.C. 1. The words “section 8101 of this title” are substituted for “section 10(M) of this Act” to reflect the codification of that section in title 5.

AMENDMENTS

1974—Subsec. (a)(2). Pub. L. 93-416 substituted provisions of subpars. (A), (B) and (C) for “wholly dependent on the employee for support because of his own physical or mental disability”.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-416 effective Sept. 7, 1974, and applicable to any injury or death occurring on or after such effective date, see section 28(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(53)(B), (C) of Pub. L. 90-83 not applicable to specified personnel, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.

§ 8111. Additional compensation for services of attendants or vocational rehabilitation

(a) The Secretary of Labor may pay an employee who has been awarded compensation an additional sum of not more than \$1,500 a month, as the Secretary considers necessary, when the Secretary finds that the service of an attendant is necessary constantly because the employee is totally blind, or has lost the use of both hands or both feet, or is paralyzed and unable to walk, or because of other disability resulting from the injury making him so helpless as to require constant attendance.

(b) The Secretary may pay an individual undergoing vocational rehabilitation under section 8104 of this title additional compensation necessary for his maintenance, but not to exceed \$200 a month.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 539; Pub. L. 90-83, §1(54), Sept. 11, 1967, 81 Stat. 210; Pub. L. 93-416, §7, Sept. 7, 1974, 88 Stat. 1145; Pub. L. 101-534, §2, Nov. 7, 1990, 104 Stat. 2352.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 756(b).	Oct. 14, 1949, ch. 691, §105 “Sec. 6(b)”, 63 Stat. 858. Sept. 13, 1960, Pub. L. 86-767, §101 (last 13 words), 74 Stat. 906.

In subsection (a), the words “In addition to the monthly compensation otherwise specified in sections 751-756, 757-871, 783-791, and 793 of this title” are omitted as surplusage.

In subsection (b), the words “pursuant to the Secretary’s direction” are omitted as unnecessary.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

<i>Section of title 5</i>	<i>Source (U.S.Code)</i>	<i>Source (Statutes at Large)</i>
8111(a)	5 App.: 756(b)(1).	July 4, 1966, Pub. L. 89-488, §4(a), 80 Stat. 253.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-534 substituted “\$1,500” for “\$500”.

1974—Subsec. (a). Pub. L. 93-416, §7(a), substituted “\$500” for “\$300”.

Subsec. (b). Pub. L. 93-416, §7(b), substituted “\$200” for “\$100”.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 3 of Pub. L. 101-534 provided that: “The amendment made by section 2 [amending this section] shall take effect October 1, 1990.”

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-416 applicable to cases where injury or death occurred prior to Sept. 7, 1974, but only to a period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(54) of Pub. L. 90-83 not applicable to specified personnel, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.

§ 8112. Maximum and minimum monthly payments

(a) Except as provided by section 8138 of this title, the monthly rate of compensation for disability, including augmented compensation under section 8110 of this title but not including additional compensation under section 8111 of this title, may not be more than 75 percent of the monthly pay of the maximum rate of basic pay for GS-15, and in case of total disability may not be less than 75 percent of the monthly pay of the minimum rate of basic pay for GS-2 or the amount of the monthly pay of the employee, whichever is less.

(b) The provisions of subsection (a) shall not apply to any employee whose disability is a result of an assault which occurs during an assassination or attempted assassination of a Federal official described under section 351(a) or 1751(a) of title 18, and was sustained in the performance of duty.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 540; Pub. L. 90-83, §1(55), Sept. 11, 1967, 81 Stat. 210; Pub. L. 100-566, §5, Oct. 31, 1988, 102 Stat. 2845.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 756(c).	Oct. 14, 1949, ch. 691, §105 “Sec. 6(c)”, 63 Stat. 859. Sept. 13, 1960, Pub. L. 86-767, §101 (last 13 words), 74 Stat. 906.

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

Section of title 5	Source (U.S.Code)	Source (Statutes at Large)
8112	5 App.: 756(c).	July 4, 1966, Pub. L. 89-488, §3(b), 80 Stat. 252.

The words “maximum rate of basic pay for GS-15” and “minimum rate of basic pay for GS-2” are substituted for “highest rate of basic compensation provided for grade 15 of the General Schedule of the Classification Act of 1949” and “lowest rate of basic compensation provided for grade 2 by such General Schedule”, respectively, for consistency of style within title 5 and to reflect the codification of the Classification Act of 1949 in title 5.

AMENDMENTS

1988—Pub. L. 100-566 designated existing provisions as subsec. (a) and added subsec. (b).

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(55) of Pub. L. 90-83 not applicable to specified personnel, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.

§ 8113. Increase or decrease of basic compensation

(a) If an individual—

(1) was a minor or employed in a learner’s capacity at the time of injury; and

(2) was not physically or mentally handicapped before the injury;

the Secretary of Labor, on review under section 8128 of this title after the time the wage-earning capacity of the individual would probably have increased but for the injury, shall recompute prospectively the monetary compensation payable for disability on the basis of an assumed monthly pay corresponding to the probable increased wage-earning capacity.

(b) If an individual without good cause fails to apply for and undergo vocational rehabilitation when so directed under section 8104 of this title, the Secretary, on review under section 8128 of this title and after finding that in the absence of the failure the wage-earning capacity of the individual would probably have substantially increased, may reduce prospectively the monetary compensation of the individual in accordance with what would probably have been his wage-earning capacity in the absence of the failure, until the individual in good faith complies with the direction of the Secretary.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 540; Pub. L. 90-83, §1(100), Sept. 11, 1967, 81 Stat. 220; Pub. L. 93-416, §8(a), Sept. 7, 1974, 88 Stat. 1145.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 756(d).	Oct. 14, 1949, ch. 691, §105 “Sec. 6(d)”, 63 Stat. 859.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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 section 8113(b) of title 5, United States Code, to conform to the source statute (sec. 6(d)(1) of the Federal Employees’ Compensation Act, as amended (63 Stat. 859)).

AMENDMENTS

1974—Subsecs. (b), (c). Pub. L. 93-416 struck out subsec. (b) which authorized the Secretary to prospectively recompute compensation because of decreased wage earning power after age 70, aside from injury, and redesignated subsec. (c) as (b).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-416 applicable to case where injury or death occurred prior to Sept. 7, 1974, but only to a period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-83 effective as of Sept. 6, 1966, for all purposes, see section 9(h) of Pub. L. 90-83, set out as a note under section 5102 of this title.

§ 8114. Computation of pay

(a) For the purpose of this section—

(1) “overtime pay” means pay for hours of service in excess of a statutory or other basic workweek or other basic unit of worktime, as observed by the employing establishment; and

(2) “year” means a period of 12 calendar months, or the equivalent thereof as specified by regulations prescribed by the Secretary of Labor.

(b) In computing monetary compensation for disability or death on the basis of monthly pay, that pay is determined under this section.

(c) The monthly pay at the time of injury is deemed one-twelfth of the average annual earnings of the employee at that time. When compensation is paid on a weekly basis, the weekly equivalent of the monthly pay is deemed one-fifty-second of the average annual earnings. However, for so much of a period of total disability as does not exceed 90 calendar days from the date of the beginning of compensable disability, the compensation, in the discretion of the Secretary of Labor, may be computed on the basis of the actual daily wage of the employee at the time of injury in which event he may be paid compensation for the days he would have worked but for the injury.

(d) Average annual earnings are determined as follows:

(1) If the employee worked in the employment in which he was employed at the time of his injury during substantially the whole year immediately preceding the injury and the employment was in a position for which an annual rate of pay—

(A) was fixed, the average annual earnings are the annual rate of pay; or

(B) was not fixed, the average annual earnings are the product obtained by multiplying his daily wage for the particular employment, or the average thereof if the daily wage has fluctuated, by 300 if he was employed on the basis of a 6-day workweek, 280 if employed on the basis of a 5½-day week, and 260 if employed on the basis of a 5-day week.

(2) If the employee did not work in employment in which he was employed at the time of his injury during substantially the whole year immediately preceding the injury, but the position was one which would have afforded employment for substantially a whole year, the average annual earnings are a sum equal to the average annual earnings of an employee of the same class working substantially the whole immediately preceding year in the same or similar employment by the United States in the same or neighboring place, as determined under paragraph (1) of this subsection.

(3) If either of the foregoing methods of determining the average annual earnings cannot be applied reasonably and fairly, the average annual earnings are a sum that reasonably represents the annual earning capacity of the injured employee in the employment in which he was working at the time of the injury having regard to the previous earnings of the employee in Federal employment, and of other employees of the United States in the same or most similar class working in the same or most similar employment in the same or neighboring location, other previous employment of the employee, or other relevant factors. However, the average annual earnings may not be less than 150 times the average daily wage the employee earned in the employment during the days employed within 1 year immediately preceding his injury.

(4) If the employee served without pay or at nominal pay, paragraphs (1), (2), and (3) of this subsection apply as far as practicable, but the average annual earnings of the employee may not exceed the minimum rate of basic pay for GS-15. If the average annual earnings cannot be determined reasonably and fairly in the manner otherwise provided by this section, the average annual earnings shall be determined at the reasonable value of the service performed but not in excess of \$3,600 a year.

(e) The value of subsistence and quarters, and of any other form of remuneration in kind for services if its value can be estimated in money, and premium pay under section 5545(c)(1) of this title are included as part of the pay, but account is not taken of—

- (1) overtime pay;
- (2) additional pay or allowance authorized outside the United States because of differential in cost of living or other special circumstances; or
- (3) bonus or premium pay for extraordinary service including bonus or pay for particularly hazardous service in time of war.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 540; Pub. L. 89-737, §1(1), Nov. 2, 1966, 80 Stat. 1164.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 762.	Sept. 7, 1916, ch. 458, §12, 39 Stat. 746. Oct. 14, 1949, ch. 691, §203, 63 Stat. 862.

In subsection (d)(4), the words "the minimum rate of basic pay for GS-15" are substituted for "the basic rate of annual compensation specified under the Classifica-

tion Act of 1949, as amended, for positions in grade GS-15 at the bottom of such grade". In former section 762, the words "Classification Act of 1949" were substituted for "Classification Act of 1923" on authority of §1106(a) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 972.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

AMENDMENTS

1966—Subsec. (e). Pub. L. 89-737 inserted reference to premium pay under section 5545(c)(1) of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 4 of Pub. L. 89-737, which provided that the amendments made by this Act [amending this section and sections 8331 and 8704 of this title] apply with respect to premium pay payable from and after the first day of the first pay period which begins after the date of enactment of this Act [Nov. 2, 1966], was repealed by Pub. L. 90-83, §10(b), Sept. 11, 1967, 81 Stat. 223.

§ 8115. Determination of wage-earning capacity

(a) In determining compensation for partial disability, except permanent partial disability compensable under sections 8107-8109 of this title, the wage-earning capacity of an employee is determined by his actual earnings if his actual earnings fairly and reasonably represent his wage-earning capacity. If the actual earnings of the employee do not fairly and reasonably represent his wage-earning capacity or if the employee has no actual earnings, his wage-earning capacity as appears reasonable under the circumstances is determined with due regard to—

- (1) the nature of his injury;
- (2) the degree of physical impairment;
- (3) his usual employment;
- (4) his age;
- (5) his qualifications for other employment;
- (6) the availability of suitable employment; and
- (7) other factors or circumstances which may affect his wage-earning capacity in his disabled condition.

(b) Section 8114(d) of this title is applicable in determining the wage-earning capacity of an employee after the beginning of partial disability.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 542.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 763.	Sept. 7, 1916, ch. 458, §13, 39 Stat. 746. Oct. 14, 1949, ch. 691, §204, 63 Stat. 864. Sept. 13, 1960, Pub. L. 86-767, §204, 74 Stat. 908.

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

§ 8116. Limitations on right to receive compensation

(a) While an employee is receiving compensation under this subchapter, or if he has been paid a lump sum in commutation of installment

payments until the expiration of the period during which the installment payments would have continued, he may not receive salary, pay, or remuneration of any type from the United States, except—

- (1) in return for service actually performed;
- (2) pension for service in the Army, Navy, or Air Force;
- (3) other benefits administered by the Department of Veterans Affairs unless such benefits are payable for the same injury or the same death; and
- (4) retired pay, retirement pay, retainer pay, or equivalent pay for service in the Armed Forces or other uniformed services.

However, eligibility for or receipt of benefits under subchapter III of chapter 83 of this title, or another retirement system for employees of the Government, does not impair the right of the employee to compensation for scheduled disabilities specified by section 8107(c) of this title.

(b) An individual entitled to benefits under this subchapter because of his injury, or because of the death of an employee, who also is entitled to receive from the United States under a provision of statute other than this subchapter payments or benefits for that injury or death (except proceeds of an insurance policy), because of service by him (or in the case of death, by the deceased) as an employee or in the armed forces, shall elect which benefits he will receive. The individual shall make the election within 1 year after the injury or death or within a further time allowed for good cause by the Secretary of Labor. The election when made is irrevocable, except as otherwise provided by statute.

(c) The liability of the United States or an instrumentality thereof under this subchapter or any extension thereof with respect to the injury or death of an employee is exclusive and instead of all other liability of the United States or the instrumentality to the employee, his legal representative, spouse, dependents, next of kin, and any other person otherwise entitled to recover damages from the United States or the instrumentality because of the injury or death in a direct judicial proceeding, in a civil action, or in admiralty, or by an administrative or judicial proceeding under a workmen's compensation statute or under a Federal tort liability statute. However, this subsection does not apply to a master or a member of a crew of a vessel.

(d) Notwithstanding the other provisions of this section, an individual receiving benefits for disability or death under this subchapter who is also receiving benefits under subchapter III of chapter 84 of this title or benefits under title II of the Social Security Act shall be entitled to all such benefits, except that—

- (1) benefits received under section 223 of the Social Security Act (on account of disability) shall be subject to reduction on account of benefits paid under this subchapter pursuant to the provisions of section 224 of the Social Security Act; and
- (2) in the case of benefits received on account of age or death under title II of the Social Security Act, compensation payable under this subchapter based on the Federal service of an employee shall be reduced by the amount of any such social security benefits payable that

are attributable to Federal service of that employee covered by chapter 84 of this title. However, eligibility for or receipt of benefits under chapter 84 of this title, or benefits under title II of the Social Security Act by virtue of service covered by chapter 84 of this title, does not affect the right of the employee to compensation for scheduled disabilities specified by section 8107(c) of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 542; Pub. L. 90-83, §1(56), Sept. 11, 1967, 81 Stat. 210; Pub. L. 93-416, §9(a), Sept. 7, 1974, 88 Stat. 1145; Pub. L. 99-335, title II, §207(e), June 6, 1986, 100 Stat. 595; Pub. L. 102-54, §13(b)(1), June 13, 1991, 105 Stat. 274; Pub. L. 106-398, §1 [[div. A], title X, §1087(f)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A-293.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 757.	Sept. 7, 1916, ch. 458, §7, 39 Stat. 743. July 1, 1944, ch. 373, §605(a), 58 Stat. 712. Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049. Oct. 14, 1949, ch. 691, §201, 63 Stat. 861. July 30, 1956, ch. 779, §3(b), 70 Stat. 721. Sept. 13, 1960, Pub. L. 86-767, §202, 74 Stat. 907. Sept. 4, 1964, Pub. L. 88-581, §4(b), 78 Stat. 919.

In subsection (a)(2), "Air Force" is added on authority of the Act of July 26, 1947, ch. 343, §207(a), (f), 61 Stat. 502, and sections 8010—8013 of title 10, United States Code. This does not affect the operation of this subsection insofar as it concerns members of the Coast Guard whose pension is based in whole or in part on service with the Coast Guard when it operated as a part of the Navy.

In subsection (b), the reference to the definition of "employee" in former section 790 is omitted as unnecessary as the definition is included in section 8101 for the entire subchapter.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8116(a)	5 App.: 757(a).	July 4, 1966, Pub. L. 89-488, §5(a), 80 Stat. 253.

The words "another retirement system for employees of the Government" are substituted for "any other Federal Act or program providing retirement benefits for employees".

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 223 and 224 are classified to sections 423 and 424a, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2000—Subsec. (a)(4). Pub. L. 106-398 struck out “, subject to the reduction of such pay in accordance with section 5532(b) of title 5, United States Code” after “uniformed services”.

1991—Subsec. (a)(3). Pub. L. 102-54 substituted “Department of Veterans Affairs” for “Veterans’ Administration”.

1986—Subsec. (d). Pub. L. 99-335 added subsec. (d).

1974—Subsec. (a). Pub. L. 93-416 struck out “and” in cl. (1), substituted a semicolon for a period in cl. (2), and added cls. (3) and (4).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 9(b) of Pub. L. 93-416 provided that: “The amendment made by this section [amending this section] shall be effective with respect to disability or death occurring before or after the date of enactment of this Act [Sept. 7, 1974] and without regard to any election under section 8116(b) of the Act [subsec. (b) of this section]; but no payment shall be made by reason of such amendment for any period prior to the date of enactment of this Act.”

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(56) of Pub. L. 90-83 not applicable to specified personnel, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.

§ 8117. Time of accrual of right

(a) An employee other than a Postal Service employee is not entitled to compensation for the first 3 days of temporary disability, except—

- (1) when the disability exceeds 14 days;
(2) when the disability is followed by permanent disability; or
(3) as provided by sections 8103 and 8104 of this title.

(b) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability, except as provided under paragraph (3) of subsection (a). A Postal Service employee may use annual leave, sick leave, or leave without pay during that 3-day period, except that if the disability exceeds 14 days or is followed by permanent disability, the employee may have their sick leave or annual leave reinstated or receive pay for the time spent on leave without pay under this section.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 543; Pub. L. 93-416, §10, Sept. 7, 1974, 88 Stat. 1145; Pub. L. 109-435, title IX, §901(a), Dec. 20, 2006, 120 Stat. 3253.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 752, Sept. 7, 1916, ch. 458, §2, 39 Stat. 743. Oct. 14, 1949, ch. 691, §101(a), 63 Stat. 854.

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

AMENDMENTS

2006—Pub. L. 109-435 designated existing provisions as subsec. (a), substituted “An employee other than a

Postal Service employee” for “An employee”, and added subsec. (b).

1974—Pub. L. 93-416 substituted “14 days” for “21 days”.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-416 effective Sept. 7, 1974, and applicable to any injury or death occurring on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

§ 8118. Continuation of pay; election to use annual or sick leave

(a) The United States shall authorize the continuation of pay of an employee, as defined in section 8101(1) of this title (other than those referred to in clause (B) or (E), who has filed a claim for a period of wage loss due to a traumatic injury with his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.

(b) Continuation of pay under this subchapter shall be furnished—

- (1) without a break in time, except as provided under section 8117(b), unless controverted under regulations of the Secretary;
(2) for a period not to exceed 45 days; and
(3) under accounting procedures and such other regulations as the Secretary may require.

(c) An employee may use annual or sick leave to his credit at the time the disability begins, but his compensation for disability does not begin, and the time periods specified by section 8117 of this title do not begin to run, until termination of pay as set forth in subsections (a) and (b) or the use of annual or sick leave ends.

(d) If a claim under subsection (a) is denied by the Secretary, payments under this section shall, at the option of the employee, be charged to sick or annual leave or shall be deemed overpayments of pay within the meaning of section 5584 of title 5, United States Code.

(e) Payments under this section shall not be considered as compensation as defined by section 8101(12) of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 543; Pub. L. 93-416, §11, Sept. 7, 1974, 88 Stat. 1145; Pub. L. 109-435, title IX, §901(b), Dec. 20, 2006, 120 Stat. 3254.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 758, Sept. 7, 1916, ch. 458, §8, 39 Stat. 743. Oct. 14, 1949, ch. 691, §101(b), 63 Stat. 854.

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

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109-435 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “without a break in time unless controverted under regulations of the Secretary.”

1974—Pub. L. 93-416 inserted in section catchline the reference to continuation of pay, added subsecs. (a), (b), (d) and (e), designated existing provisions as subsec. (c),

and in subsec. (c) as so designated, substituted “until termination of pay as set forth in subsections (a) and (b) or the use of annual or sick leave ends” for “until the use of the annual or sick leave ends”.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 28(b) of Pub. L. 93-416 provided that: “Section 11 of this Act [amending this section] shall become effective 60 days from enactment [Sept. 7, 1974] and be applicable to any injury occurring on or after such effective date.”

§ 8119. Notice of injury or death

An employee injured in the performance of his duty, or someone on his behalf, shall give notice thereof. Notice of a death believed to be related to the employment shall be given by an eligible beneficiary specified in section 8133 of this title, or someone on his behalf. A notice of injury or death shall—

- (a) be given within 30 days after the injury or death;
(b) be given to the immediate superior of the employee by personal delivery or by depositing it in the mail properly stamped and addressed;
(c) be in writing;
(d) state the name and address of the employee;
(e) state the year, month, day, and hour when and the particular locality where the injury or death occurred;
(f) state the cause and nature of the injury, or, in the case of death, the employment factors believed to be the cause; and
(g) be signed by and contain the address of the individual giving the notice.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 543; Pub. L. 93-416, §12(a), Sept. 7, 1974, 88 Stat. 1146.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Rows (a) and (b) showing code changes and effective dates.

Subsection (b)(2) is added on authority of former section 770, which is carried into section 8122, to complete the coverage of this section.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

AMENDMENTS

1974—Pub. L. 93-416 substituted “or death” for “; failure to give” in section catchline, struck out designation of subsec. (a), redesignated cls. (1) to (7) as (a) to (g), and, as so redesignated, inserted provisions relating to notice of death and substituted “30 days” for “48 hours” in cl. (a), and struck out subsec. (b) relating to allowance of compensation.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-416 effective Sept. 7, 1974, and applicable to any injury or death occurring on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

§ 8120. Report of injury

Immediately after an injury to an employee which results in his death or probable disability, his immediate superior shall report to the Secretary of Labor. The Secretary may—

- (1) prescribe the information that the report shall contain;
(2) require the immediate superior to make supplemental reports; and
(3) obtain such additional reports and information from employees as are agreed on by the Secretary and the head of the employing agency.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 543.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Rows showing code changes and effective dates.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

§ 8121. Claim

Compensation under this subchapter may be allowed only if an individual or someone on his behalf makes claim therefor. The claim shall—

- (1) be made in writing within the time specified by section 8122 of this title;
(2) be delivered to the office of the Secretary of Labor or to an individual whom the Secretary may designate by regulation, or deposited in the mail properly stamped and addressed to the Secretary or his designee;
(3) be on a form approved by the Secretary;
(4) contain all information required by the Secretary;
(5) be sworn to by the individual entitled to compensation or someone on his behalf; and
(6) except in case of death, be accompanied by a certificate of the physician of the employee stating the nature of the injury and the nature and probable extent of the disability.

The Secretary may waive paragraphs (3)–(6) of this section for reasonable cause shown.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 543; Pub. L. 93-416, §13, Sept. 7, 1974, 88 Stat. 1147.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Rows showing code changes and effective dates.

The words “except as provided in section 788” in former section 768 are omitted as unnecessary as former section 788 dealt with recovery of overpayments after claims were made.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

AMENDMENTS

1974—Par. (3). Pub. L. 93-416 substituted "approved" for "furnished".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-416 effective Sept. 7, 1974, and applicable to any injury or death occurring on or after Sept. 7, 1974, see section 23(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

§ 8122. Time for making claim

(a) An original claim for compensation for disability or death must be filed within 3 years after the injury or death. Compensation for disability or death, including medical care in disability cases, may not be allowed if claim is not filed within that time unless—

- (1) the immediate superior had actual knowledge of the injury or death within 30 days. The knowledge must be such to put the immediate superior reasonably on notice of an on-the-job injury or death; or
- (2) written notice of injury or death as specified in section 8119 of this title was given within 30 days.

(b) In a case of latent disability, the time for filing claim does not begin to run until the employee has a compensable disability and is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship of the compensable disability to his employment. In such a case, the time for giving notice of injury begins to run when the employee is aware, or by the exercise of reasonable diligence should have been aware, that his condition is causally related to his employment, whether or not there is a compensable disability.

(c) The timely filing of a disability claim because of injury will satisfy the time requirements for a death claim based on the same injury.

(d) The time limitations in subsections (a) and (b) of this section do not—

- (1) begin to run against a minor until he reaches 21 years of age or has had a legal representative appointed; or
- (2) run against an incompetent individual while he is incompetent and has no duly appointed legal representative; or
- (3) run against any individual whose failure to comply is excused by the Secretary on the ground that such notice could not be given because of exceptional circumstances.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 544; Pub. L. 90-83, §1(57), Sept. 11, 1967, 81 Stat. 210; Pub. L. 93-416, §14, Sept. 7, 1974, 88 Stat. 1147.)

HISTORICAL AND REVISION NOTES 1966 ACT

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 770. Sept. 7, 1916, ch. 458, §20, 39 Stat. 747. June 13, 1922, ch. 219, 42 Stat. 650. July 28, 1945, ch. 328, §1, 59 Stat. 503.

HISTORICAL AND REVISION NOTES—CONTINUED 1966 ACT

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: Sept. 13, 1960, Pub. L. 86-767, §205, 74 Stat. 908.

The last sentence of the Act of June 13, 1922, 42 Stat. 650, is omitted as obsolete.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

Table with 3 columns: Section of title 5, Source (U.S. Code), Source (Statutes at Large). Row 1: 8122(b), (d) 5 App.: 770. July 4, 1966, Pub. L. 89-488, §9, 80 Stat. 254.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-416, §14(1), substituted provisions requiring filing of claims for compensation within three years after death or disability, and setting forth conditions for waiver of filing within required time periods, for provisions requiring claim for death to be made within one year after death and for disability to be made within 60 days after injury and authorizing extension of time for good cause.

Subsec. (c). Pub. L. 93-416, §14(2), substituted provisions relating to timeliness of claim for death when claim for injury was timely filed and death was based on same injury, for provisions relating to waiver of compliance with requirements for giving notice of injury and filing claim for compensation.

Subsec. (d). Pub. L. 93-416, §14(3), substituted "(a) and (b)" for "(a)-(c)", and added cl. (3).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-416 effective Sept. 7, 1974, and applicable to any injury or death occurring on or after Sept. 7, 1974, see section 23(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(57) of Pub. L. 90-83 not applicable to specified personnel, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.

§ 8123. Physical examinations

(a) An employee shall submit to examination by a medical officer of the United States, or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required. The employee may have a physician designated and paid by him present to participate in the examination. If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.

(b) An employee is entitled to be paid expenses incident to an examination required by the Secretary which in the opinion of the Secretary are necessary and reasonable, including transportation and loss of wages incurred in order to be examined. The expenses, when authorized or approved by the Secretary, are paid from the Employees' Compensation Fund.

(c) The Secretary shall fix the fees for examinations held under this section by physicians not employed by or under contract to the United States to furnish medical services to employees. The fees, when authorized or approved by the Secretary, are paid from the Employees' Compensation Fund.

(d) If an employee refuses to submit to or obstructs an examination, his right to compensation under this subchapter is suspended until the refusal or obstruction stops. Compensation is not payable while a refusal or obstruction continues, and the period of the refusal or obstruction is deducted from the period for which compensation is payable to the employee.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 544.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Rows show derivations from 5 U.S.C. 771, 772, and 773(a) to various Statutes at Large.

In subsections (a) and (c), the words "duly qualified" in former sections 771 and 772 are omitted as unnecessary in view of the definition of "physician" in section 8101.

In subsection (c) the words "fees for examinations" in former section 773(a) are substituted for "fees or examinations" since the word "or" was erroneously in the 1949 amendment. The words "any sum payable to the employee under section 771 of this title" in former section 773(a) are omitted as unnecessary because the same provision appeared in former section 771, which is carried into subsection (b).

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

§ 8124. Findings and award; hearings

(a) The Secretary of Labor shall determine and make a finding of facts and make an award for or against payment of compensation under this subchapter after—

(1) considering the claim presented by the beneficiary and the report furnished by the immediate superior; and

(2) completing such investigation as he considers necessary.

(b)(1) Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary. At the hearing, the claimant is entitled to present evidence in further support of his claim. Within 30 days after the hearing ends, the Secretary shall notify the claimant in writing of his further decision and any modifications of the

award he may make and of the basis of his decision.

(2) In conducting the hearing, the representative of the Secretary is not bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 554 of this title except as provided by this subchapter, but may conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, he shall receive such relevant evidence as the claimant adduces and such other evidence as he determines necessary or useful in evaluating the claim.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 545; Pub. L. 90-83, §1(58), Sept. 11, 1967, 81 Stat. 210.)

HISTORICAL AND REVISION NOTES 1966 ACT

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row shows derivation from 5 U.S.C. 786 to Statutes at Large.

The last sentence of former section 786 is omitted as surplusage because it is covered by section 8147.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

Table with 3 columns: Section of title 5, Source (U.S. Code), Source (Statutes at Large). Row shows section 8124(b) derived from 5 App.: 786(b) and July 4, 1966, Pub. L. 89-488, §11(b).

In subsection (b)(1), the words "section 8128(a) of this title" are substituted for "section 37" to reflect the codification of section 37 in title 5, United States Code. The words "a claimant * * * is entitled * * * to a hearing" are substituted for "any claimant * * * shall * * * be afforded an opportunity for a hearing". The words "under subsection (a) of this section" are substituted for "under this section" for clarity. In the second sentence, the words "is entitled to present evidence" are substituted for "shall be afforded an opportunity to present evidence".

In subsection (b)(2), the words "section 554 of this title * * * this subchapter" are substituted for "section 5 of the Administrative Procedure Act * * * this Act" to reflect the codification of the cited section and act in title 5. In the second sentence, the words "shall, in addition, receive" are omitted as unnecessary.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(58) of Pub. L. 90-83 not applicable to specified personnel, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.

§ 8125. Misbehavior at proceedings

If an individual—

(1) disobeys or resists a lawful order or process in proceedings under this subchapter before the Secretary of Labor or his representative; or

(2) misbehaves during a hearing or so near the place of hearing as to obstruct it;

the Secretary or his representative shall certify the facts to the district court having jurisdiction in the place where he is sitting. The court,

in a summary manner, shall hear the evidence as to the acts complained of and if the evidence warrants, punish the individual in the same manner and to the same extent as for a contempt committed before the court, or commit the individual on the same conditions as if the forbidden act had occurred with reference to the process of or in the presence of the court.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 545.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 773(c).	Oct. 14, 1949, ch. 691, §208 "Sec. 23(c)", 63 Stat. 865.

The words "the district court of the United States for the District of Columbia" are omitted as included in "district court". The words "under this subchapter" are added for clarity since this section which was formerly a subsection referred to the subsection preceding it which identified the proceedings.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

§ 8126. Subpenas; oaths; examination of witnesses

The Secretary of Labor, on any matter within his jurisdiction under this subchapter, may—

- (1) issue subpenas for and compel the attendance of witnesses within a radius of 100 miles;
- (2) administer oaths;
- (3) examine witnesses; and
- (4) require the production of books, papers, documents, and other evidence.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 545.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 780.	Sept. 7, 1916, ch. 458, §29, 39 Stat. 748. Oct. 14, 1949, ch. 691, §205(c)(2), 63 Stat. 864.

The words "under this subchapter" are added to preserve the original grant of power in the Act of Sept. 7, 1916.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

§ 8127. Representation; attorneys' fees

(a) A claimant may authorize an individual to represent him in any proceeding under this subchapter before the Secretary of Labor.

(b) A claim for legal or other services furnished in respect to a case, claim, or award for compensation under this subchapter is valid only if approved by the Secretary.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 545.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 773(b) (less last sentence).	Oct. 14, 1949, ch. 691, §208 "Sec. 23(b) (less last sentence)", 63 Stat. 865.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

§ 8128. Review of award

(a) The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review, may—

- (1) end, decrease, or increase the compensation previously awarded; or
- (2) award compensation previously refused or discontinued.

(b) The action of the Secretary or his designee in allowing or denying a payment under this subchapter is—

- (1) final and conclusive for all purposes and with respect to all questions of law and fact; and
- (2) not subject to review by another official of the United States or by a court by mandamus or otherwise.

Credit shall be allowed in the accounts of a certifying or disbursing official for payments in accordance with that action.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 545.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 787.	Sept. 7, 1916, ch. 458, §37, 39 Stat. 749. June 5, 1924, ch. 261, §1, 43 Stat. 389.
(b)	5 U.S.C. 793 (penultimate sentence of 5th par.).	July 28, 1945, ch. 328, §4 (penultimate sentence), 59 Stat. 504.

In subsection (a), the words "If the original claim for compensation has been made within the time specified in section 770 of this title" are omitted as surplusage. The words "an award for or against payment of compensation" are coextensive with and, for clarity and consistency with section 8124, substituted for "the award". The second sentence of former section 787 is omitted as included in the penultimate sentence of former section 793, which is carried into subsection (b). The last sentence of former section 787 is omitted as executed.

In subsection (b), the word "official" is substituted for "officer" because of the definition of "officer" in section 2104 which excludes a member of a uniformed service.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

§ 8129. Recovery of overpayments

(a) When an overpayment has been made to an individual under this subchapter because of an

error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled. If the individual dies before the adjustment is completed, adjustment shall be made by decreasing later benefits payable under this subchapter with respect to the individual's death.

(b) Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

(c) A certifying or disbursing official is not liable for an amount certified or paid by him when—

- (1) adjustment or recovery of the amount is waived under subsection (b) of this section; or
- (2) adjustment under subsection (a) of this section is not completed before the death of all individuals against whose benefits deductions are authorized.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 546.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 788.	Sept. 7, 1916, ch. 458, §38, 39 Stat. 749. Oct. 14, 1949, ch. 691, §206, 63 Stat. 864.

In subsection (a), the words "Subject to the provisions of sections 786 and 787 of this title" and "if any" are omitted as surplusage.

In subsection (c), the word "official" is substituted for "officer" as the definition of "officer" in section 2104 excludes a member of a uniformed service.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

§ 8130. Assignment of claim

An assignment of a claim for compensation under this subchapter is void. Compensation and claims for compensation are exempt from claims of creditors.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 546.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 775.	Sept. 7, 1916, ch. 458, §25, 39 Stat. 747.

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

§ 8131. Subrogation of the United States

(a) If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability on a person other than the United States to pay damages, the Secretary of Labor may require the beneficiary to—

- (1) assign to the United States any right of action he may have to enforce the liability or

any right he may have to share in money or other property received in satisfaction of that liability; or

- (2) prosecute the action in his own name.

An employee required to appear as a party or witness in the prosecution of such an action is in an active duty status while so engaged.

(b) A beneficiary who refuses to assign or prosecute an action in his own name when required by the Secretary is not entitled to compensation under this subchapter.

(c) The Secretary may prosecute or compromise a cause of action assigned to the United States. When the Secretary realizes on the cause of action, he shall deduct therefrom and place to the credit of the Employees' Compensation Fund the amount of compensation already paid to the beneficiary and the expense of realization or collection. Any surplus shall be paid to the beneficiary and credited on future payments of compensation payable for the same injury. However, the beneficiary is entitled to not less than one-fifth of the net amount of a settlement or recovery remaining after the expenses thereof have been deducted.

(d) If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability in the Panama Canal Company to pay damages under the law of a State, a territory or possession of the United States, the District of Columbia, or a foreign country, compensation is not payable until the individual entitled to compensation—

- (1) releases to the Panama Canal Company any right of action he may have to enforce the liability of the Panama Canal Company; or
- (2) assigns to the United States any right he may have to share in money or other property received in satisfaction of the liability of the Panama Canal Company.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 546; Pub. L. 90-83, §1(60), Sept. 11, 1967, 81 Stat. 211.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)-(c)	5 U.S.C. 776.	Sept. 7, 1916, ch. 458, §26, 39 Stat. 747. Sept. 13, 1960, Pub. L. 86-767, §207, 74 Stat. 908.
(d)	5 U.S.C. 791.	Sept. 7, 1916, ch. 458, §41, 39 Stat. 750.

In subsection (d), the first 45 words of section 41 of the Act of Sept. 7, 1916, are omitted as executed. The words "Panama Canal Company" are substituted for "Panama Railroad Company" on authority of the Act of Sept. 26, 1950, ch. 1049, §2(a) (2), 64 Stat. 1038.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8131(c)	5 App.: 776 (proviso).	July 4, 1966, Pub. L. 89-488, §10(a), 80 Stat. 255.

REFERENCES IN TEXT

For definition of Panama Canal Company, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by Pub. L. 90-83 not applicable to specified personnel, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.

§ 8132. Adjustment after recovery from a third person

If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability in a person other than the United States to pay damages, and a beneficiary entitled to compensation from the United States for that injury or death receives money or other property in satisfaction of that liability as the result of suit or settlement by him or in his behalf, the beneficiary, after deducting therefrom the costs of suit and a reasonable attorney's fee, shall refund to the United States the amount of compensation paid by the United States and credit any surplus on future payments of compensation payable to him for the same injury. No court, insurer, attorney, or other person shall pay or distribute to the beneficiary or his designee the proceeds of such suit or settlement without first satisfying or assuring satisfaction of the interest of the United States. The amount refunded to the United States shall be credited to the Employees' Compensation Fund. If compensation has not been paid to the beneficiary, he shall credit the money or property on compensation payable to him by the United States for the same injury. However, the beneficiary is entitled to retain, as a minimum, at least one-fifth of the net amount of the money or other property remaining after the expenses of a suit or settlement have been deducted; and in addition to this minimum and at the time of distribution, an amount equivalent to a reasonable attorney's fee proportionate to the refund to the United States.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 547; Pub. L. 90-83, §1(61), Sept. 11, 1967, 81 Stat. 211; Pub. L. 93-416, §15, Sept. 7, 1974, 88 Stat. 1147.)

HISTORICAL AND REVISION NOTES
1966 ACT

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 777, Sept. 7, 1916, ch. 458, §27, 39 Stat. 747.

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

Table with 3 columns: Section of title 5, Source (U.S. Code), Source (Statutes at Large). Row 1: 8132, 5 App.: 777(b) (provisio), July 4, 1966, Pub. L. 89-488, §10(b), 80 Stat. 255.

The words "However, * * * is entitled to retain * * * plus" are substituted for "Provided, That * * * shall have the right to retain * * * and, in addition, to retain".

AMENDMENTS

1974—Pub. L. 93-416 made minor changes in phraseology and inserted provision prohibiting a court, etc., from distributing proceeds of suit or settlement without satisfying or assuring satisfaction of the interests of the United States.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-416 effective Sept. 7, 1974, and applicable to any injury or death occurring on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by Pub. L. 90-83 not applicable to specified personnel, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.

§ 8133. Compensation in case of death

(a) If death results from an injury sustained in the performance of duty, the United States shall pay a monthly compensation equal to a percentage of the monthly pay of the deceased employee in accordance with the following schedule:

- (1) To the widow or widower, if there is no child, 50 percent.
(2) To the widow or widower, if there is a child, 45 percent and in addition 15 percent for each child not to exceed a total of 75 percent for the widow or widower and children.
(3) To the children, if there is no widow or widower, 40 percent for one child and 15 percent additional for each additional child not to exceed a total of 75 percent, divided among the children share and share alike.
(4) To the parents, if there is no widow, widower, or child, as follows—
(A) 25 percent if one parent was wholly dependent on the employee at the time of death and the other was not dependent to any extent;
(B) 20 percent to each if both were wholly dependent; or
(C) a proportionate amount in the discretion of the Secretary of Labor if one or both were partly dependent.

If there is a widow, widower, or child, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, and children, will not exceed a total of 75 percent.

- (5) To the brothers, sisters, grandparents, and grandchildren, if there is no widow, widower, child, or dependent parent, as follows—
(A) 20 percent if one was wholly dependent on the employee at the time of death;
(B) 30 percent if more than one was wholly dependent, divided among the dependents share and share alike; or
(C) 10 percent if no one is wholly dependent but one or more is partly dependent, divided among the dependents share and share alike.

If there is a widow, widower, child, or dependent parent, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, children, and dependent parents, will not exceed a total of 75 percent.

(b) The compensation payable under subsection (a) of this section is paid from the time of death until—

- (1) a widow, or widower dies or remarries before reaching age 55;
- (2) a child, a brother, a sister, or a grandchild dies, marries, or becomes 18 years of age, or if over age 18 and incapable of self-support becomes capable of self-support; or
- (3) a parent or grandparent dies, marries, or ceases to be dependent.

Notwithstanding paragraph (2) of this subsection, compensation payable to or for a child, a brother or sister, or grandchild that would otherwise end because the child, brother or sister, or grandchild has reached 18 years of age shall continue if he is a student as defined by section 8101 of this title at the time he reaches 18 years of age for so long as he continues to be such a student or until he marries. A widow or widower who has entitlements to benefits under this title derived from more than one husband or wife shall elect one entitlement to be utilized.

(c) On the cessation of compensation under this section to or on account of an individual, the compensation of the remaining individuals entitled to compensation for the unexpired part of the period during which their compensation is payable, is that which they would have received if they had been the only individuals entitled to compensation at the time of the death of the employee.

(d) When there are two or more classes of individuals entitled to compensation under this section and the apportionment of compensation under this section would result in injustice, the Secretary may modify the apportionment to meet the requirements of the case.

(e) In computing compensation under this section, the monthly pay is deemed not less than the minimum rate of basic pay for GS-2. However, the total monthly compensation may not exceed—

- (1) the monthly pay computed under section 8114 of this title, except for increases authorized by section 8146a of this title; or
- (2) 75 percent of the monthly pay of the maximum rate of basic pay for GS-15.

(f) Notwithstanding any funeral and burial expenses paid under section 8134, there shall be paid a sum of \$200 to the personal representative of a deceased employee within the meaning of section 8101(1) of this title for reimbursement of the costs of termination of the decedent's status as an employee of the United States.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 547; Pub. L. 90-83, §1(62), Sept. 11, 1967, 81 Stat. 211; Pub. L. 93-416, §§16(a), 17, 18, Sept. 7, 1974, 88 Stat. 1147, 1149; Pub. L. 101-303, §3(1), May 29, 1990, 104 Stat. 251.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 760 (less last 23 words of 1st sentence in (B); and less (H) and (L)).	Sept. 7, 1916, ch. 458, §10 (less last 15 words of 1st sentence in (B); and less (H) and (L)), 39 Stat. 744. Feb. 12, 1927, ch. 110, §3, 44 Stat. 1087.

HISTORICAL AND REVISION NOTES—CONTINUED
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
		July 28, 1945, ch. 328, §§2 (less last 24 words), 3, 59 Stat. 503. Oct. 14, 1949, ch. 691, §106 (less last 23 words of 1st sentence in "(B)" of (c); and less (e)), 63 Stat. 859. Sept. 13, 1960, Pub. L. 86-767, §102, 74 Stat. 906.

In subsection (a), the words "an injury sustained in the performance of duty" are substituted for "the injury" to clearly identify the type of injury to which the section refers.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan. No. 19, 64 Stat. 1271 (see section 8145).

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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8133(b)	5 App.: 760(G) (last sentence).	July 4, 1966, Pub. L. 89-488, §7(a), 80 Stat. 253.
8133(e)	5 App.: 760(K).	July 4, 1966, Pub. L. 89-488, §3(c), 80 Stat. 252.

In subsection (b), the words "Notwithstanding paragraph (3) of this subsection" are substituted for "Notwithstanding any other provision of this section" for clarity. The words "section 8101 of this title" are substituted for "section 10(M) of this Act" to reflect the codification of that section in title 5.

In subsection (e), the words "is deemed" are substituted for "shall be considered to be". The words "minimum rate of basic pay for GS-2" and "maximum rate of basic pay for GS-15" are substituted for "lowest rate of basic compensation provided for grade 2 by the General Schedule of the Classification Act of 1949" and "highest rate of basic compensation provided for grade 15 of the General Schedule of the Classification Act of 1949," respectively, for consistency of style and to reflect the codification of the Classification Act of 1949 in title 5. The words "under section 8114 of this title" are substituted for "as provided in section 12" to reflect the codification of that section in title 5.

AMENDMENTS

1990—Subsec. (b)(1). Pub. L. 101-303 substituted "age 55" for "age 60".

1974—Subsec. (a)(1). Pub. L. 93-416, §16(a), substituted "50" for "45".

Subsec. (a)(2). Pub. L. 93-416, §16(a), substituted "45" for "40".

Subsec. (a)(3). Pub. L. 93-416, §16(a), substituted "40" for "35".

Subsec. (b). Pub. L. 93-416, §16(a), inserted "before reaching age 60" after "remarries" in par. (1), struck out par. (2) referring to widower who dies, remarries or becomes capable of self-support, redesignated pars. (3) and (4) as (2) and (3), respectively, changed the reference in closing paragraph from paragraph (3) of this subsection to paragraph (2) of this subsection, and inserted provision for election by widower or widow of benefits derived from more than one husband or wife.

Subsec. (e)(1). Pub. L. 93-416, §17, inserted ", except for increases authorized by section 8146a of this title" before "; or".

Subsec. (f). Pub. L. 93-416, §18, added subsec. (f).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by sections 16(a) and 17 of Pub. L. 93-416 applicable to cases where injury or death occurred

prior to Sept. 7, 1974 but only to a period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

Amendment by section 18 of Pub. L. 93-416 effective on Sept. 7, 1974, and applicable to any injury or death occurring on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

GRATUITY FOR DEATH OF CIVILIAN EMPLOYEE FROM INJURY SUSTAINED IN LINE OF DUTY

Pub. L. 104-208, div. A, title I, §101(f) [title VI, §651], Sept. 30, 1996, 110 Stat. 3009-314, 3009-368, provided that: "Notwithstanding section 8116 of title 5, United States Code, and in addition to any payment made under 5 U.S.C. 8101 et seq., beginning in fiscal year 1997 and thereafter, the head of any department or agency is authorized to pay from appropriations made available to the department or agency a death gratuity to the personal representative (as that term is defined by applicable law) of a civilian employee of that department or agency whose death resulted from an injury sustained in the line of duty on or after August 2, 1990: Provided, That payments made pursuant to this section, in combination with the payments made pursuant to sections 8133(f) and 8134(a) of such title 5 and section 312 of Public Law 103-332 (108 Stat. 2537) [5 U.S.C. 8134 note], may not exceed a total of \$10,000 per employee."

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(62)(B) of Pub. L. 90-83 not applicable to specified personnel, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.

§ 8134. Funeral expenses; transportation of body

(a) If death results from an injury sustained in the performance of duty, the United States shall pay, to the personal representative of the deceased or otherwise, funeral and burial expenses not to exceed \$800, in the discretion of the Secretary of Labor.

(b) The body of an employee whose home is in the United States, in the discretion of the Secretary, may be embalmed and transported in a hermetically sealed casket to his home or last place of residence at the expense of the Employees' Compensation Fund if—

- (1) the employee dies from—
(A) the injury while away from his home or official station or outside the United States; or
(B) from other causes while away from his home or official station for the purpose of receiving medical or other services, appliances, supplies, or examination under this subchapter; and
(2) the relatives of the employee request the return of his body.

If the relatives do not request the return of the body of the employee, the Secretary may provide for its disposition and incur and pay from the Employees' Compensation Fund the necessary and reasonable transportation, funeral, and burial expenses.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 548.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 761, Sept. 7, 1916, ch. 458, §11, 39 Stat. 745; Feb. 12, 1927, ch. 110, §4, 44 Stat. 1087.

HISTORICAL AND REVISION NOTES—CONTINUED

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: July 28, 1945, ch. 328, §2 (last 24 words), 59 Stat. 503; Oct. 14, 1949, ch. 691, §107, 63 Stat. 860; Sept. 13, 1960, Pub. L. 86-767, §103, 74 Stat. 906.

In subsection (a), the words "an injury sustained in the performance of duty" are substituted for "the injury" to clearly identify the type of injury to which the section refers.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan. No. 19, 64 Stat. 1271 (see section 8145).

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

BURIAL ALLOWANCE

Pub. L. 112-87, title III, §310, Jan. 3, 2012, 125 Stat. 1885, provided that:

- "(A) AUTHORIZATION TO PROVIDE.—
(1) IN GENERAL.—The head of an agency or department containing an element of the intelligence community may pay to the estate of a decedent described in paragraph (2) a burial allowance at the request of a representative of such estate, as determined in accordance with the laws of a State.
(2) DESCRIPTION.—A decedent described in this paragraph is an individual—
(A) who served as a civilian officer or employee of such an agency or department;
(B) who died as a result of an injury incurred during such service; and
(C) whose death—
(i) resulted from hostile or terrorist activities; or
(ii) occurred in connection with an intelligence activity having a substantial element of risk.
(b) USE OF BURIAL ALLOWANCE.—A burial allowance paid under subsection (a) may be used to reimburse such estate for burial expenses, including recovery, mortuary, funeral, or memorial service, cremation, burial costs, and costs of transportation by common carrier to the place selected for final disposition of the decedent.
(c) AMOUNT OF BURIAL ALLOWANCE; RELATIONSHIP TO OTHER PROVISIONS.—A burial allowance paid under subsection (a) shall be—
(1) in an amount not greater than—
(A) the maximum reimbursable amount allowed under Department of Defense Instruction 1344.08 or successor instruction; plus
(B) the actual costs of transportation referred to in subsection (b); and
(2) in addition to any other benefit permitted under any other provision of law, including funds that may be expended as specified in the General Provisions section of the classified annex accompanying this Act.
(d) REPORT.—Not later than 180 days after the date of the enactment of this Act [Jan. 3, 2012], the Director of the Office of Personnel Management, in consultation with the Director of National Intelligence, the Secretary of Labor, and the Secretary of Defense, shall submit to Congress a report on the feasibility of implementing legislation to provide for burial allowances at a level which adequately addresses the cost of burial expenses and provides for equitable treatment when an officer or employee of a Federal agency or department dies as the result of an injury sustained in the performance of duty."

[For definition of "intelligence community" as used in section 310 of Pub. L. 112-87, set out above, see sec-

tion 2 of Pub. L. 112-87, set out as a note under section 401a of Title 50, War and National Defense.]

AVAILABILITY OF DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS TO REIMBURSE REPRESENTATIVES OF EMPLOYEES KILLED IN LINE OF DUTY

Pub. L. 103-332, title III, §312, Sept. 30, 1994, 108 Stat. 2537, provided that: "Notwithstanding any other provision of law in fiscal year 1995 and thereafter, appropriations made available to any department or agency in a Department of the Interior and Related Agencies Appropriations Act shall be available to that department or agency to reimburse the representative (as that term is defined by applicable law) of employees killed in the line of duty after January 1, 1994, and in subsequent fiscal years, for burial costs and related out-of-pocket expenses: Provided, That the amount of such reimbursement may exceed the \$800 limitation in 5 U.S.C. 8134(a): Provided further, That funds provided pursuant to this authority may not exceed \$10,000 per employee."

§ 8135. Lump-sum payment

(a) The liability of the United States for compensation to a beneficiary in the case of death or of permanent total or permanent partial disability may be discharged by a lump-sum payment equal to the present value of all future payments of compensation computed at 4 percent true discount compounded annually if—

- (1) the monthly payment to the beneficiary is less than \$50 a month;
(2) the beneficiary is or is about to become a nonresident of the United States; or
(3) the Secretary of Labor determines that it is for the best interest of the beneficiary.

The probability of the death of the beneficiary before the expiration of the period during which he is entitled to compensation shall be determined according to the most current United States Life Tables, as developed by the United States Department of Health, Education, and Welfare, which shall be updated from time to time, but the lump-sum payment to a widow or widower of the deceased employee may not exceed 60 months' compensation. The probability of the happening of any other contingency affecting the amount or duration of compensation shall be disregarded.

(b) On remarriage before reaching age 55 a widow or widower entitled to compensation under section 8133 of this title, shall be paid a lump sum equal to twenty-four times the monthly compensation payment (excluding compensation on account of another individual) to which he was entitled immediately before the remarriage.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 548; Pub. L. 90-83, §1(63), Sept. 11, 1967, 81 Stat. 211; Pub. L. 93-416, §§16(b), 19, 20, Sept. 7, 1974, 88 Stat. 1149; Pub. L. 101-303, §3(2), May 29, 1990, 104 Stat. 251.)

HISTORICAL AND REVISION NOTES
1966 ACT

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 764, Sept. 7, 1916, ch. 458, §14, 39 Stat. 746.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

Table with 3 columns: Section of title 5, Source (U.S. Code), Source (Statutes at Large). Row 1: 8135(b) 5 App.: 764(b), July 4, 1966, Pub. L. 89-488, §8, 80 Stat. 254.

The word "widower" is substituted for "dependent widower" to conform to the definition in 5 U.S.C. 8101(11). The words "section 8133 of title 5" are substituted for "section 10" to reflect the codification of that section in title 5, United States Code.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101-303 substituted "age 55" for "age 60".

1974—Subsec. (a). Pub. L. 93-416, §20, substituted provisions relating to use of the most current United States Life Tables, for provisions relating to determination by the American Experience Tables of Mortality.

Subsec. (a)(1). Pub. L. 93-416, §19, substituted "\$50" for "\$5".

Subsec. (b). Pub. L. 93-416, §16(b), inserted "before reaching age 60" after "On remarriage".

CHANGE OF NAME

United States Department of Health, Education, and Welfare redesignated the United States Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-416 applicable to cases where injury or death occurred prior to Sept. 7, 1974, but only to a period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(63) of Pub. L. 90-83 not applicable to specified personnel, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.

§ 8136. Initial payments outside the United States

If an employee is injured outside the continental United States, the Secretary of Labor may arrange and provide for initial payment of compensation and initial furnishing of other benefits under this subchapter by an employee or agent of the United States designated by the Secretary for that purpose in the locality in which the employee was employed or the injury occurred.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 549.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 793 (2d sentence of 4th par.), July 29, 1942, ch. 533 (2d sentence), 56 Stat. 725.

The word "continental" is added on authority of the last sentence of the fifth paragraph of former section 793, which is carried into section 8137.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

§ 8137. Compensation for noncitizens and non-residents

(a) When the Secretary of Labor finds that the amount of compensation payable to an employee who is neither a citizen nor resident of the United States or Canada, or payable to a dependent of such an employee, is substantially disproportionate to compensation for disability or death payable in similar cases under local statute, regulation, custom, or otherwise at the place outside the continental United States or Canada where the employee is working at the time of injury, he may provide for payment of compensation on a basis reasonably in accord with prevailing local payments in similar cases by—

(1) the adoption or adaption of the substantive features, by a schedule or otherwise, of local workmen's compensation provisions or other local statute, regulation, or custom applicable in cases of personal injury or death; or

(2) establishing special schedules of compensation for injury, death, and loss of use of members and functions of the body for specific classes of employees, areas, and places.

Irrespective of the basis adopted, the Secretary may at any time—

(A) modify or limit the maximum monthly and total aggregate payments for injury, death, and medical or other benefits;

(B) modify or limit the percentages of the wage of the employee payable as compensation for the injury or death; and

(C) modify, limit, or redesignate the class or classes of beneficiaries entitled to death benefits, including the designation of persons, representatives, or groups entitled to payment under local statute or custom whether or not included in the classes of beneficiaries otherwise specified by this subchapter.

(b) In a case under this section, the Secretary or his designee may—

(1) make a lump-sum award in the manner prescribed by section 8135 of this title when he or his designee considers it to be for the best interest of the United States; and

(2) compromise and pay a claim for benefits, including a claim in which there is a dispute as to jurisdiction or other fact or a question of law.

Compensation paid under this subsection is instead of all other compensation from the United States for the same injury or death, and a payment made under this subsection is deemed compensation under this subchapter and is satisfaction of all liability of the United States in respect to the particular injury or death.

(c) The Secretary may delegate to an employee or agency of the United States, with such limitations and right of review as he considers advisable, authority to process, adjudicate, commute by lump-sum award, compromise, and pay a claim or class of claims for compensation, and to provide other benefits, locally, under this section, in accordance with such regulations and instructions as the Secretary considers necessary. For this purpose, the Secretary may provide or transfer funds, including reimbursement of amounts paid under this subchapter.

(d) The Secretary may waive the application of this subchapter in whole or in part and for such period or periods as he may fix if he finds that—

(1) conditions prevent the establishment of facilities for processing and adjudicating claims under this section; or

(2) claimants under this section are alien enemies.

(e) The Secretary may apply this section retrospectively with adjustment of compensation and benefits as he considers necessary and proper.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 549.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 793 (5th par., less penultimate sentence).	July 28, 1945, ch. 328, § 4 (less penultimate sentence), 59 Stat. 503.

The last sentence of former section 793 is omitted as it consists of a definition which is fully spelled out when the words "United States" are used as a geographical reference.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan. No. 19, 64 Stat. 1271 (see section 8145).

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

§ 8138. Minimum limit modification for noncitizens and aliens

(a) Except as provided by subsection (b) of this section, the minimum limit on monthly compensation for disability under section 8112 of this title and the minimum limit on monthly pay on which death compensation is computed under section 8133 of this title do not apply in the case of a noncitizen employee, or a class or classes of noncitizen employees, who sustain injury outside the continental United States. The Secretary of Labor may establish a minimum monthly pay on which death compensation is computed in the case of a class or classes of such noncitizen employees.

(b) The President may remove or modify the minimum limit on monthly compensation for disability under section 8112 of this title and the minimum limit on monthly pay on which death compensation is computed under section 8133 of this title in the case of an alien employee, or a class or classes of alien employees, of the Canal Zone Government or the Panama Canal Company.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 550.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 793 (4th par., less 2d sentence).	July 29, 1942, ch. 533 (less 2d sentence), 56 Stat. 725. Sept. 13, 1960, Pub. L. 86-767, § 210, 74 Stat. 910.
(b)	5 U.S.C. 793 (2d sentence of 2d par.).	Sept. 7, 1916, ch. 458, § 42 (2d sentence of 2d par.), 39 Stat. 750. Apr. 6, 1938, ch. 79 "Sec. 42 (2d sentence of 2d par.)", 52 Stat. 201.

In subsection (a), the words “in his discretion” are omitted as unnecessary in view of the permissive nature of the authority. The word “continental” is added on authority of the last sentence of the fifth paragraph of former section 793, which is carried into section 8137.

In subsection (b), the words “Canal Zone Government” and “Panama Canal Company” are substituted for “Panama Canal” and “Panama Railroad Company”, respectively, on authority of the Act of Sept. 26, 1950, ch. 1049, §2(a), 64 Stat. 1038.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

REFERENCES IN TEXT

For definition of Canal Zone Government and Panama Canal Company, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

§ 8139. Employees of the District of Columbia

Compensation awarded to an employee of the government of the District of Columbia shall be paid in the manner provided by statute for the payment of the general expenses of the government of the District of Columbia.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 550.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 794 (less 1st sentence).	July 11, 1919, ch. 7, §11 (less 1st sentence), 41 Stat. 104.

The words “Compensation awarded” are substituted for “Such compensation as the Secretary may award”.

The last sentence of former section 794, requiring that the Commissioners of the District of Columbia submit to Congress through the Bureau of the Budget estimates of appropriations, is omitted as obsolete. The Budget and Accounting Act, 1921, as amended, 31 U.S.C. 2 et seq., prescribes the procedures for presenting all budget estimates for the government of the District of Columbia and provides that the budget submission to Congress be made by the President.

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

PROCESSING OF CLAIMS FILED BY DISTRICT OF COLUMBIA EMPLOYEES

See Pub. L. 93-198, title II, §204(e), Dec. 24, 1973, 87 Stat. 783, set out as a note under section 8101 of this title.

§ 8140. Members of the Reserve Officers’ Training Corps

(a) Subject to the provisions of this section, this subchapter applies to a member of, or applicant for membership in, the Reserve Officers’ Training Corps of the Army, Navy, or Air Force who suffers an injury, disability, or death incurred, or an illness contracted, in line of duty—

(1) while engaged in a flight or in flight instruction under chapter 103 of title 10; or

(2) during the period of the member’s attendance at training or a practice cruise under chapter 103 of title 10, United States Code, beginning when the authorized travel to the training or practice cruise begins and ending when authorized travel from the training or practice cruise ends.

(b) For the purpose of this section, an injury, disability, death, or illness of a member referred to in subsection (a) may be considered as incurred or contracted in line of duty only if the injury, disability, or death is incurred, or the illness is contracted, by the member during a period described in that subsection. Subject to review by the Secretary of Labor, the Secretary of the military department concerned (under regulations prescribed by that Secretary), shall determine whether an injury, disability, or death was incurred, or an illness was contracted, by a member in line of duty.

(c) In computing the compensation payable under this section, the monthly pay received by the injured or deceased individual, in cash and kind, is deemed \$150.

(d) The Secretary of the military department concerned shall cooperate fully with the Department of Labor in the prompt investigation and prosecution of a case involving the legal liability of a third party other than the United States.

(e) An individual may not receive disability benefits under this section while on active duty with the armed forces, but these benefits may be reinstated when the individual is released from that active duty.

(f) Expenses incurred by a military department in providing hospitalization, medical and surgical care, necessary transportation incident to that hospitalization or medical and surgical care, or in connection with a funeral and burial on behalf of an individual covered by subsection (a) of this section shall be reimbursed by the Secretary of Labor from the Employees’ Compensation Fund in accordance with this subchapter. However, reimbursement may not be made for hospitalization or medical or surgical care provided an individual by a military department in a facility of a military department.

(g) For purposes of this section, the term “applicant for membership” includes a student enrolled, during a semester or other enrollment term, in a course which is part of Reserve Officers’ Training Corps instruction at an educational institution.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 550; Pub. L. 100-456, div. A, title VI, §633(b), Sept. 29, 1988, 102 Stat. 1986; Pub. L. 105-261, div. A, title VI, §655(a)-(c), Oct. 17, 1998, 112 Stat. 2053.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 802.	Aug. 1, 1956, ch. 830, §4, 70 Stat. 805. Oct. 13, 1964, Pub. L. 88-647, §302, 78 Stat. 1073.

In subsection (a), the words “Subject to the provisions of this section” are added for clarity.

In subsection (c), the last sentence of former section 802(b) is omitted as unnecessary.

In subsection (d), the words “Nothing in this section shall be construed to hinder the prompt action authorized by sections 776 and 777 of this title in any case involving the legal liability of a third party other than the United States” are omitted as unnecessary as there is nothing in the section that reasonably could be so construed.

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

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-261, § 655(c), inserted “, or an illness contracted,” after “death incurred” in introductory provisions.

Subsec. (a)(2). Pub. L. 105-261, § 655(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “while performing authorized travel to or from, or while attending, training or a practice cruise under chapter 103 of title 10.”

Subsec. (b). Pub. L. 105-261, § 655(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “For the purpose of this section, an injury is incurred in line of duty only if it is the proximate result of the performance of military training by the member concerned, or of his travel to or from that training, during the periods specified by subsection (a)(2) of this section. A member or applicant for membership who contracts a disease or illness which is the proximate result of the performance of training during the periods specified by subsection (a)(2) of this section is considered for the purpose of this section to have been injured in line of duty during that period. Subject to review by the Secretary of Labor, the Secretary of the military department concerned, under regulations prescribed by him, shall determine whether or not an injury, disease, or illness was incurred or contracted in line of duty and was the proximate result of the performance of military training by the member concerned or of his travel to or from that military training.”

1988—Subsec. (a). Pub. L. 100-456, § 633(b)(1)(A), substituted “who suffers an injury, disability, or death” for “who suffers disability or death from an injury” in introductory provisions.

Subsec. (a)(2). Pub. L. 100-456, § 633(b)(1)(B), struck out “field” before “training”.

Subsec. (f). Pub. L. 100-456, § 633(b)(2), substituted “by a military department in a facility of a military department” for “while attending field training or a practice cruise under chapter 103 of title 10”.

Subsec. (g). Pub. L. 100-456, § 633(b)(3), added subsec. (g).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-261, div. A, title VI, § 655(d), Oct. 17, 1998, 112 Stat. 2053, provided that: “The amendments made by subsections (a) and (b) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 17, 1998] and apply with respect to injuries, illnesses, disabilities, and deaths incurred or contracted on or after that date.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-456 applicable only with respect to training performed after Sept. 30, 1988, see section 633(e) of Pub. L. 100-456, set out as a note under section 2109 of Title 10, Armed Forces.

DIFFERENT COVERAGE FOR RESERVE OFFICER TRAINING CORPS MEMBERS

Pub. L. 97-306, title I, § 113(c), Oct. 14, 1982, 96 Stat. 1432, provided that: “Notwithstanding section 8140 of title 5, United States Code, subchapter I of chapter 81 of such title does not apply in the case of a disability suffered by a member of the Reserve Officers’ Training Corps of the Army, Navy, or Air Force that is compensable under chapter 11 of title 38, United States Code, or a death suffered by such a member for which dependency and indemnity compensation is payable under chapter 13 of such title [section 401 et seq. of Title 38].”

[Section 113(d) of Pub. L. 97-306 provided that these provisions shall apply only with respect to deaths and disabilities resulting from diseases or injuries incurred or aggravated after September 30, 1982.]

§ 8141. Civil Air Patrol volunteers

(a) Subject to the provisions of this section, this subchapter applies to a volunteer civilian

member of the Civil Air Patrol, except a Civil Air Patrol Cadet under 18 years of age.

(b) In administering this subchapter for a member of the Civil Air Patrol covered by this section—

(1) the monthly pay of a member is deemed the rate of basic pay payable for step 1 of grade GS-9 in the General Schedule under section 5332 of this title for the purpose of computing compensation for disability or death;

(2) the percentages applicable to payments under section 8133 of this title are—

(A) 45 percent for section 8133(a)(2) of this title, if the member dies fully or currently insured under subchapter II of chapter 7 of title 42, with no additional payments for a child or children while the widow or widower remains eligible for payments under section 8133(a)(2) of this title;

(B) 20 percent for section 8133(a)(3) of this title for one child and 10 percent additional for each additional child, but not to exceed a total of 75 percent, if the member died fully or currently insured under subchapter II of chapter 7 of title 42; and

(C) 25 percent for section 8133(a)(4) of this title, if one parent was wholly dependent on the deceased member at the time of his death and the other was not dependent to any extent; 16 percent to each, if both were wholly dependent; and if one was or both were partly dependent, a proportionate amount in the discretion of the Secretary of Labor;

(3) a payment may not be made under section 8133(a)(5) of this title;

(4) “performance of duty” means only active service, and travel to and from that service, rendered in performance or support of operational missions of the Civil Air Patrol under direction of the Department of the Air Force and under written authorization by competent authority covering a specific assignment and prescribing a time limit for the assignment; and

(5) the Secretary of Labor or his designee shall inform the Commissioner of Social Security when a claim is filed and eligibility for compensation is established under section 8133(a)(2) or (3) of this title, and the Commissioner of Social Security shall certify to the Secretary of Labor as to whether or not the member concerned was fully or currently insured under subchapter II of chapter 7 of title 42 at the time of his death.

(c) The Secretary of Labor or his designee may inform the Secretary of the Air Force or his designee when a claim is filed. The Secretary of the Air Force, on request of the Secretary of Labor, shall advise him of the facts concerning the injury and whether or not the member was rendering service, or engaged in travel to or from service, in performance or support of an operational mission of the Civil Air Patrol at the time of injury. This subsection does not dispense with the report of the immediate superior of the member required by section 8120 of this title, or other reports agreed on under that section.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 551; Pub. L. 98-94, title XII, § 1258(a), Sept. 24, 1983, 97 Stat.

702; Pub. L. 103-296, title I, §108(e)(4), Aug. 15, 1994, 108 Stat. 1486.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 803 (less (d)).	Aug. 3, 1956, ch. 926, §1 "Sec. 3 (less (d))", 70 Stat. 980.

Subsection (d) of former section 803, providing for retroactive applicability, is omitted as executed (see Table II).

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

REFERENCES IN TEXT

Subchapter II of chapter 7 of title 42, referred to in text, is section 401 et seq. of Title 42, The Public Health and Welfare.

AMENDMENTS

1994—Subsec. (b)(5). Pub. L. 103-296 substituted "Commissioner of Social Security" for "Secretary of Health, Education, and Welfare" in two places.

1983—Subsec. (a). Pub. L. 98-94, §1258(a)(1), inserted "under 18 years of age" after "Civil Air Patrol Cadet".

Subsec. (b)(1). Pub. L. 98-94, §1258(a)(2), substituted "the rate of basic pay payable for step 1 of grade GS-9 in the General Schedule under section 5332 of this title" for "\$300".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1258(b) of Pub. L. 98-94 provided that: "(1) The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Sept. 24, 1983].

"(2) The amendment made by subsection (a)(1) [amending this section] shall apply only to deaths or injuries occurring on or after the date of the enactment of this Act [Sept. 24, 1983].

"(3) The amendment made by subsection (a)(2) [amending this section] shall apply only to the computation of compensation payable for periods commencing on or after the date of the enactment of this Act [Sept. 24, 1983]."

§ 8142. Peace Corps volunteers

(a) For the purpose of this section, "volunteer" means—

(1) a volunteer enrolled in the Peace Corps under section 2504 of title 22;

(2) a volunteer leader enrolled in the Peace Corps under section 2505 of title 22; and

(3) an applicant for enrollment as a volunteer or volunteer leader during a period of training under section 2507(a) of title 22 before enrollment.

(b) Subject to the provisions of this section, this subchapter applies to a volunteer, except that entitlement to disability compensation payments does not commence until the day after the date of termination of his service as a volunteer.

(c) For the purpose of this subchapter—

(1) a volunteer is deemed receiving monthly pay at the minimum rate for GS-7;

(2) a volunteer leader referred to by section 2505 of title 22, or a volunteer with one or more minor children as defined in section 2504 of title 22, is deemed receiving monthly pay at the minimum rate for GS-11;

(3) an injury suffered by a volunteer when he is outside the several States and the District of Columbia is deemed proximately caused by his employment, unless the injury or disease is—

(A) caused by willful misconduct of the volunteer;

(B) caused by the volunteer's intention to bring about the injury or death of himself or of another; or

(C) proximately caused by the intoxication of the injured volunteer; and

(4) the period of service of an individual as a volunteer includes—

(A) any period of training under section 2507(a) of title 22 before enrollment as a volunteer; and

(B) the period between enrollment as a volunteer and the termination of service as a volunteer by the President or by death or resignation.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 552; Pub. L. 90-83, §1(64), Sept. 11, 1967, 81 Stat. 212; Pub. L. 93-416, §23(b), Sept. 7, 1974, 88 Stat. 1150.)

HISTORICAL AND REVISION NOTES 1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	22 U.S.C. 2504(d).	Sept. 22, 1961, Pub. L. 87-293, §5(d), 75 Stat. 613.

Subsection (a) is based on sections 2504(a), 2505, and 2507(a) of title 22.

In subsection (b), the words "Subject to the provisions of this section" are added for clarity and to conform to the style of sections 8140 and 8141. The words "of the United States Government" are omitted as unnecessary in view of the definition of "employee" in section 8101(1).

In subsection (c), the words "outside the several States, territories and possessions of the United States, and the District of Columbia" are substituted for "abroad" on authority of section 2522(a), (b) of title 22. References to "the general schedule established by the Classification Act of 1949, as amended" are omitted as unnecessary.

Subsection (c)(4) is added on authority of section 2522(e) of title 22.

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

Section 8142 of title 5 was derived from section 2504(d) of title 22. This amendment reflects changes, effected by the act of Sept. 13, 1966, Public Law 89-572, section 4, 80 Stat. 765, in the definitions applicable to section 2504(d) by virtue of section 2522(a), (b) of title 22.

AMENDMENTS

1974—Subsec. (c)(2). Pub. L. 93-416 inserted provision relating to a volunteer with one or more minor children.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-416 effective on Sept. 7, 1974, and applicable to any injury or death occurring on

or after such effective date, see section 23(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

1967 ACT—CONTINUED

§ 8143. Job Corps enrollees; volunteers in service to America

(a) Subject to the provisions of this subsection, this subchapter applies to an enrollee in the Job Corps, except that compensation for disability does not begin to accrue until the day after the date on which the injured enrollee is terminated. In administering this subchapter for an enrollee covered by this subsection—

(1) the monthly pay of an enrollee is deemed that received at the minimum rate for GS-2;

(2) section 8113(a) of this title applies to an enrollee; and

(3) “performance of duty” does not include an act of an enrollee while absent from his assigned post of duty, except while participating in an activity (including an activity while on pass or during travel to or from the post of duty) authorized by or under the direction and supervision of the Job Corps.

(b) This subchapter applies to a volunteer in service to America who receives either a living allowance or a stipend under part A of subchapter VIII of chapter 34 of title 42, with respect to that service and training, to the same extent as enrollees of the Job Corps under subsection (a) of this section. However, for the purpose of the computation described in subsection (a)(1) of this section, the monthly pay of a volunteer is deemed that received at the minimum rate for GS-5 of the General Schedule under section 5332 of title 5, United States Code.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 553; Pub. L. 90-83, §1(65), Sept. 11, 1967, 81 Stat. 212; Pub. L. 90-623, §1(19), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 93-416, §8(b), Sept. 7, 1974, 88 Stat. 1145; Pub. L. 103-82, title III, §384, Sept. 21, 1993, 107 Stat. 915.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	42 U.S.C. 2716(c).	Aug. 20, 1964, Pub. L. 88-452, §106(c), 78 Stat. 510.
(b)	42 U.S.C. 2943(d) (words after 6th comma, as applicable to 42 U.S.C. 2716(c)).	Aug. 20, 1964, Pub. L. 88-452, §603(d) (words after 6th comma, as applicable to §106(c)), 78 Stat. 531.

In subsection (a)(1), reference to “the Classification Act of 1949 (5 U.S.C. 1071 et seq.)” is omitted as unnecessary. In subsection (a)(3)(B), the word “his” is substituted for “his or her” on authority of 1 U.S.C. 1.

In subsection (b), the words “in service to America” are inserted after “volunteer” for clarity.

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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8143(a)(1) ...	42: 2716(c)(2)(B).	Nov. 8, 1966, Pub. L. 89-794, § 109, 80 Stat. 1453.
8143(a)(3) ...	42: 2716(c)(2)(A).	Oct. 9, 1965, Pub. L. 89-253, § 6, 79 Stat. 973.

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8143(b)	42: 2991c(b) (as applicable to 42: 2716(c)).	Nov. 8, 1966, Pub. L. 89-794, §801 “Sec. 804(b) (as applicable to §106(c) of the Economic Opportunity Act of 1964)”, 80 Stat. 1474.

In subsection (a)(3), the words “in the Federal Employees’ Compensation Act” are omitted as unnecessary since that act is codified in that subchapter of title 5, United States Code, in which section 8143 is a part. The word “his” is substituted for “his or hers” on authority of 1 U.S.C. 1. The words “Job Corps” are substituted for “Corps” on authority of 42 U.S.C. 2712.

In subsection (b), the words “in service to America” are inserted after “volunteer” in two places for clarity. The words “subsection (a)(2) of this section” are substituted for “paragraph (2)(B) of section 106(c)” to reflect the codification of that paragraph in title 5. The words “at the minimum rate for GS-7” are substituted for “under the entrance salary for GS-7 of the General Schedule for section 5332, title 5, United States Code” to conform to the style of title 5.

REFERENCES IN TEXT

Part A of subchapter VIII of chapter 34 of title 42, referred to in subsec. (b), is part A of title VIII of Pub. L. 88-452, Aug. 20, 1964, 73 Stat. 508, as amended, known as the Economic Opportunity Act of 1964. Part A of title VIII of that Act, as added by Pub. L. 90-222, title I, §110, Dec. 23, 1967, 81 Stat. 722, was classified generally to part A (§2992 et seq.) of subchapter VIII of chapter 34 of Title 42, The Public Health and Welfare, prior to its repeal by Pub. L. 93-113, title VI, §603, Oct. 1, 1973, 87 Stat. 417. See sections 4951 et seq. and 5055 of Title 42.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103-82 substituted “GS-5 of the General Schedule under section 5332 of title 5, United States Code” for “GS-7”.

1974—Pub. L. 93-416 struck out “, (b)” after “section 8113(a)”.

1968—Pub. L. 90-623 reenacted section in its entirety making minor changes in phraseology.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-416 applicable to case where injury or death occurred prior to Sept. 7, 1974, but only to a period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90-623, set out as a note under section 5334 of this title.

§ 8143a. Members of the National Teacher Corps

Subject to the provisions of this section, this subchapter applies to a member of the National Teacher Corps. In administering this subchapter for a member covered by this section—

(1) “performance of duty” does not include an act of a member while—

(A) on authorized leave; or

(B) absent from his assigned post of duty, except while participating in an activity au-

thorized by or under the direction or supervision of the Commissioner of Education; and

(2) in computing compensation for disability or death, the monthly pay of a member is deemed his actual pay or that received at the minimum rate for GS-6, whichever is greater.

(Added Pub. L. 90-83, §1(66)(A), Sept. 11, 1967, 81 Stat. 212.)

HISTORICAL AND REVISION NOTES

Section of title 5	Source (U.S. Code)	Source (Statutes at Large)
8143a	20: 1105(b).	Nov. 8, 1965, Pub. L. 89-329, §515(b), 79 Stat. 1257.

The words "a member of the National Teacher Corps" are substituted for "such members" on authority of 20 U.S.C. 1102, 1105(a). In paragraph (1)(B), the words "Commissioner of Education" are substituted for "Commissioner" on authority of 20 U.S.C. 1141(f). In paragraph (2), the words "at the minimum rate for GS-6" are substituted for "under the entrance salary for grade 6," and the reference to the General Schedule of the Classification Act of 1949 is omitted as unnecessary.

TRANSFER OF FUNCTIONS

Functions of Commissioner of Education of Department of Health, Education, and Welfare transferred to Secretary of Education by section 3441(a)(1) of Title 20, Education.

§ 8144. Student-employees

A student-employee as defined by section 5351 of this title who suffers disability or death as a result of personal injury arising out of and in the course of training, or incurred in the performance of duties in connection with that training, is considered for the purpose of this subchapter an employee who incurred the injury in the performance of duty.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 553.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 1053.	Aug. 4, 1947, ch. 452, §4, 61 Stat. 727.

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

§ 8145. Administration

The Secretary of Labor shall administer, and decide all questions arising under, this subchapter. He may—

(1) appoint employees to administer this subchapter; and

(2) delegate to any employee of the Department of Labor any of the powers conferred on him by this subchapter.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 553.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 778.	Sept. 7, 1916, ch. 458, §28, 39 Stat. 748.

HISTORICAL AND REVISION NOTES—CONTINUED

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	[Uncodified].	Oct. 14, 1949, ch. 691, §205(a), (c)(1), 63 Stat. 864. 1946 Reorg. Plan No. 2, §3 (less 2d sentence), eff. July 16, 1946, 60 Stat. 1095.
.....	[Uncodified].	1950 Reorg. Plan No. 19, §1, eff. May 24, 1950, 64 Stat. 1271.
.....	5 U.S.C. 781.	Sept. 7, 1916, ch. 458, §30, 39 Stat. 748.
.....	5 U.S.C. 783 (last 9 words).	Sept. 7, 1916, ch. 458, §32 (last 9 words), 39 Stat. 749.

The last 20 words of former section 781 are omitted as unnecessary in view of the definition of "competitive service" in section 2102 and the provisions of subchapter I of chapter 33 concerning examination and certification for and appointment in the competitive service.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271.

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

PROCESSING OF CLAIMS FILED BY DISTRICT OF COLUMBIA EMPLOYEES

See Pub. L. 93-198, title II, §204(e), Dec. 24, 1973, 87 Stat. 783, set out as a note under section 8101 of this title.

§ 8146. Administration for the Panama Canal Commission and The Alaska Railroad

(a) The President, from time to time, may transfer the administration of this subchapter—

(1) so far as employees of the Panama Canal Commission are concerned to the Commission; and

(2) so far as employees of The Alaska Railroad are concerned to the general manager of The Alaska Railroad.

(b) When administration is transferred under subsection (a) of this section, the expenses incident to physical examinations which are payable under section 8123 of this title shall be paid from appropriations for the Panama Canal Commission or for The Alaska Railroad, as the case may be, instead of from the Employees' Compensation Fund. The President may authorize the Panama Canal Commission and the general manager of The Alaska Railroad to pay the compensation provided by this subchapter, including medical, surgical, and hospital services and supplies under section 8103 of this title and the transportation and burial expenses under sections 8103 and 8134 of this title, from appropriations for the Panama Canal Commission and for The Alaska Railroad, and these appropriations shall be reimbursed for the payments by transfer of funds from the Employees' Compensation Fund.

(c) The President may authorize the Panama Canal Commission to waive, at its discretion, the making of the claim required by section 8121 of this title in the case of compensation to an employee of the Panama Canal Commission for temporary disability, either total or partial.

(d) When administration is transferred under subsection (a) of this section to the general manager of The Alaska Railroad, the Secretary

of Labor is not divested of jurisdiction and a claimant is entitled to appeal from the decision of the general manager of The Alaska Railroad to the Secretary of Labor. The Secretary on receipt of an appeal shall, or on his own motion may, review the decision of the general manager of The Alaska Railroad, and in accordance with the facts found on review may proceed under section 8128 of this title. The Secretary shall provide the form and manner of taking an appeal.

(e) The same right of appeal exists with respect to claims filed by employees of the Panama Canal Commission or their dependents in case of death, as is provided with respect to the claims of other employees to whom this subchapter applies, under section 8149 of this title. The Employees' Compensation Appeals Board referred to by section 8149 of this title has jurisdiction, under regulations prescribed by the Secretary, over appeals relating to claims of the employees or their dependents.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 553; Pub. L. 96-70, title III, §3302(e)(9), Sept. 27, 1979, 93 Stat. 498.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 793 (1st 3 pars., less 2d sentence of 2d par.).	Sept. 7, 1916, ch. 458, §42 (less 2d sentence of 2d par.), 39 Stat. 750. Apr. 6, 1938, ch. 79 "Sec. 42 (less 2d sentence of 2d par.)", 52 Stat. 200. Aug. 30, 1964, Pub. L. 88-508, 78 Stat. 666.

In subsection (a), the words "in which cases the words 'Secretary' and 'his' wherever they appear in sections 751-756, 757-781, 783-791, and 793 of this title shall, so far as necessary to give effect to such transfer, be read, 'Governor of the Canal Zone' or 'the general manager of The Alaska Railroad', as the case may be, and 'his'" are omitted as surplusage.

In subsection (b), the words "the Employees' Compensation Fund" are substituted for "appropriation for the work of the Secretary" in view of former section 771, which is carried into section 8123, which provides that all such expenses shall be paid from the Fund.

In subsections (b) and (c), the words "Canal Zone Government", "Panama Canal Company", and "Governor of the Canal Zone" are substituted for "Panama Canal", "Panama Railroad Company", and "Governor of the Panama Canal", respectively, on authority of the Act of Sept. 26, 1950, ch. 1049, §2, 64 Stat. 1038.

In subsection (e), the words "of other employees to whom this subchapter applies" are substituted for "of other employees of the Federal Government" for clarity and in view of the provisions of section 8149. The words "Employees' Compensation Appeals Board" are substituted for "Appeals Board" to reflect the full title of the Board.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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

AMENDMENTS

1979—Pub. L. 96-70, §3302(e)(9)(A), substituted "Panama Canal Commission" for "Canal Zone" in section catchline.

Subsec. (a)(1). Pub. L. 96-70, §3302(e)(9)(B), substituted "Panama Canal Commission are concerned to the Com-

mission" for "Canal Zone Government and of the Panama Canal Company are concerned to the Governor of the Canal Zone".

Subsec. (b). Pub. L. 96-70, §3302(e)(9)(C)-(E), substituted "Panama Canal Commission" for "Canal Zone Government" in two places and "Panama Canal Commission" for "Governor of the Canal Zone" and struck out "or from funds from the Panama Canal Company" after "The Alaska Railroad".

Subsec. (c). Pub. L. 96-70, §3302(e)(9)(F), substituted "Panama Canal Commission" for "Governor of the Canal Zone" and "employee of the Panama Canal Commission" for "employee of the Canal Zone Government or the Panama Canal Company".

Subsec. (e). Pub. L. 96-70, §3302(e)(9)(G), substituted "Panama Canal Commission" for "Canal Zone Government and of the Panama Canal Company".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96-70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

§ 8146a. Cost-of-living adjustment of compensation

(a) Compensation payable on account of disability or death which occurred more than one year before March 1 of each year shall be annually increased on that date by the amount determined by the Secretary of Labor to represent the percent change in the price index published for December of the preceding year over the price index published for the December of the year prior to the preceding year, adjusted to the nearest one-tenth of 1 percent.

(b) The regular periodic compensation payments after adjustment under this section shall be fixed at the nearest dollar. However, the regular periodic compensation after adjustment shall reflect an increase of at least \$1.

(c) This section shall be applicable to persons excluded by section 15 of the Federal Employees' Compensation Act Amendments of 1966 (Public Law 89-488) under the following statutes: Act of February 15, 1934 (48 Stat. 351); Act of June 26, 1936 (49 Stat. 2035); Act of April 8, 1935 (49 Stat. 115); Act of July 25, 1942 (56 Stat. 710); Public Law 84-955 (August 3, 1956); Public Law 77-784 (December 2, 1942); Public Law 84-879 (August 1, 1956); Public Law 80-896 (July 3, 1948); Act of September 8, 1959 (73 Stat. 469). Benefit payments to these persons shall initially be increased by the total percentage of the increases in the price index from the base month of July 1966, to the next most recent base month following the effective date of this subsection.

(Added Pub. L. 90-83, §1(67)(A), Sept. 11, 1967, 81 Stat. 212; amended Pub. L. 93-416, §§21, 24, Sept. 7, 1974, 88 Stat. 1149, 1150; Pub. L. 96-499, title IV, §421(a), Dec. 5, 1980, 94 Stat. 2608.)

HISTORICAL AND REVISION NOTES

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8146a(a)	5 App.: 793a(a).	July 4, 1966, Pub. L. 89-488, §14 "Sec. 43(a), (b)", 80 Stat. 256.
8146a(b)	5 App.: 793a(b).	

In subsection (a), the words "After the month during which this section becomes effective," following "Each month," are omitted as executed and unnecessary. The words "Secretary of Labor" are substituted for "Sec-

retary” on authority of section 40(i) of the Federal Employees’ Compensation Act. In the second sentence, the words “latest base month” are substituted for “most recent base month.”

So much of section 14 of Public Law 89-488 as redesignated section 43 of the Federal Employees’ Compensation Act as section 44 is omitted as unnecessary in view of the codification of that act in title 5, United States Code.

REFERENCES IN TEXT

“Persons excluded by section 15 of the Federal Employees’ Compensation Act Amendments of 1966”, referred to in subsec. (c), means persons excluded by section 15 of Pub. L. 89-488, July 4, 1966, 80 Stat. 256, which was set out as a note under section 756 of former Title 5, Executive Departments and Government Officers and Employees, prior to the 1966 revision of Title 5 by Pub. L. 89-554. Such section 15 of the Federal Employees’ Compensation Act Amendments of 1966 directed that benefit increases mandated by the Federal Employees’ Compensation Act Amendments of 1966 not apply to employees unless such employees fell within the definition of “employees” in section 40(b) (1) or (2) of the Federal Employees’ Compensation Act [section 790(b)(1) or (2) of former Title 5]. As a result section 15 of the Federal Employees’ Compensation Act Amendments of 1966 served to prohibit increases to persons to whom the benefits of the Federal Employees’ Compensation Act had been extended over the years by Acts described in subsec. (c) as follows:

Act of February 15, 1934 (48 Stat. 351) which extended coverage to employees of the Federal Civil Works Administration and was classified to section 796 of former Title 5.

Act of June 26, 1936 (49 Stat. 2035) probably means Act of June 29, 1936 which extended coverage to certain W.W. I veterans and was set out as a note under section 134 of former Title 38, Pensions, Bonuses, and Veterans’ Relief.

Act of April 8, 1935 (49 Stat. 115) which extended coverage to certain emergency relief personnel, is act April 8, 1935, ch. 48, 49 Stat. 115, which was enacted as legislation supplementary to the Federal Emergency Relief Act of 1933, was classified to sections 721 and 728 of Title 15, Commerce and Trade, and was omitted from the Code as temporary.

Act of July 25, 1942 (56 Stat. 710) which extended coverage to certain personnel of the War Relocation Authority, was set out as a note under section 796 of former Title 5, Executive Departments and Government Officers and Employees.

Public Law 84-955 (Aug. 3, 1956) which extended coverage to certain Civil Air Patrol personnel was set out as a note under section 760 of former Title 5.

Public Law 77-784 (December 2, 1942), which extended coverage to war risk hazards of certain employees of federal contractors, is act Dec. 2, 1942, ch. 668, 56 Stat. 1028, as amended, titles I and II of which are popularly known as the War Hazards Compensation Act, and is classified principally to chapter 12 (§1701 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables.

Public Law 84-879 (August 1, 1956), which extended coverage to certain members of the Reserve Officers Training Corps of the Army, Navy, and Air Force, was classified to section 802 of former Title 5, Executive Departments and Government Officers and Employees.

Public Law 80-896 (July 3, 1948), which extended coverage to certain persons entitled to war claims, is act July 3, 1948, ch. 826, 62 Stat. 1240, as amended, popularly known as the War Claims Act of 1948, which is classified generally to section 2001 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 50, Appendix, and Tables.

Act of September 8, 1959 (73 Stat. 469) which transferred from the Department of Commerce to the Department of Labor certain functions in respect to insurance benefits and disability payments to seamen for

W.W. II service-connected injuries, death, or disability, was not classified to the Code.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-499 substituted “Compensation” for “Each month the Secretary of Labor shall determine the percent change in the price index. Effective the first day of the month which begins after the price index change equals a rise of at least 3 percent for 3 consecutive months over the price index for the latest base month, compensation”, “March 1 of each year shall be annually increased” for “that first day shall be increased” and “amount determined by the Secretary of Labor to represent the percent change in the price index published for December of the preceding year over the price index published for the December of the year prior to the preceding year,” for “percent rise in the price index (calculated on the highest level of the price index during the 3 consecutive months)”.

1974—Subsec. (a). Pub. L. 93-416, §21, substituted “Effective the first day of the month” for “Effective the first day of the third month”.

Subsec. (b). Pub. L. 93-416, §21, substituted “regular periodic compensation payments” for “monthly compensation”.

Subsec. (c). Pub. L. 93-416, §24, added subsec. (c).

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96-499, see section 422 of Pub. L. 96-499, set out as a note under section 8101 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-416 applicable to cases where injury or death occurred prior to Sept. 7, 1974, but only to the period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

PERSONNEL NOT AFFECTED BY COST-OF-LIVING ADJUSTMENT

Increases authorized by this section not applicable to employees and individuals not within the definition of “employee” in section 8101(1)(A), (B), or (D) of this title, members of the Metropolitan Police or the Fire Department of the District of Columbia who are pensioned or pensionable under sections 521 to 535 of title 4, District of Columbia Code, or members of a uniformed service, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.

§ 8147. Employees’ Compensation Fund

(a) There is in the Treasury of the United States the Employees’ Compensation Fund which consists of sums that Congress, from time to time, may appropriate for or transfer to it, and amounts that otherwise accrue to it under this subchapter or other statute. The Fund is available without time limit for the payment of compensation and other benefits and expenses, except administrative expenses, authorized by this subchapter or any extension or application thereof, except as otherwise provided by this subchapter or other statute. The Secretary of Labor shall submit annually to the Office of Management and Budget estimates of appropriations necessary for the maintenance of the Fund. For the purpose of this subsection, “administrative expenses” does not include expenses for legal services performed by or for the Secretary under sections 8131 and 8132 of this title.

(b) Before August 15 of each year, the Secretary shall furnish to each agency and instrumentality of the United States having an em-

ployee who is or may be entitled to compensation benefits under this subchapter or any extension or application thereof a statement showing the total cost of benefits and other payments made from the Employees' Compensation Fund during the preceding July 1 through June 30 expense period on account of the injury or death of employees or individuals under the jurisdiction of the agency or instrumentality. Each agency and instrumentality shall include in its annual budget estimates for the fiscal year beginning in the next calendar year a request for an appropriation in an amount equal to the costs. Sums appropriated pursuant to the request shall be deposited in the Treasury to the credit of the Fund within 30 days after they are available. An agency or instrumentality not dependent on an annual appropriation shall make the deposit required by this subsection from funds under its control during the first fifteen days of October following the furnishing of the statement. If an agency or instrumentality (or part or function thereof) is transferred to another agency or instrumentality, the cost of compensation benefits and other expenses paid from the Fund on account of the injury or death of employees of the transferred agency or instrumentality (or part or function) shall be included in costs of the receiving agency or instrumentality.

(c) In addition to the contributions for the maintenance of the Employees' Compensation Fund required by this section, the United States Postal Service, or a mixed ownership corporation as defined by section 9101(2) of title 31, or any other corporation or agency or instrumentality (or activity thereof) which is required by statute to submit an annual budget pursuant to or as provided by chapter 91 of title 31, shall pay an additional amount for its fair share of the cost of administration of this subchapter as determined by the Secretary. With respect to these corporations, agencies, and instrumentalities, the charges billed by the Secretary under this section shall include an additional amount for these costs, which shall be paid into the Treasury as miscellaneous receipts from the sources authorized and in the manner otherwise provided by this section.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 554; Pub. L. 90-83, §1(68), Sept. 11, 1967, 81 Stat. 213; Pub. L. 93-416, §§25, 26, Sept. 7, 1974, 88 Stat. 1150; Pub. L. 94-273, §42, Apr. 21, 1976, 90 Stat. 381; Pub. L. 97-258, §3(a)(17), Sept. 13, 1982, 96 Stat. 1063.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 785.	Sept. 7, 1916, ch. 458, §35, 39 Stat. 749. Sept. 12, 1950, ch. 946, §301(92), 64 Stat. 844. Sept. 13, 1960, Pub. L. 86-767, §209, 74 Stat. 909.

In subsection (b), the words "each agency and instrumentality of the United States" are substituted for "each executive department and each agency or instrumentality of the United States or other establishment". The words "(hereinafter called 'agency'))" are omitted as unnecessary because "agency or instrumen-

tality" is substituted for "agency" in the remainder of this subsection and in subsection (c). The words "occurring after December 1, 1960" are omitted as executed.

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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8147(a)	5 App.: 785(d).	July 4, 1966, Pub. L. 89-488, §10(c), 80 Stat. 255.

The word "performed" is substituted for "rendered" to conform to the style of title 5. The words "sections 8131 and 8132 of this title" are substituted for "sections 26 and 27" to reflect the codification of those sections in title 5.

AMENDMENTS

1982—Subsec. (c). Pub. L. 97-258 substituted "section 9101(2)" for "section 856", and "chapter 91" for "sections 841-869".

1976—Subsec. (b). Pub. L. 94-273 inserted "during the first fifteen days of October following the furnishing of the statement" after "its control" and substituted "July 1 through June 30 expense period" for "fiscal year" and "the fiscal year beginning in the next calendar year" for "the next fiscal year".

1974—Subsec. (a). Pub. L. 93-416, §26, substituted "Office of Management and Budget" for "Bureau of the Budget".

Subsec. (c). Pub. L. 93-416, §25, inserted reference to the United States Postal Service.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 25 of Pub. L. 93-416 applicable to cases where injury or death occurred prior to Sept. 7, 1974, but only to a period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

Amendment by section 26 of Pub. L. 93-416 effective Sept. 7, 1974, and applicable to any death or injury occurring on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

GOVERNMENT PRINTING OFFICE PAYMENT OF COST OF ADMINISTRATION

Pub. L. 105-275, title III, §313, Oct. 21, 1998, 112 Stat. 2460, provided that: "For purposes of section 8147 of title 5, United States Code, the Government Printing Office is not considered an agency which is required by statute to submit an annual budget pursuant to or as provided by chapter 91 of title 31, United States Code, and is not required to pay an additional amount for the cost of administration."

FISCAL YEAR 1994 PROHIBITION ON PAYMENTS TO INDIVIDUALS CONVICTED OF ISSUING FALSE STATEMENTS OR FRAUD

Pub. L. 103-112, title I, §102, Oct. 21, 1993, 107 Stat. 1089, Department of Labor Appropriation Act, 1994, provided that: "None of the funds in the Employees' Compensation Fund under 5 U.S.C. 8147 shall be expended for payment of compensation, benefits, and expenses to any individual convicted of a violation of 18 U.S.C. 1920, or of any felony fraud related to the application for or receipt of benefits under subchapters I or III of chapter 81 of title 5, United States Code."

DEPOSIT INTO FUND BETWEEN JULY 1, AND JULY 15, 1976, OF SPECIFIED PART OF AUGUST 15, 1975, STATEMENT

Pub. L. 94-274, title I, §120, Apr. 21, 1976, 90 Stat. 389, provided that for the purposes of 5 U.S.C. 8147(b), each agency and instrumentality of the United States dependent upon an annual appropriation and having an

employee who is or may be entitled to compensation benefits under this subchapter or any extension or application thereof shall deposit in the Treasury to the credit of the Employees' Compensation Fund, no later than July 15, 1976, but no earlier than July 1, 1976, 25 per centum of the amount stated in the August 15, 1975, statement.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(71) of Pub. L. 90-83 not applicable to specified personnel, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.

§ 8148. Forfeiture of benefits by convicted felons

(a) Any individual convicted of a violation of section 1920 of title 18, or any other Federal or State criminal statute relating to fraud in the application for or receipt of any benefit under this subchapter or subchapter III of this chapter, shall forfeit (as of the date of such conviction) any entitlement to any benefit such individual would otherwise be entitled to under this subchapter or subchapter III for any injury occurring on or before the date of such conviction. Such forfeiture shall be in addition to any action the Secretary may take under section 8106 or 8129.

(b)(1) Notwithstanding any other provision of this chapter (except as provided under paragraph (3)), no benefits under this subchapter or subchapter III of this chapter shall be paid or provided to any individual during any period during which such individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to that individual's conviction of an offense that constituted a felony under applicable law.

(2) Such individual shall not be entitled to receive the benefits forfeited during the period of incarceration under paragraph (1), after such period of incarceration ends.

(3) If an individual has one or more dependents as defined under section 8110(a), the Secretary of Labor may, during the period of incarceration, pay to such dependents a percentage of the benefits that would have been payable to such individual computed according to the percentages set forth in section 8133(a)(1) through (5).

(c) Notwithstanding the provision of section 552a of this title, or any other provision of Federal or State law, any agency of the United States Government or of any State (or political subdivision thereof) shall make available to the Secretary of Labor, upon written request, the names and Social Security account numbers of individuals who are confined in a jail, prison, or other penal institution or correctional facility under the jurisdiction of such agency, pursuant to such individuals' conviction of an offense that constituted a felony under applicable law, which the Secretary of Labor may require to carry out the provisions of this section.

(Added Pub. L. 103-333, title I, §101(a)(1), Sept. 30, 1994, 108 Stat. 2546; amended Pub. L. 105-247, §1, Oct. 9, 1998, 112 Stat. 1863.)

PRIOR PROVISIONS

A prior section 8148, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 555, provided for a report to Congress by Secretary of Labor at beginning of each regular session covering work for preceding fiscal year under this sub-

chapter, prior to repeal by Pub. L. 90-83, §1(69), Sept. 11, 1967, 81 Stat. 213.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-247 substituted "or receipt" for "a receipt".

EFFECTIVE DATE

Section 101(c) of Pub. L. 103-333 provided that: "The amendments made by this section [enacting this section and amending section 1920 of Title 18, Crimes and Criminal Procedure] shall take effect on the date of the enactment of this Act [Sept. 30, 1994]. The amendments made by subsection (a) [enacting this section] shall apply to claims filed before, on, or after the date of enactment of this Act, and shall apply only to individuals convicted after such date of enactment."

§ 8149. Regulations

The Secretary of Labor may prescribe rules and regulations necessary for the administration and enforcement of this subchapter including rules and regulations for the conduct of hearings under section 8124 of this title. The rules and regulations shall provide for an Employees' Compensation Appeals Board of three individuals designated or appointed by the Secretary with authority to hear and, subject to applicable law and the rules and regulations of the Secretary, make final decisions on appeals taken from determinations and awards with respect to claims of employees. In adjudicating claims under section 8146 of this title, the Secretary may determine the nature and extent of the proof and evidence required to establish the right to benefits under this subchapter without regard to the date of injury or death for which claim is made.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 555; Pub. L. 90-83, §1(71), Sept. 11, 1967, 81 Stat. 213.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 783 (less last 9 words).	Sept. 7, 1916, ch. 458, §32 (less last 9 words), 39 Stat. 749.
.....	[Uncodified].	1946 Reorg. Plan No. 2, §3 (2d sentence), eff. July 16, 1946, 60 Stat. 1095.
.....	[Uncodified].	1950 Reorg. Plan No. 19, §2, eff. May 24, 1950, 64 Stat. 1272.

The words "administration and" are added for clarity.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

The first sentence of section 2 of 1950 Reorg. Plan No. 19 is omitted as executed. The word "employees" is co-extensive with and substituted for "employees of the Federal Government or of the District of Columbia" in view of the definition of "employee" in section 8101.

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

Section of title 5	Source (U.S. Code)	Source (Statutes at Large)
8149	5 App.: 783.	July 4, 1966, Pub. L. 89-488, §§11(a), 12, 80 Stat. 255.

In the first sentence, the words “section 8124 of this title” are substituted for “section 36” to reflect the codification of that section in title 5, United States Code.

In the second sentence, the word “adjudicating” is substituted for “in the adjudication of”. The words “section 8146 of this title” and “this subchapter” are substituted for “section 42 of this Act” and “this Act”, respectively, to reflect the codification of the Federal Employees’ Compensation Act in title 5, United States Code.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(71) of Pub. L. 90-83 not applicable to specified personnel, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.

§ 8150. Effect on other statutes

(a) This subchapter does not affect the maritime rights and remedies of a master or member of the crew of a vessel.

(b) Section 8141 of this title and section 9441 of title 10 do not confer military or veteran status on any individual.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 555.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 791-4(b).	Oct. 14, 1949, ch. 691, § 305(b), 63 Stat. 868.
(b)	5 U.S.C. 803a.	Aug. 3, 1956, ch. 926, § 1 “Sec. 4”, 70 Stat. 981.

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

§ 8151. Civil service retention rights

(a) In the event the individual resumes employment with the Federal Government, the entire time during which the employee was receiving compensation under this chapter shall be credited to the employee for the purposes of within-grade step increases, retention purposes, and other rights and benefits based upon length of service.

(b) Under regulations issued by the Office of Personnel Management—

(1) the department or agency which was the last employer shall immediately and unconditionally accord the employee, if the injury or disability has been overcome within one year after the date of commencement of compensation or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the United States, the right to resume his former or an equivalent position, as well as all other attendant rights which the employee would have had, or acquired, in his former position had he not been injured or disabled, including the rights to tenure, promotion, and safeguards in reductions-in-force procedures, and

(2) the department or agency which was the last employer shall, if the injury or disability is overcome within a period of more than one year after the date of commencement of compensation, make all reasonable efforts to place, and accord priority to placing, the em-

ployee in his former or equivalent position within such department or agency, or within any other department or agency.

(Added Pub. L. 93-416, § 22, Sept. 7, 1974, 88 Stat. 1149; amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE

Section applicable to cases where injury or death occurred prior to Sept. 7, 1974, but only to a period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93-416, set out as an Effective Date of 1974 Amendment note under section 8101 of this title.

§ 8152. Annual report

The Secretary of Labor shall, at the end of each fiscal year, prepare a report with respect to the administration of this chapter. Such report shall be submitted to Congress in accordance with the requirement with respect to submission under section 42 of the Longshore¹ Harbor Workers’ Compensation Act (33 U.S.C. 942).

(Added Pub. L. 104-66, title I, § 1102(b)(3)(A), Dec. 21, 1995, 109 Stat. 723.)

SUBCHAPTER II—EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES

§ 8171. Compensation for work injuries; generally

(a) The Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 901 et seq.) applies with respect to disability or death resulting from injury, as defined by section 2(2) of such Act (33 U.S.C. 902(2)), occurring to an employee of a nonappropriated fund instrumentality described by section 2105(c) of this title, or to a volunteer providing such an instrumentality with services accepted under section 1588 of title 10, who is—

(1) a United States citizen or a permanent resident of the United States or a territory or possession of the United States employed outside the continental United States; or

(2) employed inside the continental United States.

However, that part of section 3(a) of such Act (33 U.S.C. 903(a)) which follows the second comma does not apply to such an employee.

(b) For the purpose of this subchapter, the term “employer” in section 2(4) of the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 902(4)) includes the nonappropriated fund instrumentalities described by section 2105(c) of this title.

(c) The Secretary of Labor may—

(1) extend compensation districts established under section 39(b) of the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 939(b)), or establish new districts to include

¹ So in original. Probably should be “Longshore and”.

the areas outside the continental United States; and

(2) assign to each district one or more deputy commissioners as the Secretary considers advisable.

(d) Judicial proceedings under sections 18 and 21 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 918 and 921) with respect to an injury or death occurring outside the continental United States shall be instituted in the district court within the territorial jurisdiction of which is located the office of the deputy commissioner having jurisdiction with respect to the injury or death.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 555; Pub. L. 103-337, div. A, title X, §§1061(c), 1070(d)(8)(A), Oct. 5, 1994, 108 Stat. 2847, 2858; Pub. L. 104-106, div. A, title XV, §1505(b)(1), Feb. 10, 1996, 110 Stat. 514.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C.150k-1(a).	June 19, 1952, ch. 444, §2, 66 Stat. 139. July 18, 1958, Pub. L. 85-538, §1 "Sec. 2(a)", 72 Stat. 397.

In subsection (a), the word "civilian" is omitted as unnecessary as the definition of "employee" in section 2105 includes only civilians.

In subsection (d), the reference to "the United States District Court for the District of Columbia" is omitted as included in the words "district court".

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

REFERENCES IN TEXT

The Longshore and Harbor Workers' Compensation Act, referred to in subsec. (a), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-106, §1505(b)(1)(A), substituted "903(a)" for "903(3)" in concluding provisions. Subsec. (c)(1). Pub. L. 104-106, §1505(b)(1)(B), inserted "section" before "39(b)".

Subsec. (d). Pub. L. 104-106, §1505(b)(1)(C), substituted "(33 U.S.C. 918 and 921)" for "(33 U.S.C. 18 and 21, respectively)".

1994—Subsec. (a). Pub. L. 103-337, §1070(d)(8)(A)(i)(III), substituted "section 3(a) of such Act (33 U.S.C. 903(3)) which follows the second comma" for "section 903(a) of title 33 which follows the first comma" in second sentence.

Pub. L. 103-337, §1070(d)(8)(A)(i)(I), (II), substituted "The Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.)" for "Chapter 18 of title 33" and "section 2(2) of such Act (33 U.S.C. 902(2))" for "section 902(2) of title 33", in introductory provisions.

Pub. L. 103-337, §1061(c), inserted ", or to a volunteer providing such an instrumentality with services accepted under section 1588 of title 10," after "described by section 2105(c) of this title" in introductory provisions.

Subsec. (b). Pub. L. 103-337, §1070(d)(8)(A)(ii), substituted "section 2(4) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 902(4))" for "section 902(4) of title 33".

Subsec. (c)(1). Pub. L. 103-337, §1070(d)(8)(A)(iii), substituted "39(b) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 939(b))" for "section 939(b) of title 33".

Subsec. (d). Pub. L. 103-337, §1070(d)(8)(A)(iv), substituted "sections 18 and 21 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 18 and 21, respectively)" for "sections 918 and 921 of title 33".

§ 8172. Employees not citizens or residents of the United States

In case of disability or death resulting from injury, as defined by section 2(2) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 902(2)), occurring to an employee of a nonappropriated fund instrumentality described by section 2105(c) of this title who is—

(1) not a citizen or permanent resident of the United States or a territory or possession of the United States; and

(2) employed outside the continental United States;

compensation shall be provided in accordance with regulations prescribed by the Secretary of the military department concerned and approved by the Secretary of Defense or regulations prescribed by the Secretary of Transportation, as the case may be.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 556; Pub. L. 103-272, §4(b)(3), July 5, 1994, 108 Stat. 1361; Pub. L. 103-337, div. A, title X, §1070(d)(8)(B), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104-106, div. A, title XV, §1505(b)(2), Feb. 10, 1996, 110 Stat. 514.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C.150k-1(b).	July 18, 1958, Pub. L. 85-538, §1 "Sec. 2(b)", 72 Stat. 397.

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

AMENDMENTS

1996—Pub. L. 104-106 substituted "(33 U.S.C. 902(2))" for "(33 U.S.C. 2(2))" in introductory provisions.

1994—Pub. L. 103-337 substituted "section 2(2) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 2(2))" for "section 902(2) of title 33" in introductory provisions.

Pub. L. 103-272 substituted "Secretary of Transportation" for "Secretary of the Treasury" in concluding provisions.

§ 8173. Liability under this subchapter exclusive

The liability of the United States or of a nonappropriated fund instrumentality described by section 2105(c) of this title, with respect to the disability or death resulting from injury, as defined by section 2(2) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 902(2)), of an employee referred to by sections 8171 and 8172 of this title, shall be determined as provided by this subchapter. This liability is exclusive and instead of all other liability of the United States or the instrumentality to the employee, his legal representative, spouse, dependents, next of kin, and any other person otherwise entitled to recover damages from the United States or the instrumentality because of

the disability or death in a direct judicial proceeding, in a civil action, or in admiralty, or by an administrative or judicial proceeding under a workmen's compensation statute or under a Federal tort liability statute.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 556; Pub. L. 103-337, div. A, title X, § 1070(d)(8)(B), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104-106, div. A, title XV, § 1505(b)(2), Feb. 10, 1996, 110 Stat. 514.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 150k-1(c).	July 18, 1958, Pub. L. 85-538, § 1 "Sec. 2(c)", 72 Stat. 397.

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

AMENDMENTS

1996—Pub. L. 104-106 substituted "(33 U.S.C. 902(2))" for "(33 U.S.C. 2(2))".

1994—Pub. L. 103-337 substituted "section 2(2) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 2(2))" for "section 902(2) of title 33".

SUBCHAPTER III—LAW ENFORCEMENT OFFICERS NOT EMPLOYED BY THE UNITED STATES

§ 8191. Determination of eligibility

The benefits of this subchapter are available as provided in this subchapter to eligible law enforcement officers (referred to in this subchapter as "eligible officers") and their survivors. For the purposes of this subchapter, an eligible officer is any person who is determined by the Secretary of Labor in his discretion to have been on any given occasion—

(1) a law enforcement officer and to have been engaged on that occasion in the apprehension or attempted apprehension of any person—

(A) for the commission of a crime against the United States, or

(B) who at that time was sought by a law enforcement authority of the United States for the commission of a crime against the United States, or

(C) who at that time was sought as a material witness in a criminal proceeding instituted by the United States; or

(2) a law enforcement officer and to have been engaged on that occasion in protecting or guarding a person held for the commission of a crime against the United States or as a material witness in connection with such a crime; or

(3) a law enforcement officer and to have been engaged on that occasion in the lawful prevention of, or lawful attempt to prevent, the commission of a crime against the United States;

and to have been on that occasion not an employee as defined in section 8101(1), and to have sustained on that occasion a personal injury for which the United States would be required under subchapter I of this chapter to pay compensation if he had been on that occasion such an em-

ployee engaged in the performance of his duty. No person otherwise eligible to receive a benefit under this subchapter because of the disability or death of an eligible officer shall be barred from the receipt of such benefit because the person apprehended or attempted to be apprehended by such officer was then sought for the commission of a crime against a sovereignty other than the United States.

(Added Pub. L. 90-291, § 1(a), Apr. 19, 1968, 82 Stat. 98; amended Pub. L. 90-623, § 1(20), Oct. 22, 1968, 82 Stat. 1313.)

AMENDMENTS

1968—Pub. L. 90-623 substituted "For the purposes of this subchapter" for "For the purposes of this Act".

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90-623, set out as a note under section 5334 of this title.

EFFECTIVE DATE

Section 2 of Pub. L. 90-291 provided that: "The amendments made by section 1 of this Act [enacting this section and sections 8192 and 8193 of this title] are effective only with respect to personal injuries sustained on or after the date of enactment of this Act [Apr. 19, 1968]."

§ 8192. Benefits

(a) **BENEFITS IN EVENT OF INJURY.**—The Secretary of Labor shall furnish to any eligible officer the benefits to which he would have been entitled under subchapter I of this chapter if, on the occasion giving rise to his eligibility, he had been an employee as defined in section 8101(1) engaged in the performance of his duty, reduced or adjusted as the Secretary of Labor in his discretion may deem appropriate to reflect comparable benefits, if any, received by the officer (or which he would have been entitled to receive but for this subchapter) by virtue of his actual employment on that occasion. When an enforcement officer has contributed to a disability compensation fund, the reduction of Federal benefits provided for in this subsection is to be limited to the amount of the State or local government benefits which bears the same proportion to the full amount of such benefits as the cost or contribution paid by the State or local government bears to the cost of disability coverage for the individual officer.

(b) **BENEFITS IN EVENT OF DEATH.**—The Secretary of Labor shall pay to any survivor of an eligible officer the difference, as determined by the Secretary in his discretion, between the benefits to which that survivor would be entitled if the officer had been an employee as defined in section 8101(1) engaged in the performance of his duty on the occasion giving rise to his eligibility, and the comparable benefits, if any, received by the survivor (or which that survivor would have been entitled to receive but for this subchapter) by virtue of the officer's actual employment on that occasion. When an enforcement officer has contributed to a survivor's benefit fund, the reduction of Federal benefits provided for in this subsection is to be limited to the amount of the State or local government benefits which bears the same proportion to the

full amount of such benefits as the cost or contribution paid by the State or local government bears to the cost of survivor's benefits coverage for the individual officer.

(Added Pub. L. 90-291, §1(a), Apr. 19, 1968, 82 Stat. 99.)

EFFECTIVE DATE

Section effective only with respect to personal injuries sustained on or after Apr. 19, 1968, see section 2 of Pub. L. 90-291, set out as a note under section 8191 of this title.

§ 8193. Administration

(a) DEFINITIONS AND RULES OF CONSTRUCTION.—For the purpose of this subchapter—

(1) The term "Attorney General" includes any person to whom the Attorney General has delegated any function pursuant to subsection (b) of this section.

(2) The term "Secretary of Labor" includes any person to whom the Secretary of Labor has delegated any function pursuant to subsection (b) of this section.

(b) DELEGATION.—

(1) The Attorney General may delegate to any division, officer, or employee of the Department of Justice any function conferred upon the Attorney General by this subchapter.

(2) The Secretary of Labor may delegate to any bureau, officer, or employee of the Department of Labor any function conferred upon the Secretary of Labor by this subchapter.

(c) APPLICATIONS.—An application for any benefit under this subchapter may be made only—

(1) to the Secretary of Labor

(2) by

(A) any eligible officer or survivor of an eligible officer,

(B) any guardian, personal representative, or other person legally authorized to act on behalf of an eligible officer, his estate, or any of his survivors, or

(C) any association of law enforcement officers which is acting on behalf of an eligible officer or any of his survivors;

(3) within five years after the injury or death; and

(4) in such form as the Secretary of Labor may require.

(d) CONSULTATION WITH ATTORNEY GENERAL AND OTHER AGENCIES.—The Secretary of Labor may refer any application received by him pursuant to this subchapter to the Attorney General for his assistance, comments and advice as to any determination required to be made pursuant to paragraph (1), (2), or (3) of section 8191. To insure that all Federal assistance under this subchapter is carried out in a coordinated manner, the Secretary of Labor is authorized to request any Federal department or agency to supply any statistics, data, or any other materials he deems necessary to carry out his functions under this subchapter. Each such department or agency is authorized to cooperate with the Secretary of Labor and, to the extent permitted by law, to furnish such materials to him.

(e) COOPERATION WITH STATE AGENCIES.—The Secretary of Labor shall cooperate fully with

the appropriate State and local officials, and shall take all other practicable measures, to assure that the benefits of this subchapter are made available to eligible officers and their survivors with a minimum of delay and difficulty.

(f) APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subchapter.

(Added Pub. L. 90-291, §1(a), Apr. 19, 1968, 82 Stat. 99; amended Pub. L. 94-183, §2(31), Dec. 31, 1975, 89 Stat. 1058.)

AMENDMENTS

1975—Subsec. (f). Pub. L. 94-183 redesignated subsec. (e), relating to appropriations, as subsec. (f).

EFFECTIVE DATE

Section effective only with respect to personal injuries sustained on or after Apr. 19, 1968, see section 2 of Pub. L. 90-291, set out as a note under section 8191 of this title.

CHAPTER 83—RETIREMENT

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AMENDMENTS

1986—Pub. L. 99-335, title II, §§201(b)(2), 204(b)(1), 205(b), 206(a)(2), June 6, 1986, 100 Stat. 591-594, added items 8343a, 8349, 8350, and 8351.

SUBCHAPTER I—GENERAL PROVISIONS

§ 8301. Uniform retirement date

(a) Except as otherwise specifically provided by this title or other statute, retirement authorized by statute is effective on the first day of the month following the month in which retirement would otherwise be effective.

(b) Notwithstanding subsection (a) of this section, the rate of active or retired pay or allowance is computed as of the date retirement would have occurred but for subsection (a) of this section.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 557.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 47a.	Apr. 23, 1930, ch. 209, §1, 46 Stat. 253.

In subsection (a), the words “Except as otherwise specifically provided by this title or other statute” are added because of the statutes carried into subchapter III of chapter 83. The words “of Federal personnel of whatever class, civil, military, naval, judicial, legislative, or otherwise, and for whatever cause retired” are omitted as unnecessary. The words “and said first day of the month for retirements made after July 1, 1930, shall be for all purposes in lieu of such date for retirement as was on April 23, 1930, authorized” are omitted as executed.

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

SUBCHAPTER II—FORFEITURE OF ANNUITIES AND RETIRED PAY

§ 8311. Definitions

For the purpose of this subchapter—

(1) “employee” means—

(A) an employee as defined by section 2105 of this title;

(B) a Member of Congress as defined by section 2106 of this title and a Delegate to Congress;

(C) a member or former member of a uniformed service; and

(D) an individual employed by the government of the District of Columbia;

(2) “annuity” means a retirement benefit, including a disability insurance benefit and a dependent’s or survivor’s benefit under subchapter II of chapter 7 of title 42, and a monthly annuity under section 228b or 228e of title 45, payable by an agency of the Government of the United States or the government of the District of Columbia on the basis of service as a civilian employee and other service which is creditable to an employee toward the benefit under the statute, regulation, or agreement which provides the benefit, but does not include—

(A) a benefit provided under statutes administered by the Department of Veterans Affairs;

(B) pay or compensation which may not be diminished under section 1 of Article III of the Constitution of the United States;

(C) that portion of a benefit payable under subchapter II of chapter 7 of title 42 which

would be payable without taking into account, for any of the purposes of that subchapter, including determinations of periods of disability under section 416(i) of title 42, pay for services as an employee;

(D) monthly annuity awarded under section 228b or 228e of title 45 before September 26, 1961, whether or not computed under section 228c(e) of title 45;

(E) that portion of an annuity awarded under section 228b or 228e of title 45 after September 25, 1961, which would be payable without taking into account military service creditable under section 228c-1 of title 45;

(F) a retirement benefit, including a disability insurance benefit and a dependent’s or survivor’s benefit under subchapter II of chapter 7 of title 42, awarded before September 1, 1954, to an individual or his survivor or beneficiary, insofar as the individual, before September 1, 1954—

(i) was convicted of an offense named by subsection (b) of section 8312 of this title, to the extent provided by that subsection; or

(ii) violated section 8314 or 8315(a)(1) of this title; or

(G) a retirement benefit, including a disability insurance benefit and a dependent’s or survivor’s benefit under subchapter II of chapter 7 of title 42, awarded before September 26, 1961, to an individual or his survivor or beneficiary, insofar as the individual, before September 26, 1961—

(i) was convicted of an offense named by subsection (c) of section 8312 of this title, to the extent provided by that subsection; or

(ii) violated section 8315(a)(2) of this title; and

(3) “retired pay” means retired pay, retirement pay, retainer pay, or equivalent pay, payable under a statute to a member or former member of a uniformed service, and an annuity payable to an eligible beneficiary of the member or former member under chapter 73 of title 10 or section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504), but does not include—

(A) a benefit provided under statutes administered by the Department of Veterans Affairs;

(B) retired pay, retirement pay, retainer pay, or equivalent pay, awarded before September 1, 1954, to an individual, insofar as the individual, before September 1, 1954—

(i) was convicted of an offense named by subsection (b) of section 8312 of this title, to the extent provided by that subsection; or

(ii) violated section 8314 or 8315(a)(1) of this title;

(C) retired pay, retirement pay, retainer pay, or equivalent pay, awarded before September 26, 1961, to an individual, insofar as the individual, before September 26, 1961—

(i) was convicted of an offense named by subsection (c) of section 8312 of this title, to the extent provided by that subsection; or

(ii) violated section 8315(a)(2) of this title; or

(D) an annuity payable to an eligible beneficiary of an individual under chapter 73 of title 10 or section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504), if the annuity was awarded to the beneficiary, or if retired pay was awarded to the individual, before September 26, 1961, insofar as the individual, on the basis of whose service the annuity was awarded, before September 26, 1961—

(i) was convicted of an offense named by section 8312 of this title, to the extent provided by that section; or

(ii) violated section 8314 or 8315 of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 557; Pub. L. 102-54, § 13(b)(1), June 13, 1991, 105 Stat. 274.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2281.	Sept. 26, 1961, Pub. L. 87-299, § 1 "Sec. 10", 75 Stat. 646.

The words "and section 3282 of Title 18" are omitted as unnecessary.

In paragraph (1)(A), the words "an employee as defined by section 2105 of this title" are coextensive with and substituted for "an officer or employee in or under the legislative, executive, or judicial branch of the Government of the United States".

In paragraph (1)(B), the reference to "Resident Commissioner" is omitted as included in "Member of Congress" in view of the definition of "Member of Congress" in section 2106.

In paragraph (1)(C), the words "uniformed service" are coextensive with and substituted for "armed forces, the Coast and Geodetic Survey, or the Public Health Service" in view of the definition of "uniformed services" in section 2101.

In paragraph (3), the words "uniformed service" are coextensive with and substituted for "armed forces, the Coast and Geodetic Survey, and the Public Health Service" in view of the definition of "uniformed services" in section 2101.

The definition of "armed forces" in former section 2281(4) is omitted as unnecessary in view of the definition of "armed forces" in section 2101.

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

REFERENCES IN TEXT

Subchapter II of chapter 7 of title 42, referred to in par. (2), is classified to section 401 et seq. of Title 42, The Public Health and Welfare.

Sections 228b, 228c(e), 228c-1, and 228e of title 45, referred to in par. (2), are references to sections 2, 3(e), 4, and 5 of the Railroad Retirement Act of 1937. That Act was amended in its entirety and completely revised by Pub. L. 93-445, Oct. 16, 1974, 88 Stat. 1305. The Act, as thus amended and revised, was redesignated the Railroad Retirement Act of 1974, and is classified to subchapter IV (section 231 et seq.) of chapter 9 of Title 45, Railroads.

Section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504), referred to in text, is covered by section 1438 of Title 10, Armed Forces.

AMENDMENTS

1991—Pars. (2)(A), (3)(A). Pub. L. 102-54 substituted "Department of Veterans Affairs" for "Veterans' Administration".

§ 8312. Conviction of certain offenses

(a) An individual, or his survivor or beneficiary, may not be paid annuity or retired pay on the basis of the service of the individual which is creditable toward the annuity or retired pay, subject to the exceptions in section 8311(2) and (3) of this title, if the individual—

(1) was convicted, before, on, or after September 1, 1954, of an offense named by subsection (b) of this section, to the extent provided by that subsection; or

(2) was convicted, before, on, or after September 26, 1961, of an offense named by subsection (c) of this section, to the extent provided by that subsection.

The prohibition on payment of annuity or retired pay applies—

(A) with respect to the offenses named by subsection (b) of this section, to the period after the date of the conviction or after September 1, 1954, whichever is later; and

(B) with respect to the offenses named by subsection (c) of this section, to the period after the date of conviction or after September 26, 1961, whichever is later.

(b) The following are the offenses to which subsection (a) of this section applies if the individual was convicted before, on, or after September 1, 1954:

(1) An offense within the purview of—

(A) section 792 (harboring or concealing persons), 793 (gathering, transmitting, or losing defense information), 794 (gathering or delivering defense information to aid foreign government), or 798 (disclosure of classified information), of chapter 37 (relating to espionage and censorship) of title 18;

(B) chapter 105 (relating to sabotage) of title 18;

(C) section 2381 (treason), 2382 (misprision of treason), 2383 (rebellion or insurrection), 2384 (seditious conspiracy), 2385 (advocating overthrow of government), 2387 (activities affecting armed forces generally), 2388 (activities affecting armed forces during war), 2389 (recruiting for service against United States), or 2390 (enlistment to serve against United States), of chapter 115 (relating to treason, sedition, and subversive activities) of title 18;

(D) section 10(b)(2), (3), or (4) of the Atomic Energy Act of 1946 (60 Stat. 766, 767), as in effect before August 30, 1954;

(E) section 16(a) or (b) of the Atomic Energy Act of 1946 (60 Stat. 773), as in effect before August 30, 1954, insofar as the offense is committed with intent to injure the United States or with intent to secure an advantage to a foreign nation; or

(F) an earlier statute on which a statute named by subparagraph (A), (B), or (C) of this paragraph (1) is based.

(2) An offense within the purview of—

(A) article 104 (aiding the enemy), article 106 (spies), or article 106a (espionage) of the Uniform Code of Military Justice (chapter 47 of title 10) or an earlier article on which article 104 or article 106, as the case may be, is based; or

(B) a current article of the Uniform Code of Military Justice (or an earlier article on which the current article is based) not named by subparagraph (A) of this paragraph (2) on the basis of charges and specifications describing a violation of a statute named by paragraph (1), (3), or (4) of this subsection, if the executed sentence includes death, dishonorable discharge, or dismissal from the service, or if the defendant dies before execution of that sentence as finally approved.

(3) Perjury committed under the statutes of the United States or the District of Columbia—

(A) in falsely denying the commission of an act which constitutes an offense within the purview of—

(i) a statute named by paragraph (1) of this subsection; or

(ii) an article or statute named by paragraph (2) of this subsection insofar as the offense is within the purview of an article or statute named by paragraph (1) or (2) (A) of this subsection;

(B) in falsely testifying before a Federal grand jury, court of the United States, or court-martial with respect to his service as an employee in connection with a matter involving or relating to an interference with or endangerment of, or involving or relating to a plan or attempt to interfere with or endanger, the national security or defense of the United States; or

(C) in falsely testifying before a congressional committee in connection with a matter under inquiry before the congressional committee involving or relating to an interference with or endangerment of, or involving or relating to a plan or attempt to interfere with or endanger, the national security or defense of the United States.

(4) Subornation of perjury committed in connection with the false denial or false testimony of another individual as specified by paragraph (3) of this subsection.

(c) The following are the offenses to which subsection (a) of this section applies if the individual was convicted before, on, or after September 26, 1961:

(1) An offense within the purview of—

(A) section 2272 (violation of specific sections) or 2273 (violation of sections generally of chapter 23 of title 42) of title 42 insofar as the offense is committed with intent to injure the United States or with intent to secure an advantage to a foreign nation;

(B) section 2274 (communication of restricted data), 2275 (receipt of restricted data), or 2276 (tampering with restricted data) of title 42; or

(C) section 783 (conspiracy and communication or receipt of classified information) of title 50 or section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to intelligence identities).

(2) An offense within the purview of a current article of the Uniform Code of Military Justice (chapter 47 of title 10) or an earlier ar-

ticle on which the current article is based, as the case may be, on the basis of charges and specifications describing a violation of a statute named by paragraph (1), (3), or (4) of this subsection, if the executed sentence includes death, dishonorable discharge, or dismissal from the service, or if the defendant dies before execution of that sentence as finally approved.

(3) Perjury committed under the statutes of the United States or the District of Columbia in falsely denying the commission of an act which constitutes an offense within the purview of a statute named by paragraph (1) of this subsection.

(4) Subornation of perjury committed in connection with the false denial of another individual as specified by paragraph (3) of this subsection.

(d)(1) For purposes of subsections (b)(1) and (c)(1), an offense within the meaning of such subsections is established if the Attorney General of the United States certifies to the agency administering the annuity or retired pay concerned—

(A) that an individual subject to this chapter has been convicted by an impartial court of appropriate jurisdiction within a foreign country in circumstances in which the conduct violates the provisions of law enumerated in subsections (b)(1) and (c)(1), or would violate such provisions had such conduct taken place within the United States, and that such conviction is not being appealed or that final action has been taken on such appeal;

(B) that such conviction was obtained in accordance with procedures that provided the defendant due process rights comparable to such rights provided by the United States Constitution, and such conviction was based upon evidence which would have been admissible in the courts of the United States; and

(C) that such conviction occurred after the date of enactment of this subsection.

(2) Any certification made pursuant to this subsection shall be subject to review by the United States Court of Claims based upon the application of the individual concerned, or his or her attorney, alleging that any of the conditions set forth in subparagraphs¹ (A), (B), or (C) of paragraph (1), as certified by the Attorney General, have not been satisfied in his or her particular circumstances. Should the court determine that any of these conditions has not been satisfied in such case, the court shall order any annuity or retirement benefit to which the person concerned is entitled to be restored and shall order that any payments which may have been previously denied or withheld to be paid by the department or agency concerned.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 559; Pub. L. 92-128, §2(b), Sept. 25, 1971, 85 Stat. 348; Pub. L. 99-569, title VI, §603, Oct. 27, 1986, 100 Stat. 3204; Pub. L. 103-337, div. A, title VI, §639(a), Oct. 5, 1994, 108 Stat. 2791; Pub. L. 103-359, title VIII, §805, Oct. 14, 1994, 108 Stat. 3441.)

¹ So in original. Probably should be "subparagraph".

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2282.	Sept. 26, 1961, Pub. L. 87-299, §1 "Sec. 1", 75 Stat. 640.

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

REFERENCES IN TEXT

Pars. (2), (3) and (4) of subsec. (b) of section 10 of the Atomic Energy Act of 1946 (60 Stat. 766, 767), as in effect before August 30, 1954, referred to in subsec. (b)(1)(D), are covered by sections 2274, 2275 and 2276, respectively, of Title 42, The Public Health and Welfare.

Subsecs. (a) and (b) of section 16 of the Atomic Energy Act of 1946 (60 Stat. 773), as in effect before August 30, 1954, referred to in subsec. (b)(1)(E), are covered by sections 2272 and 2273, respectively, of Title 42.

Articles 104, 106, and 106a of the Uniform Code of Military Justice, referred to in subsec. (b)(2)(A), are sections 904, 906, and 906a, respectively, of Title 10, Armed Forces. The Uniform Code of Military Justice, in its entirety, is set out in section 801 et seq. of Title 10.

The date of enactment of this subsection, referred to in subsec. (d)(1)(C), is the date of enactment of Pub. L. 103-359, which was approved Oct. 14, 1994.

AMENDMENTS

1994—Subsec. (b)(2)(A). Pub. L. 103-337 substituted “, article 106 (spies), or article 106a (espionage)” for “or article 106 (spies)”.

Subsec. (d). Pub. L. 103-359 added subsec. (d).

1986—Subsec. (c)(1)(C). Pub. L. 99-569 inserted provisions relating to section 601 of the National Security Act of 1947.

1971—Subsec. (c)(1)(C). Pub. L. 92-128 struck out “, 822 (conspiracy or evasion of apprehension during internal security emergency), or 823 (aiding evasion or apprehension during internal security emergency)” after “classified information”.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 639(b) of Pub. L. 103-337 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 5, 1994] and shall apply to persons convicted of espionage under section 906a of title 10, United States Code (article 106a of the Uniform Code of Military Justice), on or after the date of the enactment of this Act.”

§ 8313. Absence from the United States to avoid prosecution

(a) An individual, or his survivor or beneficiary, may not be paid annuity or retired pay on the basis of the service of the individual which is creditable toward the annuity or retired pay, subject to the exceptions in section 8311(2) and (3) of this title, if the individual—

(1) is under indictment, or has outstanding against him charges preferred under the Uniform Code of Military Justice—

(A) after July 31, 1956, for an offense named by section 8312(b) of this title; or

(B) after September 26, 1961, for an offense named by section 8312(c) of this title; and

(2) willfully remains outside the United States, or its territories and possessions including the Commonwealth of Puerto Rico, for more than 1 year with knowledge of the indictment or charges, as the case may be.

(b) The prohibition on payment of annuity or retired pay under subsection (a) of this section

applies to the period after the end of the 1-year period and continues until—

(1) a nolle prosequi to the entire indictment is entered on the record or the charges are dismissed by competent authority;

(2) the individual returns and thereafter the indictment or charges is or are dismissed; or

(3) after trial by court or court-martial, the accused is found not guilty of the offense or offenses.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 561.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2283a.	Sept. 26, 1961, Pub. L. 87-299, §1, “Sec. 3”, 75 Stat. 643.

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

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in text, is classified to chapter 47 (§801 et seq.) of Title 10, Armed Forces.

SUSPENSION OF PAYMENT OF RETIRED PAY OF MEMBERS WHO ARE ABSENT FROM UNITED STATES TO AVOID PROSECUTION

Pub. L. 104-201, div. A, title VI, §633, Sept. 23, 1996, 110 Stat. 2550, provided that:

“(a) DEVELOPMENT OF PROCEDURES FOR SUSPENSION.—The Secretary of Defense shall develop uniform procedures under which the Secretary of a military department may suspend the payment of the retired pay of a member or former member of the Armed Forces during periods in which the member willfully remains outside the United States to avoid criminal prosecution or civil liability. The procedures shall address the types of criminal offenses and civil proceedings for which the procedures may be used, including the offenses specified in section 8312 of title 5, United States Code, and the manner by which a member, upon the return of the member to the United States, may obtain retired pay withheld during the member’s absence.

“(b) REPORT TO CONGRESS.—The Secretary of Defense shall submit to Congress a report describing the procedures developed under subsection (a). The report shall include recommendations regarding changes to existing provisions of law (including section 8313 of title 5, United States Code) that the Secretary determines are necessary to fully implement the procedures.

“(c) RETIRED PAY DEFINED.—For purposes of this section, the term ‘retired pay’ means retired pay, retirement pay, retainer pay, or equivalent pay, payable under a statute to a member or former member of a uniformed service.

“(d) EFFECTIVE DATE.—The uniform procedures required by subsection (a) shall be developed not later than 30 days after the date of the enactment of this Act [Sept. 23, 1996].”

§ 8314. Refusal to testify

(a) An individual, or his survivor or beneficiary, may not be paid annuity or retired pay on the basis of the service of the individual which is creditable toward the annuity or retired pay, subject to the exceptions in section 8311(2) and (3) of this title, if the individual, before, on, or after September 1, 1954, refused or refuses, or knowingly and willfully failed or fails, to appear, testify, or produce a book, paper, record, or other document, relating to his service as an employee, before a Federal grand jury,

court of the United States, court-martial, or congressional committee, in a proceeding concerning—

(1) his past or present relationship with a foreign government; or

(2) a matter involving or relating to an interference with or endangerment of, or involving or relating to a plan or attempt to interfere with or endanger, the national security or defense of the United States.

(b) The prohibition on payment of annuity or retired pay under subsection (a) of this section applies to the period after the date of the failure or refusal of the individual, or after September 1, 1954, whichever is later.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 561.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2283(a).	Sept. 26, 1961, Pub. L. 87-299, § 1 "Sec. 2(a)", 75 Stat. 642.

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

§ 8315. Falsifying employment applications

(a) An individual, or his survivor or beneficiary, may not be paid annuity or retired pay on the basis of the service of the individual which is creditable toward the annuity or retired pay, subject to the exceptions in section 8311(2) and (3) of this title, if the individual knowingly and willfully made or makes a false, fictitious, or fraudulent statement or representation, or knowingly and willfully concealed or conceals a material fact—

(1) before, on, or after September 1, 1954, concerning his—

(A) past or present membership in, affiliation or association with, or support of the Communist Party, or a chapter, branch, or subdivision thereof, in or outside the United States, or other organization, party, or group advocating—

(i) the overthrow, by force, violence, or other unconstitutional means, of the Government of the United States;

(ii) the establishment, by force, violence, or other unconstitutional means, of a Communist totalitarian dictatorship in the United States; or

(iii) the right to strike against the United States;

(B) conviction of an offense named by subsection (b) of section 8312 of this title, to the extent provided by that subsection; or

(C) failure or refusal to appear, testify, or produce a book, paper, record, or other document, as specified by section 8314 of this title; or

(2) before, on, or after September 26, 1961, concerning his conviction of an offense named by subsection (c) of section 8312 of this title, to the extent provided by that subsection;

in a document executed by the individual in connection with his employment in, or application

for, a civilian or military office or position in or under the legislative, executive, or judicial branch of the Government of the United States or the government of the District of Columbia.

(b) The prohibition on the payment of annuity or retired pay applies—

(1) with respect to matters specified by subsection (a)(1) of this section, to the period after the statement, representation, or concealment of fact is made or occurs, or after September 1, 1954, whichever is later; and

(2) with respect to matters specified by subsection (a)(2) of this section, to the period after the statement, representation, or concealment of fact is made or occurs, or after September 26, 1961, whichever is later.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 562.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2283(b), (c).	Sept. 26, 1961, Pub. L. 87-299, § 1 "Sec. 2(b), (c)", 75 Stat. 642.

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

§ 8316. Refund of contributions and deposits

(a) When payment of annuity or retired pay is denied under this subchapter because an individual was convicted of an offense named by section 8312 of this title, to the extent provided by that section, or violated section 8314 or 8315 of this title—

(1) the amount, except employment taxes, contributed by the individual toward the annuity, less the amount previously refunded or paid as annuity benefits; and

(2) deposits made under section 1438 of title 10 or section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504) to provide the eligible beneficiary with annuity for any period, less the amount previously paid as retired pay benefits;

shall be refunded, on appropriate application therefor—

(A) to the individual;

(B) if the individual is dead, to the beneficiary designated to receive refunds by or under the statute, regulation, or agreement under which the annuity, the benefits of which are denied under this subchapter, would have been payable; or

(C) if a beneficiary is not designated, in the order of precedence prescribed by section 8342(c) of this title or section 2771 of title 10, as the case may be.

(b) A refund under subsection (a) of this section shall be made with interest at the rate and for the period provided under the statute, regulation, or agreement under which the annuity would have been payable. However, interest may not be computed—

(1) if the individual was convicted of an offense named by section 8312(b) of this title, or violated section 8314 or 8315(a)(1) of this title, for the period after the conviction or commission of the violation, or after September 1, 1954, whichever is later; or

(2) if the individual was convicted of an offense named by section 8312(c) of this title, or violated section 8315(a)(2) of this title, for the period after the conviction or commission of the violation, or after September 26, 1961, whichever is later.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 563.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 2284(a), (b). Row 2: 5 U.S.C. 2284a(b).

This section is reorganized for clarity and conciseness.

The words "and section 3282 of Title 18" in former section 2284(a) are 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.

REFERENCES IN TEXT

Section 5 of the Uniform Services Contingency Option Act of 1953 (67 Stat. 504), referred to in text, is covered by section 1438 of Title 10, Armed Forces.

§ 8317. Repayment of annuity or retired pay properly paid; waiver

(a) An individual, or his survivor or beneficiary, to whom payment of annuity is denied under this subchapter is not thereafter required to repay that part of the annuity otherwise properly paid to the individual, or to his survivor or beneficiary on the basis of the service of the individual, which is in excess of the aggregate amount of the contributions of the individual toward the annuity, with applicable interest.

(b) An individual, including an eligible beneficiary under chapter 73 of title 10 or section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504), to whom payment of retired pay is denied under this subchapter is not thereafter required to repay retired pay otherwise properly paid to the individual or beneficiary which is paid in violation of this subchapter.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 563.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 2284(c), (d). Row 2: 5 U.S.C. 2284a(a).

The words "and section 3282 of Title 18" are 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.

REFERENCES IN TEXT

Section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504), referred to in text, is covered by section 1438 of Table 10, Armed Forces.

§ 8318. Restoration of annuity or retired pay

(a) If an individual who was convicted, before, on, or after September 1, 1954, of—

(1) an offense named by section 8312 of this title; or

(2) an offense constituting a violation of section 8314 or 8315 of this title;

is pardoned by the President, the right of the individual and his survivor or beneficiary to receive annuity or retired pay previously denied under this subchapter is restored as of the date of the pardon.

(b) The President may restore, effective as of the date he prescribes, the right to receive annuity or retired pay which is denied, before, on, or after September 1, 1954, under section 8314 or 8315 of this title, to the individual and to his survivor or beneficiary.

(c) Payment of annuity or retired pay which results from pardon or restoration by the President under subsection (a) or (b) of this section may not be made for a period before—

(1) the date of pardon referred to by subsection (a) of this section; or

(2) the effective date of restoration referred to by subsection (b) of this section.

(d) Credit for a period of service covered by a refund under section 8316 of this title is allowed only after the amount refunded has been redeposited.

(e) The spouse of an individual whose annuity or retired pay is forfeited under section 8312 or 8313 after the date of enactment of this subsection shall be eligible for spousal pension benefits if the Attorney General of the United States determines that the spouse fully cooperated with Federal authorities in the conduct of a criminal investigation and subsequent prosecution of the individual which resulted in such forfeiture.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 563; Pub. L. 104-93, title III, § 305, Jan. 6, 1996, 109 Stat. 965.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 2285(a), (b).

The section is reorganized for clarity and conciseness.

The words "and section 3282 of Title 18" are 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.

REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsec. (e), is the date of enactment of Pub. L. 104-93, which was approved Jan. 6, 1996.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104-93 added subsec. (e).

§ 8319. Removal of members of the uniformed services from rolls; restoration; reappointment

(a) The President may drop from the rolls a member of a uniformed service who is deprived of retired pay under this subchapter.

(b) The President may restore—

(1) military status to an individual dropped from the rolls to whom retired pay is restored under this subchapter or under section 2 of the Act of September 26, 1961 (75 Stat. 648); and

(2) all rights and privileges to the individual and his beneficiaries of which he or they were deprived because his name was dropped from the rolls.

(c) If the individual restored was a commissioned officer, the President alone may reappoint him to the grade and position on the retired list held when his name was dropped from the rolls.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 564.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2287.	Sept. 26, 1961, Pub. L. 87-299, §1 "Sec. 8", 75 Stat. 646.

The words "and section 3282 of Title 18" are 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.

REFERENCES IN TEXT

Section 2 of the Act of September 26, 1961 (75 Stat. 648), referred to in subsec. (b)(1), is set out as a note under section 8322 of this title.

§ 8320. Offense or violation committed in compliance with orders

When it is established by satisfactory evidence that an individual—

(1) was convicted of an offense named by section 8312 of this title; or

(2) violated section 8314 or 8315 of this title; as a result of proper compliance with orders issued, in a confidential relationship, by an agency or other authority of the Government of the United States or the government of the District of Columbia, the right to receive annuity or retired pay may not be denied.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 564.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2285(c).	Sept. 26, 1961, Pub. L. 87-299, §1 "Sec. 6(c)", 75 Stat. 645.

The reference to conviction of an offense which constitutes a violation of former section 2283 (which is carried into this title as sections 8314 and 8315) is omitted as being covered by the words "violated section 8314 or 8315 of this title" which are added on authority of the words "conviction or violation" in former section 2285(c).

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

§ 8321. Liability of accountable employees

An accountable employee may not be held responsible for a payment made in violation of this subchapter when the payment made is in due course and without fraud, collusion, or gross negligence.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 564.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2286.	Sept. 26, 1961, Pub. L. 87-299, §1 "Sec. 7", 75 Stat. 645.

The words "and section 3282 of Title 18" are 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.

§ 8322. Effect on other statutes

This subchapter does not restrict authority under a statute, other than this subchapter, to deny or withhold benefits authorized by statute.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 564.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2288.	Sept. 26, 1961, Pub. L. 87-299, §1 "Sec. 9", 75 Stat. 646.

The words "and section 3282 of Title 18" are 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.

RETROACTIVE RESTORATION OF ANNUITY AND RETIRED PAY; REDEPOSITS OF CONTRIBUTIONS AND OFFSETS

Section 2 of Pub. L. 87-299, Sept. 26, 1961, 75 Stat. 648, provided that:

"(a) Subject to subsection (b) of this section, any person, including his survivor or beneficiary, to whom annuity or retired pay is not payable under the Act of September 1, 1954 [this subchapter], as in effect at any time prior to the date of enactment of this Act [Sept. 26, 1961], by reason of any conviction of an offense, any commission of a violation, any refusal to answer, or any absence under indictment, or under charges, for any offense, shall be restored the right to receive such annuity or retired pay for any and all periods for which he would have had the right to receive such annuity or retired pay if the Act of September 1, 1954 [this subchapter], had not been enacted, unless, under the amendment made by the first section of this Act [amending former chapter 31 of this title, now this subchapter, and section 3282 of Title 18, Crimes and Criminal Procedure], such annuity or retired pay remains nonpayable to such person, including his survivor or beneficiary.

"(b) No annuity accrued or accruing, prior to, on, or after the date of enactment of this Act [Sept. 26, 1961], on account of the restoration, by reason of the amendment made by the first section of this Act [amending former chapter 31 of this title, now this subchapter, and section 3282 of Title 18] and by reason of subsection (a) of this section, of the right to receive such annuity, shall be paid until any sum refunded under section 3 of the Act of September 1, 1954 [former section 2284 of this title, now section 8316 of this title, prior to amendment Sept. 26, 1961], as in effect prior to the date of enactment of such amendment [Sept. 26, 1961], is deposited or is collected by offset against the annuity."

SUBCHAPTER III—CIVIL SERVICE RETIREMENT

§ 8331. Definitions

For the purpose of this subchapter—

(1) "employee" means—

(A) an employee as defined by section 2105 of this title;

(B) the Architect of the Capitol, an employee of the Architect of the Capitol, and an employee of the Botanic Garden;

(C) a Congressional employee as defined by section 2107 of this title (other than the Architect of the Capitol, an employee of the Architect of the Capitol, and an employee of the Botanic Garden), after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter;

(D) a temporary Congressional employee appointed at an annual rate of pay, after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter;

(E) a United States Commissioner whose total pay for services performed as Commissioner is not less than \$3,000 in each of the last 3 consecutive calendar years ending after December 31, 1954;

(F) an individual employed by a county committee established under section 590h(b) of title 16;

(G) an individual first employed by the government of the District of Columbia before October 1, 1987;

(H) an individual employed by Gallaudet College;

(I) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838);

(J) an alien (i) who was previously employed by the Government, (ii) who is employed full time by a foreign government for the purpose of protecting or furthering the interests of the United States during an interruption of diplomatic or consular relations, and (iii) for whose services reimbursement is made to the foreign government by the United States;

(K) an individual appointed to a position on the office staff of a former President, or a former Vice President under section 4 of the Presidential Transition Act of 1963, as amended (78 Stat. 153), who immediately before the date of such appointment was an employee as defined under any other subparagraph of this paragraph; and

(L) an employee described in section 2105(c) who has made an election under section 8347(q)(1) to remain covered under this subchapter;

but does not include—

(i) a justice or judge of the United States as defined by section 451 of title 28;

(ii) an employee subject to another retirement system for Government employees (besides any employee excluded by clause (x), but including any employee who has made an election under section 8347(q)(2) to remain covered by a retirement system established for employees described in section 2105(c));

(iii) an employee or group of employees in or under an Executive agency excluded by the Office of Personnel Management under section 8347(g) of this title;

(iv) an individual or group of individuals employed by the government of the District of Columbia excluded by the Office under section 8347(h) of this title;

(v) an employee of the Administrative Office of the United States Courts, the Federal Judicial Center, or a court named by section 610 of title 28, excluded by the Director of the Administrative Office under section 8347(o) of this title;

(vi) a construction employee or other temporary, part-time, or intermittent employee of the Tennessee Valley Authority;

(vii) an employee under the Office of the Architect of the Capitol excluded by the Architect of the Capitol under section 8347(i) of this title;

(viii) an employee under the Library of Congress excluded by the Librarian of Congress under section 8347(j) of this title;

(ix) a student-employee as defined by section 5351 of this title;

(x) an employee subject to the Federal Employees' Retirement System;

(xi) an employee under the Botanic Garden excluded by the Director or Acting Director of the Botanic Garden under section 8347(l) of this title; or

(xii) a member of the Foreign Service (as described in section 103(6) of the Foreign Service Act of 1980), appointed after December 31, 1987.

Notwithstanding this paragraph, the employment of a teacher in the recess period between two school years in a position other than a teaching position in which he served immediately before the recess period does not qualify the individual as an employee for the purpose of this subchapter. For the purpose of the preceding sentence, "teacher" and "teaching position" have the meanings given them by section 901 of title 20;

(2) "Member" means a Member of Congress as defined by section 2106 of this title, after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter, but does not include any such Member of Congress who is subject to the Federal Employees' Retirement System or who makes an election under section 8401(20) of this title not to be subject to such System;

(3) "basic pay" includes—

(A) the amount a Member received from April 1, 1954, to February 28, 1955, as expense allowance under section 601(b) of the Legislative Reorganization Act of 1946 (60 Stat. 850), as amended; and that amount from January 3, 1953, to March 31, 1954, if deposit is made therefor as provided by section 8334 of this title;

(B) additional pay provided by—

(i) subsection (a) of section 60e-7 of title 2 and the provisions of law referred to by that subsection; and

(ii) sections 60e-8, 60e-9, 60e-10, 60e-11, 60e-12, 60e-13, and 60e-14 of title 2;

(C) premium pay under section 5545(c)(1) of this title;

(D) with respect to a law enforcement officer, premium pay under section 5545(c)(2) of this title;

(E) availability pay—

(i) received by a criminal investigator under section 5545a of this title; or

(ii) received after September 11, 2001, by a Federal air marshal of the Department of Transportation, subject to all restrictions and earning limitations imposed on criminal investigators under section 5545a;

(F) pay as provided in section 5545b(b)(2) and (c)(2);

(G) with respect to a customs officer (referred to in subsection (e)(1) of section 5 of the Act of February 13, 1911), compensation for overtime inspectional services provided for under subsection (a) of such section 5, but not to exceed 50 percent of any statutory maximum in overtime pay for customs officers which is in effect for the year involved; and

(H) any amount received under section 5948 (relating to physicians comparability allowances);

but does not include bonuses, allowances, overtime pay, military pay, pay given in addition to the base pay of the position as fixed by law or regulation except as provided by subparagraphs (B) through (H) of this paragraph¹ retroactive pay under section 5344 of this title in the case of a retired or deceased employee, uniform allowances under section 5901 of this title, or lump-sum leave payments under subchapter VI of chapter 55 of this title. For an employee paid on a fee basis, the maximum amount of basic pay which may be used is \$10,000;

(4) “average pay” means the largest annual rate resulting from averaging an employee’s or Member’s rates of basic pay in effect over any 3 consecutive years of creditable service or, in the case of an annuity under subsection (d) or (e)(1) of section 8341 of this title based on service of less than 3 years, over the total service, with each rate weighted by the time it was in effect;

(5) “Fund” means the Civil Service Retirement and Disability Fund;

[(6) Repealed. Pub. L. 96-499, title IV, § 403(b), Dec. 5, 1980, 94 Stat. 2606;]

(7) “Government” means the Government of the United States, the government of the District of Columbia, Gallaudet University, and, in the case of an employee described in paragraph (1)(L), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c);

(8) “lump-sum credit” means the unrefunded amount consisting of—

(A) retirement deductions made from the basic pay of an employee or Member;

(B) amounts deposited by an employee or Member covering earlier service, including any amounts deposited under section 8334(j) of this title; and

(C) interest on the deductions and deposits at 4 percent a year to December 31, 1947, and 3 percent a year thereafter compounded annually to December 31, 1956, or, in the case of an employee or Member separated or trans-

ferred to a position in which he does not continue subject to this subchapter before he has completed 5 years of civilian service, to the date of the separation or transfer;

but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for the fractional part of a month in the total service;

(9) “annuitant” means a former employee or Member who, on the basis of his service, meets all requirements of this subchapter for title to annuity and files claim therefor;

(10) “survivor” means an individual entitled to annuity under this subchapter based on the service of a deceased employee, Member, or annuitant;

(11) “survivor annuitant” means a survivor who files claim for annuity;

(12) “service” means employment creditable under section 8332 of this title;

(13) “military service” means honorable active service—

(A) in the armed forces;

(B) in the Regular or Reserve Corps of the Public Health Service after June 30, 1960; or

(C) as a commissioned officer of the Environmental Science Services Administration after June 30, 1961;

and includes service as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, but does not include service in the National Guard except when ordered to active duty in the service of the United States or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this subchapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990;

(14) “Member service” means service as a Member and includes the period from the date of the beginning of the term for which elected or appointed to the date on which he takes office as a Member;

(15) “price index” means the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics;

(16) “base month” means the month for which the price index showed a percent rise forming the basis for a cost-of-living annuity increase;

(17) “normal-cost percentage” means the entry-age normal cost computed by the Office of Personnel Management in accordance with generally accepted actuarial practice and standards (using dynamic assumptions) and expressed as a level percentage of aggregate basic pay;

(18) “Fund balance” means the current net assets of the Fund available for payment of benefits, as determined by the Office in accordance with appropriate accounting standards, but does not include any amount attributable to—

(A) the Federal Employees’ Retirement System; or

¹ So in original. Probably should be followed by a comma.

(B) contributions made under the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 by or on behalf of any individual who became subject to the Federal Employees' Retirement System;

(19) "unfunded liability" means the estimated excess of the present value of all benefits payable from the Fund to employees and Members, and former employees and Members, subject to this subchapter, and to their survivors, over the sum of—

(A) the present value of deductions to be withheld from the future basic pay of employees and Members currently subject to this subchapter and of future agency contributions to be made in their behalf; plus

(B) the present value of Government payments to the Fund under section 8348(f) of this title; plus

(C) the Fund balance as of the date the unfunded liability is determined;

(20) "law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purpose of this paragraph, "detention" includes the duties of—

(A) employees of the Bureau of Prisons and Federal Prison Industries, Incorporated;

(B) employees of the Public Health Service assigned to the field service of the Bureau of Prisons or of the Federal Prison Industries, Incorporated;

(C) employees in the field service at Army or Navy disciplinary barracks or at confinement and rehabilitation facilities operated by any of the armed forces; and

(D) employees of the Department of Corrections of the District of Columbia, its industries and utilities;

whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniformed Code of Military Justice (chapter 47 of title 10) require frequent (as determined by the appropriate administrative authority with the concurrence of the Office) direct contact with these individuals in their detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation;

(21) "firefighter" means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position;

(22) "bankruptcy judge" means an individual—

(A) who is appointed under section 34 of the Bankruptcy Act (11 U.S.C. 62) or under section 404(d) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549), and—

(i) who is serving as a United States bankruptcy judge on March 31, 1984; or

(ii) whose service as a United States bankruptcy judge at any time in the period beginning on October 1, 1979, and ending on July 10, 1984, is terminated by reason of death or disability; or

(B) who is appointed as a bankruptcy judge under section 152 of title 28;

(23) "former spouse" means a former spouse of an individual—

(A) if such individual performed at least 18 months of civilian service covered under this subchapter as an employee or Member, and

(B) if the former spouse was married to such individual for at least 9 months;

(24) "Indian court" means an Indian court as defined by section 201(3) of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes", approved April 11, 1968 (25 U.S.C. 1301(3); 82 Stat. 77);

(25) "magistrate judge" or "United States magistrate judge" means an individual appointed under section 631 of title 28;

(26) "Court of Federal Claims judge" means a judge of the United States Court of Federal Claims who is appointed under chapter 7 of title 28 or who has served under section 167 of the Federal Courts Improvement Act of 1982;

(27) "Nuclear materials courier"—

(A) means an employee of the Department of Energy, the duties of whose position are primarily to transport, and provide armed escort and protection during transit of, nuclear weapons, nuclear weapon components, strategic quantities of special nuclear materials or other materials related to national security; and

(B) includes an employee who is transferred directly to a supervisory or administrative position within the same Department of Energy organization, after performing duties referred to in subparagraph (A) for at least 3 years;

(28) "Government physician" has the meaning given that term under section 5948;

(29) "dynamic assumptions" means economic assumptions that are used in determining actuarial costs and liabilities of a retirement system and in anticipating the effects of long-term future—

(A) investment yields;

(B) increases in rates of basic pay; and

(C) rates of price inflation;

(30) the term "air traffic controller" or "controller" means—

(A) a controller within the meaning of section 2109(1); and

(B) a civilian employee of the Department of Transportation or the Department of Defense who is the immediate supervisor of a person described in section 2109(1)(B); and

(31) "customs and border protection officer" means an employee in the Department of Homeland Security (A) who holds a position within the GS-1895 job series (determined applying the criteria in effect as of September 1,

2007) or any successor position, and (B) whose duties include activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry, including any such employee who is transferred directly to a supervisory or administrative position in the Department of Homeland Security after performing such duties (as described in subparagraph (B)) in 1 or more positions (as described in subparagraph (A)) for at least 3 years.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 564; Pub. L. 89-737, § 1(2), Nov. 2, 1966, 80 Stat. 1164; Pub. L. 90-83, § 1(2), Sept. 11, 1967, 81 Stat. 213; Pub. L. 90-623, § 1(21), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 91-93, title I, § 101, title II, § 201(a), Oct. 20, 1969, 83 Stat. 136, 138; Pub. L. 92-352, title I, § 105(a), July 13, 1972, 86 Stat. 490; Pub. L. 93-350, § 2, July 12, 1974, 88 Stat. 355; Pub. L. 94-183, § 2(38), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-598, title III, § 338(e), Nov. 6, 1978, 92 Stat. 2681; Pub. L. 96-54, § 2(a)(47), Aug. 14, 1979, 93 Stat. 384; Pub. L. 96-499, title IV, § 403(b), Dec. 5, 1980, 94 Stat. 2606; Pub. L. 97-253, title III, § 306(a), Sept. 8, 1982, 96 Stat. 795; Pub. L. 98-249, § 3(b), Mar. 31, 1984, 98 Stat. 117; Pub. L. 98-271, § 3(b), Apr. 30, 1984, 98 Stat. 163; Pub. L. 98-299, § 3(b), May 25, 1984, 98 Stat. 214; Pub. L. 98-325, § 3(b), June 20, 1984, 98 Stat. 268; Pub. L. 98-353, title I, §§ 116(a), 121(g), July 10, 1984, 98 Stat. 343, 346; Pub. L. 98-531, § 2(a), Oct. 19, 1984, 98 Stat. 2704; Pub. L. 98-615, § 2(1), Nov. 8, 1984, 98 Stat. 3195; Pub. L. 99-335, title II, § 202, 207(f), June 6, 1986, 100 Stat. 591, 595; Pub. L. 100-53, § 2(a), June 18, 1987, 101 Stat. 367; Pub. L. 100-238, title I, §§ 112, 123, Jan. 8, 1988, 101 Stat. 1750, 1754; Pub. L. 100-679, § 13(a)(1), Nov. 17, 1988, 102 Stat. 4071; Pub. L. 101-474, § 5(m), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101-508, title VII, § 7202(j)(1), Nov. 5, 1990, 104 Stat. 1388-337; Pub. L. 101-650, title III, § 306(c)(1), 321, Dec. 1, 1990, 104 Stat. 5110, 5117; Pub. L. 102-378, § 2(57), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 102-572, title IX, § 902(b), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103-66, title XIII, § 13812(a), Aug. 10, 1993, 107 Stat. 670; Pub. L. 103-353, § 5(a), Oct. 13, 1994, 108 Stat. 3173; Pub. L. 105-261, div. C, title XXXI, § 3154(b), Oct. 17, 1998, 112 Stat. 2254; Pub. L. 105-277, div. A, § 101(h) [title VI, § 628(d)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-521; Pub. L. 106-571, § 3(a), (b)(2), Dec. 28, 2000, 114 Stat. 3054, 3055; Pub. L. 107-71, title I, § 105(c), Nov. 19, 2001, 115 Stat. 607; Pub. L. 108-18, § 2(a), Apr. 23, 2003, 117 Stat. 624; Pub. L. 108-176, title II, § 226(a)(1), Dec. 12, 2003, 117 Stat. 2529; Pub. L. 110-161, div. E, title V, § 535(a)(1), Dec. 26, 2007, 121 Stat. 2075; Pub. L. 110-181, div. A, title XI, § 1115(a), Jan. 28, 2008, 122 Stat. 361.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2251 (less (h)-(j)).	July 31, 1956, ch. 804, § 401 "Sec. 1 (less (h)-(j))", 70 Stat. 743. Apr. 8, 1960, Pub. L. 86-415, § 6(c), 74 Stat. 35. July 7, 1960, Pub. L. 86-604, § 1(a), 74 Stat. 358. Sept. 14, 1961, Pub. L. 87-233, § 2, 75 Stat. 507. Oct. 11, 1962, Pub. L. 87-793, § 1102(a), 76 Stat. 869.

HISTORICAL AND REVISION NOTES—CONTINUED
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2252 (less (e), (f) (words after semicolon), (g) (2d sentence), (h) (words after colon)).	Feb. 7, 1964, Pub. L. 88-267, § 1(a), 78 Stat. 8. July 31, 1956, ch. 804, § 401 "Sec. 2 (less (e), (f) (words after semicolon), (g) (2d sentence))", 70 Stat. 745. July 1, 1960, Pub. L. 86-568, § 115(b)(1) "(h) (less words after colon)", 74 Stat. 302. Feb. 7, 1964, Pub. L. 88-267, § 1(b), (c), 78 Stat. 9.
.....	5 U.S.C. 1054 (1st 27 words). [Uncodified].	Aug. 4, 1947, ch. 452, § 5 (1st 27 words), 61 Stat. 728. Aug. 25, 1958, Pub. L. 85-745, § 1(b) (last sentence, as applicable to the Civil Service Retirement Act), 72 Stat. 838.
.....	5 U.S.C. 2358(c) (as applicable to the Civil Service Retirement Act).	July 17, 1959, Pub. L. 86-91, § 10(c) (as applicable to the Civil Service Retirement Act), 73 Stat. 217.
.....	5 U.S.C. 932c(d).	June 28, 1955, ch. 189, § 4(i), 69 Stat. 178.
.....	5 U.S.C. 932d(d).	June 20, 1958, Pub. L. 85-462, § 4(g), 72 Stat. 208.
.....	5 U.S.C. 932e(f).	July 1, 1960, Pub. L. 86-568, § 117(i), 74 Stat. 304.
.....	5 U.S.C. 932f(e).	Oct. 11, 1962, Pub. L. 87-793, § 1005(h), 76 Stat. 867.
.....	5 U.S.C. 932g(d).	Aug. 14, 1964, Pub. L. 88-426, § 202(d), 78 Stat. 413.
.....	5 U.S.C. 1182(b).	Sept. 2, 1958, Pub. L. 85-872, § 2(b), 72 Stat. 1696.
.....	5 U.S.C. 2132 (as applicable to the Civil Service Retirement Act, as amended).	Sept. 1, 1954, ch. 1208, § 403 (as applicable to the Civil Service Retirement Act, as amended), 68 Stat. 1115.

In paragraph (1), the specific exception of the President, appearing in former section 2252(b), is omitted as unnecessary because he is not included in the definition of "employee".

In paragraph (1)(B), the definition of "Congressional employee" in former section 2251(c) is omitted as unnecessary in view of the definition of the term in section 2107.

In paragraph (1)(E), the words "Notwithstanding any other provision of law or any Executive order" are omitted as unnecessary.

In paragraph (1)(i), the words "justice or" are added on authority of section 371 and 372 of title 28.

Paragraph (1)(iii) and (iv) is based on former section 2252(e), which is carried into section 8347(g) and (h).

Paragraph (1)(vii) and (viii) is based on former section 2252(f), which is carried in part into section 8347(i) and (j).

In paragraph (1), the last sentence is added on authority of former section 2351, which is scheduled for transfer to section 901 of title 20.

In paragraph (3), the words "or lump-sum leave payments under subchapter VI of chapter 55 of this title" are added on authority of former section 61b (6th sentence), which is carried into section 5551.

In paragraph (4)(B), references to sections 60e-7, 60e-8, 60e-9, 60e-10, and 60e-11 of title 2 are substituted for the words "this section", appearing in former sections 932c(d), 932d(d), 932e(f), 932f(e), and 932g(d), to reflect the scheduled transfer of those sections to title 2.

In paragraph (5), the words "the Civil Service Retirement and Disability Fund" are substituted for "the civil service retirement and disability fund created by the Act of May 22, 1920".

In paragraph (7), the words "Government of the United States" are coextensive with and substituted for "the executive, judicial, and legislative branches of the United States Government, including Government-owned or controlled corporation".

In paragraph (13), the words “armed forces” are coextensive with and substituted for “Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States” in view of the definition of “armed forces” in section 2101.

The definition of “Commission” in former section 2251(m) is omitted as unnecessary as the title “Civil Service Commission” is fully set out the first time it is used in each section.

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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8331(1)(B), (C).	5 App.: 2252(c).	Sept. 26, 1966, Pub. L. 89-604, §1(b), 80 Stat. 846.
8331(3)(B) (ii).	5 App.: 932h(c).	Oct. 29, 1965, Pub. L. 89-301, §11(d), 79 Stat. 1120.
	5 App.: 932i(c).	July 18, 1966, Pub. L. 89-504, §302(d), 80 Stat. 295.
8331(13)	[No source].	[No source].
8331(15), (16)	5 App.: 2251(t).	Sept. 27, 1965, Pub. L. 89-205, §1(a), 79 Stat. 840.

In paragraphs (1)(C), (D) and (2), the words “become subject to” are substituted for “come within the purview of” for consistency within the subchapter.

In paragraph (3)(B)(ii), references to sections 60e-12 and 60e-13 of title 2 are substituted for the words “this section” appearing in 5 U.S.C. App. 932h(c) and 932i(c), to reflect the scheduled transfer of those sections to title 2 (See table IV).

In paragraph (8)(C), the words “in which he does not continue subject to” are substituted for “not within the purview of” for consistency within the subchapter and to reflect that it is the individual, rather than the position, that is subject to this subchapter.

The amendment to paragraph (13) reflects Reorganization Plan No. 2 of 1965 (79 Stat. 1318), effective July 13, 1965, which consolidated the Coast and Geodetic Survey and the Weather Bureau to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration.

REFERENCES IN TEXT

Section 1(b) of the act of August 25, 1958 (72 Stat. 838), referred to in par. (1)(I), is set out as a note under section 102 of Title 3, The President.

Section 4 of the Presidential Transition Act of 1963, referred to in par. (1)(K), is section 4 of Pub. L. 88-277, which is set out as a note under section 102 of Title 3.

Section 103(6) of the Foreign Service Act of 1980, referred to in par. (1)(xii), is classified to section 3903(6) of Title 22, Foreign Relations and Intercourse.

Section 601(b) of the Legislative Reorganization Act of 1946 (60 Stat. 850), as amended, referred to in par. (3)(A), was classified to section 31a of Title 2, The Congress, which was repealed by act Mar. 2, 1955, ch. 9, §4(b), 69 Stat. 11.

Sections 60e-7, 60e-8, 60e-9, 60e-10, 60e-11, 60e-12, 60e-13, and 60e-14 of title 2, referred to in par. (3)(B), were omitted from the Code.

Section 5 of the Act of February 13, 1911, referred to in par. (3)(G), is classified to section 267 of Title 19, Customs Duties.

The Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, referred to in par. (18)(B), is Pub. L. 98-168, title II, Nov. 29, 1983, 97 Stat. 1106, as amended, which is set out as a note below.

The Bankruptcy Act, referred to in par. (22)(A), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11, Bankruptcy. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95-598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

Section 404(d) of the Act of November 6, 1978, referred to in par. (22)(A), is section 404(d) of Pub. L. 95-598, title IV, Nov. 6, 1978, 92 Stat. 2684, which was set out in a

note preceding section 151 of Title 28, Judiciary and Judicial Procedure, and was repealed by Pub. L. 98-353, title I, §114, July 10, 1984, 98 Stat. 343.

Section 167 of the Federal Courts Improvement Act of 1982, referred to in par. (26), is section 167 of Pub. L. 97-164, which is set out as a note under section 171 of Title 28.

AMENDMENTS

2008—Par. (13). Pub. L. 110-181, in concluding provisions, substituted “and includes service as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, but” for “but”.

2007—Pars. (29) to (31). Pub. L. 110-161 redesignated par. (29) defining “air traffic controller” or “controller” as (30) and added par. (31).

2003—Par. (17). Pub. L. 108-18, §2(a)(1), substituted “normal-cost percentage” for “normal cost” and inserted “and standards (using dynamic assumptions)” after “practice”.

Par. (18). Pub. L. 108-18, §2(a)(2), amended par. (18) generally. Prior to amendment, par. (18) read as follows: “Fund balance” means the sum of—

“(A) the investments of the Fund calculated at par value; and

“(B) the cash balance of the Fund on the books of the Treasury;

“but does not include any amount attributable to—

“(i) the Federal Employees' Retirement System; or

“(ii) contributions made under the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 by or on behalf of any individual who became subject to the Federal Employees' Retirement System;”.

Pars. (27), (28). Pub. L. 108-18, §2(a)(3), and Pub. L. 108-176, §226(a)(1)(A), (B), made identical amendments, striking out “and” at end of par. (27) and substituting “; and” for period at end of par. (28).

Par. (29). Pub. L. 108-176, §226(a)(1)(C), added par. (29) defining “air traffic controller” or “controller”.

Pub. L. 108-18, §2(a)(3), added par. (29) defining “dynamic assumptions”.

2001—Par. (3)(E). Pub. L. 107-71 amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: “with respect to a criminal investigator, availability pay under section 5545a of this title;”.

2000—Par. (3). Pub. L. 106-571, §3(a)(4), substituted “through (H)” for “through (G)” in concluding provisions.

Par. (3)(H). Pub. L. 106-571, §3(a)(1)–(3), added subpar. (H).

Par. (28). Pub. L. 106-571, §3(b)(2), added par. (28).

1998—Par. (3). Pub. L. 105-277 struck out “and” at end of subpar. (D), added subpars. (E) and (F), redesignated former subpar. (E) as (G), and, in concluding provisions, substituted “subparagraphs (B) through (G)” for “subparagraphs (B), (C), (D), and (E)”.

Par. (27). Pub. L. 105-261 added par. (27).

1994—Par. (13). Pub. L. 103-353 inserted before semicolon at end “or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this subchapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990”.

1993—Par. (3). Pub. L. 103-66 added subpar. (E), and in closing provisions substituted “subparagraphs (B), (C), (D), and (E) of this paragraph” for “subparagraphs (B), (C), and (D) of this paragraph”.

1992—Par. (1)(L). Pub. L. 102-378, §2(57)(A)(i), substituted “section 8347(q)(1)” for “section 8347(p)(1)”.

Par. (1)(ii). Pub. L. 102-378, §2(57)(A)(ii), substituted “section 8347(q)(2)” for “section 8347(p)(2)”.

Par. (7). Pub. L. 102-378, §2(57)(B), substituted “University” for “College”.

Par. (26). Pub. L. 102-572 substituted “Court of Federal Claims” for “Claims Court” and “United States Court of Federal Claims” for “United States Claims Court”.

1990—Par. (1)(L). Pub. L. 101-508, §7202(j)(1)(A)–(C), added subpar. (L).

Par. (1)(ii). Pub. L. 101-508, §7202(j)(1)(D), substituted “(besides any employee excluded by clause (x), but including any employee who has made an election under section 8347(p)(2) to remain covered by a retirement system established for employees described in section 2105(c))” for “(other than an employee described in clause (x))”.

Par. (1)(v). Pub. L. 101-474 amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: “a temporary employee of the Administrative Office of the United States Courts or of a court named by section 610 of title 28;”.

Par. (7). Pub. L. 101-508, §7202(j)(1)(E), substituted “Gallaudet College, and, in the case of an employee described in paragraph (1)(L), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c)” for “and Gallaudet College”.

Par. (26). Pub. L. 101-650 added par. (26).

1988—Par. (1)(K). Pub. L. 100-679 added subpar. (K).

Par. (1)(xii). Pub. L. 100-238, §112, added cl. (xii).

Par. (18). Pub. L. 100-238, §123, inserted “but does not include any amount attributable to—

“(i) the Federal Employees’ Retirement System; or

“(ii) contributions made under the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 by or on behalf of any individual who became subject to the Federal Employees’ Retirement System;”.

1987—Par. (22). Pub. L. 100-53, §2(a)(1), amended par. (22) generally. Prior to amendment, par. (22) read as follows: “‘bankruptcy judge’ means an individual appointed under section 34 of the Bankruptcy Act (11 U.S.C. 62) or under section 404(d) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549)—

“(A) who is serving as a United States bankruptcy judge on March 31, 1984;

“(B) whose service as United States bankruptcy judge at any time in the period beginning on October 1, 1979, and ending on July 10, 1984, is terminated by reason of death or disability; or

“(C) who is appointed as a bankruptcy judge under section 152 of title 28;”.

Par. (25). Pub. L. 100-53, §2(a)(2)–(4), added par. (25).

1986—Par. (1)(G). Pub. L. 99-335, §207(f)(1), amended subpar. (G) generally, substituting “first employed” for “employed” and inserting “before October 1, 1987”.

Par. (1)(ii). Pub. L. 99-335, §202(a)(1), amended cl. (ii) generally, inserting “(other than an employee described in clause (x))”.

Par. (1)(x). Pub. L. 99-335, §202(a)(2)–(4), added cl. (x).

Par. (1)(xi). Pub. L. 99-335, §207(f)(2), added cl. (xi).

Par. (2). Pub. L. 99-335, §202(b), inserted “, but does not include any such Member of Congress who is subject to the Federal Employees’ Retirement System or who makes an election under section 8401(20) of this title not to be subject to such System”.

1984—Par. (22). Pub. L. 98-353, §116(a)(1), substituted “of November 6, 1978 (Public Law 95-598; 92 Stat. 2549)” for “adding this paragraph” in provision preceding subpar. (A).

Par. (22)(A). Pub. L. 98-531 substituted “who is serving as a United States bankruptcy judge on March 31, 1984;” for “who is serving as a United States bankruptcy judge on the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984, and continues to serve as a bankruptcy judge after such date until either the date on which a successor for such judge is appointed, or October 1, 1986, whichever date is earlier;”.

Pub. L. 98-353, §121(g), substituted “the day before the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984” for “June 27, 1984”.

Pub. L. 98-353, §116(a)(2), substituted “who is serving as a United States bankruptcy judge on the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984, and continues to serve as a bankruptcy judge after such date until either the date on

which a successor for such judge is appointed, or October 1, 1986, whichever date is earlier;” for “who is serving as a United States bankruptcy judge on June 27, 1984, and that has agreed by filing a notice of such agreement with the President, the Senate, and the Director of the Administrative Office of the United States Courts, to accept an appointment as a judge of a United States bankruptcy court established under section 201 of this Act but that is not appointed by the President as a judge of such court; or”.

Pub. L. 98-325 substituted “June 27, 1984” for “June 20, 1984”.

Pub. L. 98-299 substituted “June 20, 1984” for “May 25, 1984”.

Pub. L. 98-271 substituted “May 25, 1984” for “April 30, 1984”.

Pub. L. 98-249 substituted “April 30, 1984” for “March 31, 1984”.

Par. (22)(B). Pub. L. 98-531 substituted “whose service as United States bankruptcy judge at any time in the period beginning on October 1, 1979, and ending on July 10, 1984, is terminated by reason of death or disability” for “whose service as a United States bankruptcy judge during the period beginning on October 1, 1979, and ending on the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984 is terminated by reason of death or disability”.

Pub. L. 98-353, §116(a)(3)(A), substituted “period beginning on October 1, 1979, and ending on the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984” for “transition period”.

Par. (22)(C). Pub. L. 98-353, §116(a)(4), added subpar. (C).

Pars. (23), (24). Pub. L. 98-615 added pars. (23) and (24). 1982—Par. (8)(B). Pub. L. 97-253, §306(a), inserted “, including any amounts deposited under section 8334(j) of this title”.

1980—Par. (6). Pub. L. 96-499 struck out par. (6) which defined “disabled” and “disability” as meaning totally disabled or total disability for useful and efficient service in the grade or class of position last occupied by the employee or Member because of disease or injury not due to vicious habits, intemperance, or wilful misconduct on his part within 5 years of becoming disabled.

1979—Par. (2). Pub. L. 96-54, §2(a)(47)(A), struck out “and a Delegate to Congress,” after “title.”.

Par. (19)(C). Pub. L. 96-54, §2(a)(47)(B), struck out “and” after “determined;”.

1978—Pars. (1), (17), (20). Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively, wherever appearing.

Par. (22). Pub. L. 95-598 added par. (22).

1975—Par. (4). Pub. L. 94-183 struck out provision relating to member’s option of having average pay computed from averaging rates of basic pay in effect over all periods of member’s service after August 2, 1946.

1974—Par. (3). Pub. L. 93-350, §2(a), added subpar. (D) and inserted reference to subpar. (D) in closing provisions of par. (3).

Pars. (20), (21). Pub. L. 93-350, §2(b), added pars. (20) and (21).

1972—Par. (1)(J). Pub. L. 92-352 added par. (1)(J).

1969—Par. (4)(A). Pub. L. 91-93, §201(a), reduced the number of years of creditable service from 5 to 3 consecutive years and provided for averaging rate of basic pay over the total service in the case of an annuity under subsec. (d) or (e)(1) of section 8341 of this title based on service of less than three years.

Pars. (17) to (19). Pub. L. 91-93, §101, added pars. (17) to (19).

1968—Par. (3)(B)(ii). Pub. L. 90-623 inserted reference to section 60e-14 of title 2.

1966—Par. (3). Pub. L. 89-737 added subpar. (C) and, in the exception set out in provisions following subpar. (C), substituted reference to subpars. (B) and (C) for reference to subpar. (B).

CHANGE OF NAME

Words “magistrate judge” and “United States magistrate judge” substituted for “magistrate” and

“United States magistrate”, respectively, in par. (25) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

Gallaudet College, referred to in par. (1)(H), redesignated Gallaudet University by section 101(a) of Pub. L. 99-371, which is classified to section 4301(a) of Title 20, Education.

Commissioned Officer Corps of Environmental Science Services Administration, referred to in par. (13)(C), changed to Commissioned Officer Corps of National Oceanic and Atmospheric Administration, see 1970 Reorg. Plan No. 4, §4(d), eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title XI, §1115(c), Jan. 28, 2008, 122 Stat. 361, provided that: “The amendments made by this section [amending this section and section 8401 of this title] shall apply to—

“(1) any annuity, eligibility for which is based upon a separation occurring before, on, or after the date of enactment of this Act [Jan. 28, 2008]; and

“(2) any period of service as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, occurring before, on, or after the date of enactment of this Act.”

EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110-161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110-161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-176 effective on 60th day after Dec. 12, 2003, and applicable with respect to any annuity entitlement based on an individual’s separation from service occurring on or after such effective date, and any service performed by any such individual before, on, or after such effective date, subject to special rule relating to deposit requirement, see section 226(c) of Pub. L. 108-176, set out as a note under section 8401 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105-277 effective on first day of first applicable pay period which begins on or after Oct. 1, 1998, see section 101(h) [title VI, §628(e)] of Pub. L. 105-277, set out as a note under section 4109 of this title.

Pub. L. 105-261, div. C, title XXXI, §3154(m), (n), Oct. 17, 1998, 112 Stat. 2256, provided that:

“(m) APPLICABILITY.—Subsections (b) through (l) [amending this section and sections 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title and enacting provisions set out as notes under sections 8334, 8348, and 8422 of this title] shall apply only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of title 5, United States Code (as amended by this section), after the later of—

“(1) September 30, 1998; or

“(2) the date of the enactment of this Act [Oct. 17, 1998].

“(n) EFFECTIVE DATES.—(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 3307, 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title] shall take effect at the beginning of the first pay period that begins after the later of—

“(A) October 1, 1998; or

“(B) the date of the enactment of this Act.

“(2)(A) The amendments made by subsection (a) [amending section 3307 of this title] shall take effect on the date of the enactment of this Act.

“(B) The amendments made by subsections (d) and (k) [amending sections 8335 and 8425 of this title] shall take effect 1 year after the date of the enactment of this Act.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103-353, set out as an Effective Date note under section 4301 of Title 38, Veterans’ Benefits.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13812(c)(1) of Pub. L. 103-66 provided that: “The amendments made by subsection (a) [amending this section] take effect on January 1, 1994, and apply only with respect to service performed on or after such date.”

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

Amendment by section 2(57)(A) of Pub. L. 102-378 effective Nov. 5, 1990, and amendment by section 2(57)(B) of Pub. L. 102-378 effective Oct. 2, 1992, see section 9(a), (b)(6) of Pub. L. 102-378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENTS

Section 306(f) of Pub. L. 101-650, as amended by Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516, provided that: “This section and the amendments made by this section [enacting section 8440b [now 8440c] of this title and section 178 of Title 28, Judiciary and Judicial Procedure and amending this section, sections 8334, 8336, 8339, and 8402 of this title, and sections 376 and 604 of Title 28] shall apply to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after the date of the enactment of this Act [Dec. 1, 1990].”

Amendment by Pub. L. 101-508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101-508, set out as a note under section 2105 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 3 of Pub. L. 100-53, as amended by Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117, provided that: “This Act [amending this section and sections 8334, 8336, and 8339 of this title and enacting provisions set out as a note under this section] shall take effect on October 1, 1987, and shall apply to bankruptcy judges and United States magistrate judges in office on that date and to individuals subsequently appointed to such positions to whom chapter 83 of title 5, United States Code, otherwise applies.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions and specific applicability provisions, see section 4(a)(1) of Pub. L. 98-615 as

amended, set out as a note under section 8341 of this title.

Section 3 of Pub. L. 98-531 provided that:

“(a) Except as provided in subsection (b), this Act and the amendments made by this Act [renumbering a provision set out as a note under section 101 of Title 11, Bankruptcy] shall take effect on July 10, 1984.

“(b) The amendments made by section 2 [amending this section and sections 8336 and 8339 of this title] shall take effect on March 31, 1984.”

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

Section 116(e) of Pub. L. 98-353 provided that: “The amendments made by this section [amending this section and sections 8334, 8336, and 8339 of this title] shall take effect on the date of enactment [July 10, 1984] and shall apply to bankruptcy judges who retire on or after such date.”

EFFECTIVE DATE OF 1982 AMENDMENT

Section 306(g) of Pub. L. 97-253, as amended by Pub. L. 97-346, §3(e)(2), Oct. 15, 1982, 96 Stat. 1648; Pub. L. 98-369, div. B, title II, §2205, July 18, 1984, 98 Stat. 1059, provided that: “The amendments made by this section [amending this section and sections 8332, 8334, and 8348 of this title] shall take effect October 1, 1982; except that any employee or Member who retired after the date of the enactment of this Act [Sept. 8, 1982] and before October 1, 1985, or is entitled to an annuity under chapter 83 of title 5, United States Code, based on a separation from service occurring during such period, or a survivor of such individual, may make a payment under section 8334(j)(1) of title 5, United States Code. Regulations required to be issued under section 8334(j)(1) of title 5, United States Code, shall be issued by the Office of Personnel Management within 90 days after such effective date.”

EFFECTIVE DATE OF 1980 AMENDMENT

Section 403(c) of Pub. L. 96-499 provided that: “The amendments made by this section [amending this section and section 8337 of this title] shall take effect on the 90th day after the date of the enactment of this Act [Dec. 5, 1980].”

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2(a) of Pub. L. 93-350 effective at beginning of first applicable pay period which begins after Dec. 31, 1974, and amendment by section 2(b) of Pub. L. 93-350 effective July 12, 1974, see section 7 of Pub. L. 93-350, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 105(b) of Pub. L. 92-352 provided that: “Subsection (a) of this section [amending this section] shall become effective on the first day of the second month which begins after its enactment [July 13, 1972].”

EFFECTIVE DATE OF 1969 AMENDMENT

Section 207(a) of Pub. L. 91-93 provided that: “The amendments made by sections 201, 202, 203, and 206(a) of

this Act [amending this section and sections 8333, 8334, 8339, and 8341 of this title] shall not apply in the case of persons retired or otherwise separated prior to the date of enactment of this Act [Oct. 20, 1969], and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if such sections had not been enacted.”

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90-623, set out as a note under section 5334 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-737 applicable with respect to premium pay payable from and after first day of first pay period which begins after Nov. 2, 1966, see section 4 of Pub. L. 89-737, set out in the note under section 8114 of this title.

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-358, §1, Oct. 14, 1994, 108 Stat. 3420, provided that: “This Act [amending sections 8345, 8437, and 8467 of this title and enacting provisions set out as a note under section 8345 of this title] may be cited as the ‘Child Abuse Accountability Act.’”

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-428, §1(a), Oct. 15, 1990, 104 Stat. 928, provided that: “This Act [amending sections 8335 to 8337, 8339, 8341, 8344, 8412, and 8425 of this title and enacting provisions set out as notes under sections 8335, 8339, and 8425 of this title] may be cited as the ‘Capitol Police Retirement Act.’”

SHORT TITLE OF 1987 AMENDMENT

Section 1 of Pub. L. 100-53 provided that: “This Act [amending this section and sections 8334, 8336, and 8339 of this title and enacting provisions set out as a note under this section] may be cited as the ‘Magistrates’ Retirement Parity Act of 1987.’”

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-638, §2(a), Nov. 10, 1986, 100 Stat. 3535, provided that: “This section [amending sections 2105 and 8332 of this title and enacting provisions set out as a note under section 8332 of this title] may be cited as the ‘Nonappropriated Fund Instrumentalities Employees’ Retirement Credit Act of 1986.’”

SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98-615 provided: “That this Act [enacting sections 3595a, 4302a and 5406-5410 of this title, amending this section and sections 3135, 3393, 3395, 3593-3595, 4312, 4501, 5332, 5334-5336, 5361, 5362, 5383, 5384, 5401-5405, 5948, 7543, 8334, 8336, 8339, 8341, 8342, 8345, 8348, 8901-8903, 8905, 8907, 8909, and 8913 of this title, section 1602 of Title 10, Armed Forces, and section 731 of Title 31, Money and Finance, and enacting provisions set out as notes under sections 3131, 3135, 5401, and 8341 of this title] may be cited as the ‘Civil Service Retirement Spouse Equity Act of 1984.’”

SHORT TITLE OF 1969 AMENDMENT

Section 1 of Pub. L. 91-93 provided: “That this Act [amending this section and sections 1308, 8333, 8334, 8339, 8340, 8341, and 8348 of this title, enacting provisions set out as notes under sections 8334, 8340, 8341, and 8348 of this title, and repealing provisions set out as a note under section 8339 of this title] may be cited as the ‘Civil Service Retirement Amendments of 1969.’”

SAVINGS PROVISION

Section 105(c) of Pub. L. 92-352 provided that: “The amendments made by such subsection (a) [amending this section] shall not apply in the cases of persons retired or otherwise separated prior to the effective date

established under subsection (b) of this section [see Effective Date of 1972 Amendment note above], and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if such amendments had not been enacted.”

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

RETIREMENT TREATMENT FOR CAPITOL POLICE HAZARDOUS MATERIALS RESPONSE TEAM MEMBERS

Pub. L. 108-83, title I, §1004, Sept. 30, 2003, 117 Stat. 1022, provided that:

“(a) RETIREMENT TREATMENT.—

“(1) IN GENERAL.—For purposes of chapters 83 and 84 of title 5, United States Code, a hazardous materials response team member of the Capitol Police shall be treated as a member of the Capitol Police.

“(2) APPLICATION.—This subsection shall apply to periods of service performed as a hazardous materials response team member of the Capitol Police on and after December 1, 2002.

“(b) TREATMENT OF INCUMBENTS.—

“(1) DEFINITIONS.—In this subsection, the term—

“(A) ‘incumbent’ means an individual who—

“(i) is first appointed as a hazardous materials response team member of the Capitol Police before the effective date of this section; and

“(ii) is employed as a hazardous materials response team member of the Capitol Police on that date; and

“(B) ‘prior service’ means any period of service performed by an incumbent as a hazardous materials response team member of the Capitol Police before the effective date of this section.

“(2) INDIVIDUAL CONTRIBUTIONS.—

“(A) IN GENERAL.—An incumbent shall pay with respect to prior service an amount into the Civil Service Retirement and Disability Fund equal to—

“(i) the difference between the individual contributions that were actually made for such prior service and the individual contributions that would have been made for such service if subsection (a) had then been in effect; and

“(ii) interest computed on the amount under clause (i) based on section 8334(e) of title 5, United States Code.

“(B) EFFECT OF NOT CONTRIBUTING.—If no part of or less than the full amount required under subparagraph (A) is paid, all prior service of the incumbent shall remain fully creditable as treated under subsection (a), but the resulting annuity shall be reduced in a manner similar to that described under section 8334(d)(2) of title 5, United States Code, to the extent necessary to make up the amount unpaid.

“(3) GOVERNMENT CONTRIBUTIONS FOR PRIOR SERVICE.—The Capitol Police shall pay with respect to prior service of each incumbent an amount into the Civil Service Retirement and Disability Fund equal to—

“(A) the difference between the Government contributions that were actually made for such prior service and the Government contributions that would have been made for such service if subsection (a) had then been in effect; and

“(B) interest computed on the amount under subparagraph (A) based on section 8334(e) of title 5, United States Code.

“(c) EFFECTIVE DATE.—This section shall take effect on the first day of the first applicable pay period begin-

ning on or after the date of enactment of this Act [Sept. 30, 2003].”

SUPREME COURT POLICE RETIREMENT

Pub. L. 106-553, §1(a)(2) [title III, §308], Dec. 21, 2000, 114 Stat. 2762, 2762A-86, provided that:

“(a) SUPREME COURT POLICE RETIREMENT.—

“(1) SERVICE DEEMED TO BE SERVICE AS LAW ENFORCEMENT OFFICER.—Any period of service performed before the effective date of this section by an individual as a member of the Supreme Court Police, who is such a member on such date, shall be deemed to be service performed as a law enforcement officer for purposes of chapters 83 and 84 of title 5, United States Code. Notwithstanding any amendment made by this section, any period of service performed before the effective date of this section by an individual as a member of the Supreme Court Police, who is not such a member on such date, shall be employee service for purposes of chapters 83 and 84 of title 5, United States Code.

“(2) CONTRIBUTIONS.—The Marshal of the Supreme Court of the United States shall pay an amount determined by the Office of Personnel Management equal to—

“(A)(i) the difference between—

“(I) the amount that was deducted and withheld from basic pay under chapters 83 and 84 of title 5, United States Code, for the period of service described in the first sentence of paragraph (1); and

“(II) the amount that should have been deducted and withheld for such period of service, if it had instead been performed as a law enforcement officer; and

“(ii) interest as prescribed under section 8334(e) of title 5, United States Code, based on the amount determined under clause (i); and

“(B) with respect to the period of service described in subparagraph (A), the difference between the Government contributions that were in fact made to the Civil Service Retirement and Disability Fund for such service, and the amount that would have been required if such service had instead been performed as a law enforcement officer, subject to subsection (f).

“(3) DEPOSIT OF PAYMENTS.—Payments under paragraph (2) shall be paid from the salaries and expenses account from appropriations to the Supreme Court of the United States, including any prior year unobligated balances, and deposited in the Civil Service Retirement and Disability Fund.

“(b) AMENDMENTS TO CHAPTER 83.—[Amended sections 8334 to 8336 and 8339 of this title.]

“(c) AMENDMENTS TO CHAPTER 84.—[Amended sections 8412, 8415, 8422, 8423, and 8425 of this title.]

“(d) PAYMENTS FOR OTHER LIABILITY.—

“(1) IN GENERAL.—The Marshal of the Supreme Court of the United States shall pay into the Civil Service Retirement and Disability Fund an amount determined by the Director of the Office of Personnel Management to be necessary to reimburse the Fund for any estimated increase in the unfunded liability of the Fund resulting from the amendments related to the Civil Service Retirement System under this section, and for any estimated increase in the supplemental liability of the Fund resulting from the amendments related to the Federal Employees’ Retirement System under this section.

“(2) INSTALLMENTS.—The amount determined under paragraph (1) shall be paid in 5 equal annual installments with interest computed at the rates used in the most recent valuation of the Federal Employees’ Retirement System.

“(3) SOURCE OF FUNDS.—Payments under this subsection shall be made from amounts available from the salaries and expenses account from appropriations to the Supreme Court of the United States, including any prior year unobligated balances.

“(e) NO MANDATORY SEPARATION FOR A 2-YEAR PERIOD.—Nothing in section 8335(e) or 8425(d) of title 5,

United States Code, as added by this section, shall require the automatic separation of any member of the Supreme Court Police before the end of the 2-year period beginning on the effective date of this section.

“(f) NONREDUCTION IN GOVERNMENT CONTRIBUTIONS.—Notwithstanding any other provision of this section, Government contributions to the Civil Service Retirement and Disability Fund on behalf of a member of the Supreme Court Police shall, with respect to any service performed during the period beginning on January 1, 1999, and ending on December 31, 2002, while subject to the Federal Employees’ Retirement System, be determined in the same way as if this section had never been enacted.

“(g) SAVINGS PROVISION.—Nothing in this section or in any amendment made by this section shall, with respect to any service performed before the effective date of such amendment, have the effect of reducing the percentage applicable in computing any portion of an annuity based on service as a member of the Supreme Court Police below the percentage which would otherwise apply if this section had not been enacted.

“(h) TECHNICAL AND CONFORMING AMENDMENTS.—[Amended sections 8337, 8339, 8341, 8343a, and 8344 of this title.]

“(i) APPLICABILITY.—This section and the amendments made by this section shall apply only to an individual who is employed as a member of the Supreme Court Police after the later of October 1, 2000, or the date of enactment of this Act [Dec. 21, 2000].

“(j) EFFECTIVE DATE.—Except as otherwise provided in this section, this section and the amendments made by this section shall take effect on the first day of the first applicable pay period that begins on the later of October 1, 2000, or the date of enactment of this Act.”

FEDERAL RETIREMENT COVERAGE ERRORS CORRECTION

Pub. L. 106-265, title II, Sept. 19, 2000, 114 Stat. 770, provided that:

“SEC. 2001. SHORT TITLE; TABLE OF CONTENTS.

“(a) SHORT TITLE.—This title may be cited as the ‘Federal Erroneous Retirement Coverage Corrections Act’.

“(b) TABLE OF CONTENTS.—[Omitted.]

“SEC. 2002. DEFINITIONS.

“For purposes of this title:

“(1) ANNUITANT.—The term ‘annuitant’ has the meaning given such term under section 8331(9) or 8401(2) of title 5, United States Code.

“(2) CSRS.—The term ‘CSRS’ means the Civil Service Retirement System.

“(3) CSRDF.—The term ‘CSRDF’ means the Civil Service Retirement and Disability Fund.

“(4) CSRS COVERED.—The term ‘CSRS covered’, with respect to any service, means service that is subject to the provisions of subchapter III of chapter 83 of title 5, United States Code, other than service subject to section 8334(k) of such title.

“(5) CSRS-OFFSET COVERED.—The term ‘CSRS-Offset covered’, with respect to any service, means service that is subject to the provisions of subchapter III of chapter 83 of title 5, United States Code, and to section 8334(k) of such title.

“(6) EMPLOYEE.—The term ‘employee’ has the meaning given such term under section 8331(1) or 8401(11) of title 5, United States Code.

“(7) EXECUTIVE DIRECTOR.—The term ‘Executive Director of the Federal Retirement Thrift Investment Board’ or ‘Executive Director’ means the Executive Director appointed under section 8474 of title 5, United States Code.

“(8) FERS.—The term ‘FERS’ means the Federal Employees’ Retirement System.

“(9) FERS COVERED.—The term ‘FERS covered’, with respect to any service, means service that is subject to chapter 84 of title 5, United States Code.

“(10) FORMER EMPLOYEE.—The term ‘former employee’ means an individual who was an employee, but who is not an annuitant.

“(11) OASDI TAXES.—The term ‘OASDI taxes’ means the OASDI employee tax and the OASDI employer tax.

“(12) OASDI EMPLOYEE TAX.—The term ‘OASDI employee tax’ means the tax imposed under section 3101(a) of the Internal Revenue Code of 1986 [26 U.S.C. 3101(a)] (relating to Old-Age, Survivors and Disability Insurance).

“(13) OASDI EMPLOYER TAX.—The term ‘OASDI employer tax’ means the tax imposed under section 3111(a) of the Internal Revenue Code of 1986 [26 U.S.C. 3111(a)] (relating to Old-Age, Survivors and Disability Insurance).

“(14) OASDI TRUST FUNDS.—The term ‘OASDI trust funds’ means the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

“(15) OFFICE.—The term ‘Office’ means the Office of Personnel Management.

“(16) RETIREMENT COVERAGE DETERMINATION.—The term ‘retirement coverage determination’ means a determination by an employee or agent of the Government as to whether a particular type of Government service is CSRS covered, CSRS-Offset covered, FERS covered, or Social Security-Only covered.

“(17) RETIREMENT COVERAGE ERROR.—The term ‘retirement coverage error’ means an erroneous retirement coverage determination that was in effect for a minimum period of 3 years of service after December 31, 1986.

“(18) SOCIAL SECURITY-ONLY COVERED.—The term ‘Social Security-Only covered’, with respect to any service, means Government service that—

“(A) constitutes employment under section 210 of the Social Security Act (42 U.S.C. 410); and

“(B)(i) is subject to OASDI taxes; but

“(ii) is not subject to CSRS or FERS.

“(19) SURVIVOR.—The term ‘survivor’ has the meaning given such term under section 8331(10) or 8401(28) of title 5, United States Code.

“(20) THRIFT SAVINGS FUND.—The term ‘Thrift Savings Fund’ means the Thrift Savings Fund established under section 8437 of title 5, United States Code.

“SEC. 2003. APPLICABILITY.

“(a) IN GENERAL.—This title shall apply with respect to retirement coverage errors that occur before, on, or after the date of the enactment of this Act [Sept. 19, 2000].

“(b) LIMITATION.—Except as otherwise provided in this title, this title shall not apply to any erroneous retirement coverage determination that was in effect for a period of less than 3 years of service after December 31, 1986.

“SEC. 2004. IRREVOCABILITY OF ELECTIONS.

“Any election made (or deemed to have been made) by an employee or any other individual under this title shall be irrevocable.

“SUBTITLE A—DESCRIPTION OF RETIREMENT COVERAGE ERRORS TO WHICH THIS TITLE APPLIES AND MEASURES FOR THEIR RECTIFICATION

“CHAPTER 1—EMPLOYEES AND ANNUITANTS WHO SHOULD HAVE BEEN FERS COVERED, BUT WHO WERE ERRONEOUSLY CSRS COVERED OR CSRS-OFFSET COVERED INSTEAD, AND SURVIVORS OF SUCH EMPLOYEES AND ANNUITANTS

“SEC. 2101. EMPLOYEES.

“(a) APPLICABILITY.—This section shall apply in the case of any employee or former employee who should be (or should have been) FERS covered but, as a result of a retirement coverage error, is (or was) CSRS covered or CSRS-Offset covered instead.

“(b) UNCORRECTED ERROR.—

“(1) APPLICABILITY.—This subsection applies if the retirement coverage error has not been corrected before the effective date of the regulations described

under paragraph (3). As soon as practicable after discovery of the error, and subject to the right of an election under paragraph (2), if CSRS covered or CSRS-Offset covered, such individual shall be treated as CSRS-Offset covered, retroactive to the date of the retirement coverage error.

“(2) COVERAGE.—

“(A) ELECTION.—Upon written notice of a retirement coverage error, an individual may elect to be CSRS-Offset covered or FERS covered, effective as of the date of the retirement coverage error. Such election shall be made not later than 180 days after the date of receipt of such notice.

“(B) NONELECTION.—If the individual does not make an election by the date provided under subparagraph (A), a CSRS-Offset covered individual shall remain CSRS-Offset covered and a CSRS covered individual shall be treated as CSRS-Offset covered.

“(3) REGULATIONS.—The Office shall prescribe regulations to carry out this subsection.

“(c) CORRECTED ERROR.—

“(1) APPLICABILITY.—This subsection applies if the retirement coverage error was corrected before the effective date of the regulations described under subsection (b).

“(2) COVERAGE.—

“(A) ELECTION.—

“(i) CSRS-OFFSET COVERED.—Not later than 180 days after the date of the enactment of this Act [Sept. 19, 2000], the Office shall prescribe regulations authorizing individuals to elect, during the 18-month period immediately following the effective date of such regulations, to be CSRS-Offset covered, effective as of the date of the retirement coverage error.

“(ii) THRIFT SAVINGS FUND CONTRIBUTIONS.—If under this section an individual elects to be CSRS-Offset covered, all employee contributions to the Thrift Savings Fund made during the period of FERS coverage (and earnings on such contributions) may remain in the Thrift Savings Fund in accordance with regulations prescribed by the Executive Director, notwithstanding any limit under title 5, United States Code, that would otherwise be applicable.

“(B) PREVIOUS SETTLEMENT PAYMENT.—An individual who previously received a payment ordered by a court or provided as a settlement of claim for losses resulting from a retirement coverage error shall not be entitled to make an election under this subsection unless that amount is waived in whole or in part under section 2208, and any amount not waived is repaid.

“(C) INELIGIBILITY FOR ELECTION.—An individual who, subsequent to correction of the retirement coverage error, received a refund of retirement deductions under section 8424 of title 5, United States Code, or a distribution under section 8433(b), (c), or (h)(1)(A) of title 5, United States Code, may not make an election under this subsection.

“(3) CORRECTIVE ACTION TO REMAIN IN EFFECT.—If an individual is ineligible to make an election or does not make an election under paragraph (2) before the end of any time limitation under this subsection, the corrective action taken before such time limitation shall remain in effect.

“SEC. 2102. ANNUITANTS AND SURVIVORS.

“(a) IN GENERAL.—This section shall apply in the case of an individual who is—

“(1) an annuitant who should have been FERS covered but, as a result of a retirement coverage error, was CSRS covered or CSRS-Offset covered instead; or

“(2) a survivor of an employee who should have been FERS covered but, as a result of a retirement coverage error, was CSRS covered or CSRS-Offset covered instead.

“(b) COVERAGE.—

“(1) ELECTION.—Not later than 180 days after the date of the enactment of this Act [Sept. 19, 2000], the

Office shall prescribe regulations authorizing an individual described under subsection (a) to elect CSRS-Offset coverage or FERS coverage, effective as of the date of the retirement coverage error.

“(2) TIME LIMITATION.—An election under this subsection shall be made not later than 18 months after the effective date of the regulations prescribed under paragraph (1).

“(3) REDUCED ANNUITY.—

“(A) AMOUNT IN ACCOUNT.—If the individual elects CSRS-Offset coverage, the amount in the employee's Thrift Savings Fund account under subchapter III of chapter 84 of title 5, United States Code, on the date of retirement that represents the Government's contributions and earnings on those contributions (whether or not such amount was subsequently distributed from the Thrift Savings Fund) will form the basis for a reduction in the individual's annuity, under regulations prescribed by the Office.

“(B) REDUCTION.—The reduced annuity to which the individual is entitled shall be equal to an amount which, when taken together with the amount referred to in subparagraph (A), would result in the present value of the total being actuarially equivalent to the present value of an unreduced CSRS-Offset annuity that would have been provided the individual.

“(4) REDUCED BENEFIT.—If—

“(A) a surviving spouse elects CSRS-Offset benefits; and

“(B) a FERS basic employee death benefit under section 8442(b) of title 5, United States Code, was previously paid, then the survivor's CSRS-Offset benefit shall be subject to a reduction, under regulations prescribed by the Office. The reduced annuity to which the individual is entitled shall be equal to an amount which, when taken together with the amount of the payment referred to under subparagraph (B) would result in the present value of the total being actuarially equivalent to the present value of an unreduced CSRS-Offset annuity that would have been provided the individual.

“(5) PREVIOUS SETTLEMENT PAYMENT.—An individual who previously received a payment ordered by a court or provided as a settlement of claim for losses resulting from a retirement coverage error may not make an election under this subsection unless repayment of that amount is waived in whole or in part under section 2208, and any amount not waived is repaid.

“(c) NONELECTION.—If the individual does not make an election under subsection (b) before any time limitation under this section, the retirement coverage shall be subject to the following rules:

“(1) CORRECTIVE ACTION PREVIOUSLY TAKEN.—If corrective action was taken before the end of any time limitation under this section, that corrective action shall remain in effect.

“(2) CORRECTIVE ACTION NOT PREVIOUSLY TAKEN.—If corrective action was not taken before such time limitation, the employee shall be CSRS-Offset covered, retroactive to the date of the retirement coverage error.

“CHAPTER 2—EMPLOYEE WHO SHOULD HAVE BEEN FERS COVERED, CSRS-OFFSET COVERED, OR CSRS COVERED, BUT WHO WAS ERRONEOUSLY SOCIAL SECURITY-ONLY COVERED INSTEAD

“SEC. 2111. APPLICABILITY.

“This chapter shall apply in the case of any employee who—

“(1) should be (or should have been) FERS covered but, as a result of a retirement coverage error, is (or was) Social Security-Only covered instead;

“(2) should be (or should have been) CSRS-Offset covered but, as a result of a retirement coverage error, is (or was) Social Security-Only covered instead; or

“(3) should be (or should have been) CSRS covered but, as a result of a retirement coverage error, is (or was) Social Security-Only covered instead.

“SEC. 2112. CORRECTION MANDATORY.

“(a) UNCORRECTED ERROR.—If the retirement coverage error has not been corrected, as soon as practicable after discovery of the error, such individual shall be covered under the correct retirement coverage, effective as of the date of the retirement coverage error.

“(b) CORRECTED ERROR.—If the retirement coverage error has been corrected, the corrective action previously taken shall remain in effect.

“CHAPTER 3—EMPLOYEE WHO SHOULD OR COULD HAVE BEEN SOCIAL SECURITY-ONLY COVERED BUT WHO WAS ERRONEOUSLY CSRS-OFFSET COVERED OR CSRS COVERED INSTEAD

“SEC. 2121. EMPLOYEE WHO SHOULD BE SOCIAL SECURITY-ONLY COVERED, BUT WHO IS ERRONEOUSLY CSRS OR CSRS-OFFSET COVERED INSTEAD.

“(a) APPLICABILITY.—This section applies in the case of a retirement coverage error in which a Social Security-Only covered employee was erroneously CSRS covered or CSRS-Offset covered.

“(b) UNCORRECTED ERROR.—

“(1) APPLICABILITY.—This subsection applies if the retirement coverage error has not been corrected before the effective date of the regulations described in paragraph (3).

“(2) COVERAGE.—In the case of an individual who is erroneously CSRS covered, as soon as practicable after discovery of the error, and subject to the right of an election under paragraph (3), such individual shall be CSRS-Offset covered, effective as of the date of the retirement coverage error.

“(3) ELECTION.—

“(A) IN GENERAL.—Upon written notice of a retirement coverage error, an individual may elect to be CSRS-Offset covered or Social Security-Only covered, effective as of the date of the retirement coverage error. Such election shall be made not later than 180 days after the date of receipt of such notice.

“(B) NONELECTION.—If the individual does not make an election before the date provided under subparagraph (A), the individual shall remain CSRS-Offset covered.

“(C) REGULATIONS.—The Office shall prescribe regulations to carry out this paragraph.

“(c) CORRECTED ERROR.—

“(1) APPLICABILITY.—This subsection applies if the retirement coverage error was corrected before the effective date of the regulations described under subsection (b)(3).

“(2) ELECTION.—Not later than 180 days after the date of the enactment of this Act [Sept. 19, 2000], the Office shall prescribe regulations authorizing individuals to elect, during the 18-month period immediately following the effective date of such regulations, to be CSRS-Offset covered or Social Security-Only covered, effective as of the date of the retirement coverage error.

“(3) NONELECTION.—If an eligible individual does not make an election under paragraph (2) before the end of any time limitation under this subsection, the corrective action taken before such time limitation shall remain in effect.

“CHAPTER 4—EMPLOYEE WHO WAS ERRONEOUSLY FERS COVERED

“SEC. 2131. EMPLOYEE WHO SHOULD BE SOCIAL SECURITY-ONLY COVERED, CSRS COVERED, OR CSRS-OFFSET COVERED AND IS NOT FERS-ELIGIBLE, BUT WHO IS ERRONEOUSLY FERS COVERED INSTEAD.

“(a) APPLICABILITY.—This section applies in the case of a retirement coverage error in which a Social Security-Only covered, CSRS covered, or CSRS-Offset covered employee not eligible to elect FERS coverage under authority of section 8402(c) of title 5, United States Code, was erroneously FERS covered.

“(b) UNCORRECTED ERROR.—

“(1) APPLICABILITY.—This subsection applies if the retirement coverage error has not been corrected before the effective date of the regulations described in paragraph (2).

“(2) COVERAGE.—

“(A) ELECTION.—

“(i) IN GENERAL.—Upon written notice of a retirement coverage error, an individual may elect to remain FERS covered or to be Social Security-Only covered, CSRS covered, or CSRS-Offset covered, as would have applied in the absence of the erroneous retirement coverage determination, effective as of the date of the retirement coverage error. Such election shall be made not later than 180 days after the date of receipt of such notice.

“(ii) TREATMENT OF FERS ELECTION.—An election of FERS coverage under this subsection is deemed to be an election under section 301 of the Federal Employees Retirement System Act of 1986 (5 U.S.C. 8331 note; Public Law 99-335; 100 Stat. 599).

“(B) NONELECTION.—If the individual does not make an election before the date provided under subparagraph (A), the individual shall remain FERS covered, effective as of the date of the retirement coverage error.

“(3) EMPLOYEE CONTRIBUTIONS IN THRIFT SAVINGS FUND.—If under this section, an individual elects to be Social Security-Only covered, CSRS covered, or CSRS-Offset covered, all employee contributions to the Thrift Savings Fund made during the period of erroneous FERS coverage (and all earnings on such contributions) may remain in the Thrift Savings Fund in accordance with regulations prescribed by the Executive Director, notwithstanding any limit under section 8351 or 8432 of title 5, United States Code.

“(4) REGULATIONS.—Except as provided under paragraph (3), the Office shall prescribe regulations to carry out this subsection.

“(c) CORRECTED ERROR.—

“(1) APPLICABILITY.—This subsection applies if the retirement coverage error was corrected before the effective date of the regulations described under paragraph (2).

“(2) ELECTION.—Not later than 180 days after the date of the enactment of this Act [Sept. 19, 2000], the Office shall prescribe regulations authorizing individuals to elect, during the 18-month period immediately following the effective date of such regulations to remain Social Security-Only covered, CSRS covered, or CSRS-Offset covered, or to be FERS covered, effective as of the date of the retirement coverage error.

“(3) NONELECTION.—If an eligible individual does not make an election under paragraph (2), the corrective action taken before the end of any time limitation under this subsection shall remain in effect.

“(4) TREATMENT OF FERS ELECTION.—An election of FERS coverage under this subsection is deemed to be an election under section 301 of the Federal Employees Retirement System Act of 1986 (5 U.S.C. 8331 note; Public Law 99-335; 100 Stat. 599).

“SEC. 2132. FERS-ELIGIBLE EMPLOYEE WHO SHOULD HAVE BEEN CSRS COVERED, CSRS-OFFSET COVERED, OR SOCIAL SECURITY-ONLY COVERED, BUT WHO WAS ERRONEOUSLY FERS COVERED INSTEAD WITHOUT AN ELECTION.

“(a) IN GENERAL.—

“(1) FERS ELECTION PREVENTED.—If an individual was prevented from electing FERS coverage because the individual was erroneously FERS covered during the period when the individual was eligible to elect FERS under title III of the Federal Employees Retirement System Act [Pub. L. 99-335] or the Federal

Employees' Retirement System Open Enrollment Act of 1997 (Public Law 105-61; 111 Stat. 1318 et seq.) [5 U.S.C. 8331 notes], the individual—

“(A) is deemed to have elected FERS coverage; and

“(B) shall remain covered by FERS, unless the individual declines, under regulations prescribed by the Office, to be FERS covered.

“(2) DECLINING FERS COVERAGE.—If an individual described under paragraph (1)(B) declines to be FERS covered, such individual shall be CSRS covered, CSRS-Offset covered, or Social Security-Only covered, as would apply in the absence of a FERS election, effective as of the date of the erroneous retirement coverage determination.

“(b) EMPLOYEE CONTRIBUTIONS IN THRIFT SAVINGS FUND.—If under this section, an individual declines to be FERS covered and instead is Social Security-Only covered, CSRS covered, or CSRS-Offset covered, as would apply in the absence of a FERS election, all employee contributions to the Thrift Savings Fund made during the period of erroneous FERS coverage (and all earnings on such contributions) may remain in the Thrift Savings Fund in accordance with regulations prescribed by the Executive Director, notwithstanding any limit under title 5, United States Code, that would otherwise be applicable.

“(c) INAPPLICABILITY OF DURATION OF ERRONEOUS COVERAGE.—This section shall apply regardless of the length of time the erroneous coverage determination remained in effect.

“SEC. 2133. RETROACTIVE EFFECT.

“This chapter shall be effective as of January 1, 1987, except that section 2132 shall not apply to individuals who made or were deemed to have made elections similar to those provided in this section under regulations prescribed by the Office before the effective date of this title.

“CHAPTER 5—EMPLOYEE WHO SHOULD HAVE BEEN CSRS-OFFSET COVERED, BUT WHO WAS ERRONEOUSLY CSRS COVERED INSTEAD

“SEC. 2141. APPLICABILITY.

“This chapter shall apply in the case of any employee who should be (or should have been) CSRS-Offset covered but, as a result of a retirement coverage error, is (or was) CSRS covered instead.

“SEC. 2142. CORRECTION MANDATORY.

“(a) UNCORRECTED ERROR.—If the retirement coverage error has not been corrected, as soon as practicable after discovery of the error, such individual shall be covered under the correct retirement coverage, effective as of the date of the retirement coverage error.

“(b) CORRECTED ERROR.—If the retirement coverage error has been corrected before the effective date of this title, the corrective action taken before such date shall remain in effect.

“CHAPTER 6—EMPLOYEE WHO SHOULD HAVE BEEN CSRS COVERED, BUT WHO WAS ERRONEOUSLY CSRS-OFFSET COVERED INSTEAD

“SEC. 2151. APPLICABILITY.

“This chapter shall apply in the case of any employee who should be (or should have been) CSRS covered but, as a result of a retirement coverage error, is (or was) CSRS-Offset covered instead.

“SEC. 2152. CORRECTION MANDATORY.

“(a) UNCORRECTED ERROR.—If the retirement coverage error has not been corrected, as soon as practicable after discovery of the error, such individual shall be covered under the correct retirement coverage, effective as of the date of the retirement coverage error.

“(b) CORRECTED ERROR.—If the retirement coverage error has been corrected before the effective date of this title, the corrective action taken before such date shall remain in effect.

“SUBTITLE B—GENERAL PROVISIONS

“SEC. 2201. IDENTIFICATION AND NOTIFICATION REQUIREMENTS.

“Government agencies shall take all such measures as may be reasonable and appropriate to promptly identify and notify individuals who are (or have been) affected by a retirement coverage error of their rights under this title.

“SEC. 2202. INFORMATION TO BE FURNISHED TO AND BY AUTHORITIES ADMINISTERING THIS TITLE.

“(a) APPLICABILITY.—The authorities identified in this subsection are—

“(1) the Director of the Office of Personnel Management;

“(2) the Commissioner of Social Security; and

“(3) the Executive Director of the Federal Retirement Thrift Investment Board.

“(b) AUTHORITY TO OBTAIN INFORMATION.—Each authority identified in subsection (a) may secure directly from any department or agency of the United States information necessary to enable such authority to carry out its responsibilities under this title. Upon request of the authority involved, the head of the department or agency involved shall furnish that information to the requesting authority.

“(c) AUTHORITY TO PROVIDE INFORMATION.—Each authority identified in subsection (a) may provide directly to any department or agency of the United States all information such authority believes necessary to enable the department or agency to carry out its responsibilities under this title.

“(d) LIMITATION; SAFEGUARDS.—Each of the respective authorities under subsection (a) shall—

“(1) request or provide only such information as that authority considers necessary; and

“(2) establish, by regulation or otherwise, appropriate safeguards to ensure that any information obtained under this section shall be used only for the purpose authorized.

“SEC. 2203. SERVICE CREDIT DEPOSITS.

“(a) CSRS DEPOSIT.—In the case of a retirement coverage error in which—

“(1) a FERS covered employee was erroneously CSRS covered or CSRS-Offset covered;

“(2) the employee made a service credit deposit under the CSRS rules; and

“(3) there is a subsequent retroactive change to FERS coverage,

the excess of the amount of the CSRS civilian or military service credit deposit over the FERS civilian or military service credit deposit, together with interest computed in accordance with paragraphs (2) and (3) of section 8334(e) of title 5, United States Code, and regulations prescribed by the Office, shall be paid to the employee, the annuitant or, in the case of a deceased employee, to the individual entitled to lump-sum benefits under section 8424(d) of title 5, United States Code.

“(b) FERS DEPOSIT.—

“(1) APPLICABILITY.—This subsection applies in the case of an erroneous retirement coverage determination in which—

“(A) the employee owed a service credit deposit under section 8411(f) of title 5, United States Code; and

“(B)(i) there is a subsequent retroactive change to CSRS or CSRS-Offset coverage; or

“(ii) the service becomes creditable under chapter 83 of title 5, United States Code.

“(2) REDUCED ANNUITY.—

“(A) IN GENERAL.—If at the time of commencement of an annuity there is remaining unpaid CSRS civilian or military service credit deposit for service described under paragraph (1), the annuity shall be reduced based upon the amount unpaid together with interest computed in accordance with section 8334(e)(2) and (3) of title 5, United States Code, and regulations prescribed by the Office.

“(B) AMOUNT.—The reduced annuity to which the individual is entitled shall be equal to an amount that, when taken together with the amount referred to under subparagraph (A), would result in the present value of the total being actuarially equivalent to the present value of the unreduced annuity benefit that would have been provided the individual.

“(3) SURVIVOR ANNUITY.—

“(A) IN GENERAL.—If at the time of commencement of a survivor annuity, there is remaining unpaid any CSRS service credit deposit described under paragraph (1), and there has been no actuarial reduction in an annuity under paragraph (2), the survivor annuity shall be reduced based upon the amount unpaid together with interest computed in accordance with section 8334(e)(2) and (3) of title 5, United States Code, and regulations prescribed by the Office.

“(B) AMOUNT.—The reduced survivor annuity to which the individual is entitled shall be equal to an amount that, when taken together with the amount referred to under subparagraph (A), would result in the present value of the total being actuarially equivalent to the present value of an unreduced survivor annuity benefit that would have been provided the individual.

“SEC. 2204. PROVISIONS RELATED TO SOCIAL SECURITY COVERAGE OF MISCLASSIFIED EMPLOYEES.

“(a) DEFINITIONS.—In this section, the term—

“(1) ‘covered individual’ means any employee, former employee, or annuitant who—

“(A) is or was employed erroneously subject to CSRS coverage as a result of a retirement coverage error; and

“(B) is or was retroactively converted to CSRS-offset coverage, FERS coverage, or Social Security-Only coverage; and

“(2) ‘excess CSRS deduction amount’ means an amount equal to the difference between the CSRS deductions withheld and the CSRS-Offset or FERS deductions, if any, due with respect to a covered individual during the entire period the individual was erroneously subject to CSRS coverage as a result of a retirement coverage error.

“(b) REPORTS TO COMMISSIONER OF SOCIAL SECURITY.—

“(1) IN GENERAL.—In order to carry out the Commissioner of Social Security’s responsibilities under title II of the Social Security Act [42 U.S.C. 401 et seq.], the Commissioner may request the head of each agency that employs or employed a covered individual to report (in coordination with the Office of Personnel Management) in such form and within such timeframe as the Commissioner may specify, any or all of—

“(A) the total wages (as defined in section 3121(a) of the Internal Revenue Code of 1986 [26 U.S.C. 3121(a)]) paid to such individual during each year of the entire period of the erroneous CSRS coverage; and

“(B) such additional information as the Commissioner may require for the purpose of carrying out the Commissioner’s responsibilities under title II of the Social Security Act (42 U.S.C. 401 et seq.).

“(2) COMPLIANCE.—The head of an agency or the Office shall comply with a request from the Commissioner under paragraph (1).

“(3) WAGES.—For purposes of section 201 of the Social Security Act (42 U.S.C. 401), wages reported under this subsection shall be deemed to be wages reported to the Secretary of the Treasury or the Secretary’s delegates pursuant to subtitle F of the Internal Revenue Code of 1986 [26 U.S.C. 6001 et seq.].

“(c) PAYMENT RELATING TO OASDI EMPLOYER TAXES.—The Office shall transfer from the Civil Service Retirement and Disability Fund to the General Fund of the Treasury an amount equal to the lesser of the excess CSRS deduction amount or the OASDI taxes

due for covered individuals (as adjusted by amounts transferred relating to applicable OASDI employee taxes as a result of corrections made, including corrections made before the date of the enactment of this Act [Sept. 19, 2000]). If the excess CSRS deductions exceed the OASDI taxes, any difference shall be paid to the covered individual or survivors, as appropriate.

“(d) PAYMENT OF OASDI EMPLOYER TAXES.—

“(1) IN GENERAL.—Each employing agency shall pay an amount equal to the OASDI employer taxes owed with respect to covered individuals during the applicable period of erroneous coverage (as adjusted by amounts transferred for the payment of such taxes as a result of corrections made, including corrections made before the date of the enactment of this Act [Sept. 19, 2000]).

“(2) PAYMENT.—Amounts paid under this subsection shall be determined subject to any limitation under section 6501 of the Internal Revenue Code of 1986 [26 U.S.C. 6501].

“SEC. 2205. THRIFT SAVINGS PLAN TREATMENT FOR CERTAIN INDIVIDUALS.

“(a) APPLICABILITY.—This section applies to an individual who—

“(1) is eligible to make an election of coverage under section 2101 or 2102, and only if FERS coverage is elected (or remains in effect) for the employee involved; or

“(2) is described in section 2111, and makes or has made retroactive employee contributions to the Thrift Savings Fund under regulations prescribed by the Executive Director.

“(b) PAYMENT INTO THRIFT SAVINGS FUND.—

“(1) IN GENERAL.—

“(A) PAYMENT.—With respect to an individual to whom this section applies, the employing agency shall pay to the Thrift Savings Fund under subchapter III of chapter 84 of title 5, United States Code, for credit to the account of the employee involved, an amount equal to the earnings which are disallowed under section 8432a(a)(2) of such title on the employee’s retroactive contributions to such Fund.

“(B) AMOUNT.—Earnings under subparagraph (A) shall be computed in accordance with the procedures for computing lost earnings under section 8432a of title 5, United States Code. The amount paid by the employing agency shall be treated for all purposes as if that amount had actually been earned on the basis of the employee’s contributions.

“(C) EXCEPTIONS.—If an individual made retroactive contributions before the effective date of the regulations under section 2101(c), the Director may provide for an alternative calculation of lost earnings to the extent that a calculation under subparagraph (B) is not administratively feasible. The alternative calculation shall yield an amount that is as close as practicable to the amount computed under subparagraph (B), taking into account earnings previously paid.

“(2) ADDITIONAL EMPLOYEE CONTRIBUTION.—In cases in which the retirement coverage error was corrected before the effective date of the regulations under section 2101(c), the employee involved shall have an additional opportunity to make retroactive contributions for the period of the retirement coverage error (subject to applicable limits), and such contributions (including any contributions made after the date of the correction) shall be treated in accordance with paragraph (1).

“(c) REGULATIONS.—

“(1) EXECUTIVE DIRECTOR.—The Executive Director shall prescribe regulations appropriate to carry out this section relating to retroactive employee contributions and payments made on or after the effective date of the regulations under section 2101(c).

“(2) OFFICE.—The Office, in consultation with the Federal Retirement Thrift Investment Board, shall prescribe regulations appropriate to carry out this

section relating to the calculation of lost earnings on retroactive employee contributions made before the effective date of the regulations under section 2101(c).

“SEC. 2206. CERTAIN AGENCY AMOUNTS TO BE PAID INTO OR REMAIN IN THE CSRDF.

“(a) CERTAIN EXCESS AGENCY CONTRIBUTIONS TO REMAIN IN THE CSRDF.—

“(1) IN GENERAL.—Any amount described under paragraph (2) shall—

“(A) remain in the CSRDF; and

“(B) may not be paid or credited to an agency.

“(2) AMOUNTS.—Paragraph (1) refers to any amount of contributions made by an agency under section 8423 of title 5, United States Code, on behalf of any employee, former employee, or annuitant (or survivor of such employee, former employee, or annuitant) who makes an election to correct a retirement coverage error under this title, that the Office determines to be excess as a result of such election.

“(b) ADDITIONAL EMPLOYEE RETIREMENT DEDUCTIONS TO BE PAID BY AGENCY.—If a correction in a retirement coverage error results in an increase in employee deductions under section 8334 or 8422 of title 5, United States Code, that cannot be fully paid by a reallocation of otherwise available amounts previously deducted from the employee’s pay as employment taxes or retirement deductions, the employing agency—

“(1) shall pay the required additional amount into the CSRDF; and

“(2) shall not seek repayment of that amount from the employee, former employee, annuitant, or survivor.

“SEC. 2207. CSRS COVERAGE DETERMINATIONS TO BE APPROVED BY OPM.

“No agency shall place an individual under CSRS coverage unless—

“(1) the individual has been employed with CSRS coverage within the preceding 365 days; or

“(2) the Office has agreed in writing that the agency’s coverage determination is correct.

“SEC. 2208. DISCRETIONARY ACTIONS BY DIRECTOR.

“(a) IN GENERAL.—The Director of the Office of Personnel Management may—

“(1) extend the deadlines for making elections under this title in circumstances involving an individual’s inability to make a timely election due to a cause beyond the individual’s control;

“(2) provide for the reimbursement of necessary and reasonable expenses incurred by an individual with respect to settlement of a claim for losses resulting from a retirement coverage error, including attorney’s fees, court costs, and other actual expenses;

“(3) compensate an individual for monetary losses that are a direct and proximate result of a retirement coverage error, excluding claimed losses relating to forgone contributions and earnings under the Thrift Savings Plan under subchapter III of chapter 84 of title 5, United States Code, and all other investment opportunities; and

“(4) waive payments required due to correction of a retirement coverage error under this title.

“(b) SIMILAR ACTIONS.—In exercising the authority under this section, the Director shall, to the extent practicable, provide for similar actions in situations involving similar circumstances.

“(c) JUDICIAL REVIEW.—Actions taken under this section are final and conclusive, and are not subject to administrative or judicial review.

“(d) REGULATIONS.—The Office of Personnel Management shall prescribe regulations regarding the process and criteria used in exercising the authority under this section.

“(e) REPORT.—The Office of Personnel Management shall, not later than 180 days after the date of the enactment of this Act [Sept. 19, 2000], and annually thereafter for each year in which the authority provided in this section is used, submit a report to each House of Congress on the operation of this section.

“SEC. 2209. REGULATIONS.

“(a) IN GENERAL.—In addition to the regulations specifically authorized in this title, the Office may prescribe such other regulations as are necessary for the administration of this title.

“(b) FORMER SPOUSE.—The regulations prescribed under this title shall provide for protection of the rights of a former spouse with entitlement to an apportionment of benefits or to survivor benefits based on the service of the employee.

“SUBTITLE C—OTHER PROVISIONS

“SEC. 2301. PROVISIONS TO AUTHORIZE CONTINUED CONFORMITY OF OTHER FEDERAL RETIREMENT SYSTEMS.

“(a) FOREIGN SERVICE.—Sections 827 and 851 of the Foreign Service Act of 1980 (22 U.S.C. 4067 and 4071) shall apply with respect to this title in the same manner as if this title were part of—

“(1) the Civil Service Retirement System, to the extent this title relates to the Civil Service Retirement System; and

“(2) the Federal Employees’ Retirement System, to the extent this title relates to the Federal Employees’ Retirement System.

“(b) CENTRAL INTELLIGENCE AGENCY.—Sections 292 and 301 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2141 and 2151) shall apply with respect to this title in the same manner as if this title were part of—

“(1) the Civil Service Retirement System, to the extent this title relates to the Civil Service Retirement System; and

“(2) the Federal Employees’ Retirement System, to the extent this title relates to the Federal Employees’ Retirement System.

“SEC. 2302. AUTHORIZATION OF PAYMENTS.

“All payments authorized or required by this title to be paid from the Civil Service Retirement and Disability Fund, together with administrative expenses incurred by the Office in administering this title, shall be deemed to have been authorized to be paid from that Fund, which is appropriated for the payment thereof.

“SEC. 2303. INDIVIDUAL RIGHT OF ACTION PRESERVED FOR AMOUNTS NOT OTHERWISE PROVIDED FOR UNDER THIS TITLE.

“Nothing in this title shall preclude an individual from bringing a claim against the Government of the United States which such individual may have under section 1346(b) or chapter 171 of title 28, United States Code, or any other provision of law (except to the extent the claim is for any amounts otherwise provided for under this title).

“SUBTITLE D—EFFECTIVE DATE

“SEC. 2401. EFFECTIVE DATE.

“Except as otherwise provided in this title, this title shall take effect on the date of the enactment of this Act [Sept. 19, 2000].”

FEDERAL EMPLOYEES’ RETIREMENT SYSTEM OPEN ENROLLMENT ACT OF 1997

Pub. L. 105-61, title VI, §642(a)-(c), Oct. 10, 1997, 111 Stat. 1318, as amended by Pub. L. 105-66, title III, §348, Oct. 27, 1997, 111 Stat. 1451, known as the “Federal Employees’ Retirement System Open Enrollment Act of 1997”, provided that any individual who, as of Jan. 1, 1998, was employed by the Federal Government, and on such date was subject to subchapter III of chapter 83 of this title, other than a Member of Congress, could elect to become subject to chapter 84 of this title, and directed Office of Personnel Management to promulgate

regulations which would provide for an election to be made not before July 1, 1998, or after Dec. 31, 1998.

PILOT PROGRAMS FOR DEFENSE EMPLOYEES CONVERTED TO CONTRACTOR EMPLOYEES DUE TO PRIVATIZATION AT CLOSED MILITARY INSTALLATIONS

Pub. L. 104-201, div. A, title XVI, §1616, Sept. 23, 1996, 110 Stat. 2741, as amended by Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814, provided that:

“(a) **PILOT PROGRAMS AUTHORIZED.**—(1) The Secretary of Defense, after consultation with the Director of the Office of Personnel Management, may establish one or more pilot programs under which Federal retirement benefits are provided in accordance with this section to persons who convert from Federal employment to employment by a Department of Defense contractor in connection with the privatization of the performance of functions at selected military installations being closed under the base closure and realignment process.

“(2) The Secretary of Defense shall select the military installations to be covered by a pilot program under this section.

“(b) **ELIGIBLE CONVERTED EMPLOYEES.**—(1) A person is a converted employee eligible for Federal retirement benefits under this section if the person is a former employee of the Department of Defense (other than a temporary employee) who—

“(A) while employed by the Department of Defense at a military installation selected to participate in a pilot program, performed a function that was recommended, in a report of the Defense Base Closure and Realignment Commission submitted to the President under the Defense Base Closure and Realignment Act of 1990 ([part A of] title XXIX of Public Law 101-510; 10 U.S.C. 2687 note), to be privatized for performance by a defense contractor at the same installation or in the vicinity of the installation;

“(B) while so employed, separated from Federal service after being notified that the employee would be separated in a reduction in force resulting from such privatization;

“(C) at the time separated from Federal service, was covered under the Civil Service Retirement System, but was not eligible for an immediate annuity under the Civil Service Retirement System;

“(D) does not withdraw retirement contributions under section 8342 of title 5, United States Code;

“(E) within 60 days following such separation, is employed by the defense contractor selected to privatize the function to perform substantially the same function performed by the person before the separation; and

“(F) remains employed by the defense contractor (or a successor defense contractor) or subcontractor of the defense contractor (or successor defense contractor) until attaining early deferred retirement age (unless the employment is sooner involuntarily terminated for reasons other than performance or conduct of the employee).

“(2) A person who, under paragraph (1), would otherwise be eligible for an early deferred annuity under this section shall not be eligible for such benefits if the person received separation pay or severance pay due to a separation described in subparagraph (B) of that paragraph unless the person repays the full amount of such pay with interest (computed at a rate determined appropriate by the Director of the Office of Personnel Management) to the Department of Defense before attaining early deferred retirement age.

“(c) **RETIREMENT BENEFITS OF CONVERTED EMPLOYEES.**—In the case of a converted employee covered by a pilot program, payment of a deferred annuity for which the converted employee is eligible under section 8338(a) of title 5, United States Code, shall commence on the first day of the first month that begins after the date on which the converted employee attains early deferred retirement age, notwithstanding the age requirement under that section. If the employment of a converted employee is involuntarily terminated by the defense contractor or subcontractor as described in subsection

(b)(1)(F) and the converted employee resumes Federal service before the converted employee attains early deferred retirement age, the converted employee shall once again be covered under the Civil Service Retirement System instead of the pilot program.

“(d) **COMPUTATION OF AVERAGE PAY.**—(1)(A) This paragraph applies to a converted employee who was employed in a position classified under the General Schedule immediately before the employee's covered separation from Federal service.

“(B) Subject to subparagraph (C), for purposes of computing the deferred annuity for a converted employee referred to in subparagraph (A), the average pay of the converted employee, computed under section 8331(4) of title 5, United States Code, as of the date of the employee's covered separation from Federal service, shall be adjusted at the same time and by the same percentage that rates of basic pay are increased under section 5303 of such title during the period beginning on that date and ending on the date on which the converted employee attains early deferred retirement age.

“(C) The average pay of a converted employee, as adjusted under subparagraph (B), may not exceed the amount to which an annuity of the converted employee could be increased under section 8340 of title 5, United States Code, in accordance with the limitation in subsection (g)(1) of such section (relating to maximum pay, final pay, or average pay).

“(2)(A) This paragraph applies to a converted employee who was a prevailing rate employee (as defined under section 5342(2) [5342(a)(2)] of title 5, United States Code) immediately before the employee's covered separation from Federal service.

“(B) For purposes of computing the deferred annuity for a converted employee referred to in subparagraph (A), the average pay of the converted employee, computed under section 8331(4) of title 5, United States Code, as of the date of the employee's covered separation from Federal service, shall be adjusted at the same time and by the same percentage that pay rates for positions that are in the same area as, and are comparable to, the last position the converted employee held as a prevailing rate employee, are increased under section 5343(a) of such title during the period beginning on that date and ending on the date on which the converted employee attains early deferred retirement age.

“(e) **PAYMENT OF UNFUNDED LIABILITY.**—(1) The military department concerned shall be liable for that portion of any estimated increase in the unfunded liability of the Civil Service Retirement and Disability Fund established under section 8348 of title 5, United States Code, which is attributable to any benefits payable from such Fund to a converted employee, and any survivor of a converted employee, when the increase results from—

“(A) an increase in the average pay of the converted employee under subsection (d) upon which such benefits are computed; and

“(B) the commencement of an early deferred annuity in accordance with this section before the attainment of 62 years of age by the converted employee.

“(2) The estimated increase in the unfunded liability for each department referred to in paragraph (1) shall be determined by the Director of the Office of Personnel Management. In making the determination, the Director shall consider any savings to the Fund as a result of a pilot program established under this section. The Secretary of the military department concerned shall pay the amount so determined to the Director in 10 equal annual installments with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System, with the first payment thereof due at the end of the fiscal year in which an increase in average pay under subsection (d) becomes effective.

“(f) **CONTRACTOR SERVICE NOT CREDITABLE.**—Service performed by a converted employee for a defense contractor after the employee's covered separation from Federal service is not creditable for purposes of subchapter III of chapter 83 of title 5, United States Code.

“(g) RECEIPT OF BENEFITS WHILE EMPLOYED BY A DEFENSE CONTRACTOR.—A converted employee may commence receipt of an early deferred annuity in accordance with this section while continuing to work for a defense contractor.

“(h) LUMP-SUM CREDIT PAYMENT.—If a converted employee dies before attaining early deferred retirement age, such employee shall be treated as a former employee who dies not retired for purposes of payment of the lump-sum credit under section 8342(d) of title 5, United States Code.

“(i) CONTINUED FEDERAL HEALTH BENEFITS COVERAGE.—Notwithstanding section 8905a(e)(1)(A) of title 5, United States Code, the continued coverage of a converted employee for health benefits under chapter 89 of such title by reason of the application of section 8905a of such title to such employee shall terminate 90 days after the date of the employee’s covered separation from Federal employment. For the purposes of the preceding sentence, a person who, except for subsection (b)(2), would be a converted employee shall be considered a converted employee.

“(j) REPORT BY GOVERNMENT ACCOUNTABILITY OFFICE.—The Comptroller General shall conduct a study of each pilot program, if any, established under this section and submit a report on the pilot program to Congress not later than two years after the date on which the program is established. The report shall contain the following:

“(1) A review and evaluation of the program, including—

“(A) an evaluation of the success of the privatization outcomes of the program;

“(B) a comparison and evaluation of such privatization outcomes with the privatization outcomes with respect to facilities at other military installations closed or realigned under the base closure laws;

“(C) an evaluation of the impact of the program on the Federal workforce and whether the program results in the maintenance of a skilled workforce for defense contractors at an acceptable cost to the military department concerned; and

“(D) an assessment of the extent to which the program is a cost-effective means of facilitating privatization of the performance of Federal activities.

“(2) Recommendations relating to the expansion of the program to other installations and employees.

“(3) Any other recommendation relating to the program.

“(k) IMPLEMENTING REGULATIONS.—Not later than 30 days after the Secretary of Defense notifies the Director of the Office of Personnel Management of a decision to establish a pilot program under this section, the Director shall prescribe regulations to carry out the provisions of this section with respect to that pilot program. Before prescribing the regulations, the Director shall consult with the Secretary.

“(l) DEFINITIONS.—In this section:

“(1) The term ‘converted employee’ means a person who, pursuant to subsection (b), is eligible for benefits under this section.

“(2) The term ‘covered separation from Federal service’ means a separation from Federal service as described under subsection (b)(1)(B).

“(3) The term ‘Civil Service Retirement System’ means the retirement system under subchapter III of chapter 83 of title 5, United States Code.

“(4) The term ‘defense contractor’ means any entity that—

“(A) contracts with the Department of Defense to perform a function previously performed by Department of Defense employees;

“(B) performs that function at the same installation at which such function was previously performed by Department of Defense employees or in the vicinity of that installation; and

“(C) is the employer of one or more converted employees.

“(5) The term ‘early deferred retirement age’ means the first age at which a converted employee would have been eligible for immediate retirement under subsection (a) or (b) of section 8336 of title 5, United States Code, if such converted employee had remained an employee within the meaning of section 8331(1) of such title continuously until attaining such age.

“(6) The term ‘severance pay’ means severance pay payable under section 5595 of title 5, United States Code.

“(7) The term ‘separation pay’ means separation pay payable under section 5597 of title 5, United States Code.

“(m) APPLICATION OF PILOT PROGRAM.—In the event that a pilot program is established for a military installation, the pilot program shall apply to a covered separation from Federal service by an employee of the Department of Defense at the installation occurring on or after August 1, 1996.”

ADDITIONAL AGENCY CONTRIBUTIONS TO RETIREMENT FUND

Pub. L. 103-226, § 4, Mar. 30, 1994, 108 Stat. 114, as amended by Pub. L. 104-52, title IV, § 3, Nov. 19, 1995, 109 Stat. 490; Pub. L. 108-487, title IV, § 401(b)(2), Dec. 23, 2004, 118 Stat. 3946, provided that:

“(a) RELATING TO VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

“(1) IN GENERAL.—In addition to any other payments which it is required to make under subchapter III of chapter 83 of title 5, United States Code, an agency shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to 9 percent of the final basic pay of each employee of the agency—

“(A) who, on or after the date of the enactment of this Act [Mar. 30, 1994] retires under section 8336(d)(2) of such title; and

“(B) to whom a voluntary separation incentive payment has been or is to be paid by such agency based on that retirement.

“(2) DEFINITIONS.—For the purpose of this subsection—

“(A) the term ‘final basic pay’, with respect to an employee, means the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee’s final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor; and

“(B) the term ‘voluntary separation incentive payment’ means—

“(i) a voluntary separation incentive payment under section 3 [5 U.S.C. 5597 note] (including under any program established under section 3(f)); and

“(ii) any separation pay under section 5597 of title 5, United States Code.

“(b) RELATING TO FISCAL YEARS 1995 THROUGH 1998.—

“(1) IN GENERAL.—In addition to any other payments which it is required to make under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, in fiscal years 1995, 1996, 1997, and 1998 (and in addition to any amounts required under subsection (a)), each agency shall, before the end of each such fiscal year, remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to the product of—

“(A) the number of employees of such agency who, as of March 31st of such fiscal year, are subject to subchapter III of chapter 83 or chapter 84 of such title; multiplied by

“(B) \$80.

“(2) DEFINITION.—For the purpose of this subsection, the term ‘agency’ means an Executive agency (as defined by section 105 of title 5, United States Code), but does not include the General Accounting Office [now Government Accountability Office].

“(c) REGULATIONS.—The Director of the Office of Personnel Management may prescribe any regulations necessary to carry out this section.”

COORDINATION WITH PAY PERIODS

Pub. L. 99-556, title V, §505, Oct. 27, 1986, 100 Stat. 3141, provided that: “Under regulations prescribed by the Office of Personnel Management, any reference to a specific date in section 302, 303, 305 [5 U.S.C. 8331 notes], or 702(a) [5 U.S.C. 8401 note] of the Federal Employees’ Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 514) shall, for purposes of individual contributions (including deductions from basic pay), Government contributions, and refunds, be deemed to be a reference to the first day of the first applicable pay period beginning on or after such date, or to the day before such first day, as appropriate.”

CONTINUED COVERAGE UNDER CERTAIN FEDERAL EMPLOYEE BENEFIT PROGRAMS FOR CERTAIN EMPLOYEES OF SAINT ELIZABETHS HOSPITAL

Pub. L. 99-335, title II, §207(o), as added by Pub. L. 100-238, title I, §109(a), Jan. 8, 1988, 101 Stat. 1748, provided that: “An employee of Saint Elizabeths Hospital who is appointed to a position in the government of the District of Columbia on October 1, 1987, pursuant to the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act (Public Law 98-621; 98 Stat. 3369 and following) [see Short Title note set out under section 225 of Title 24, Hospitals and Asylums] shall, for purposes of chapters 83, 87, and 89 of title 5, United States Code, be treated in the same way as an individual first employed by the government of the District of Columbia before October 1, 1987.”

[Section 109(b) of Pub. L. 100-238 provided that: “The amendment made by this section [enacting note above] shall be effective as of October 1, 1987.”]

ELECTION OF COVERAGE UNDER CHAPTER 84

Sections 301-303 of Pub. L. 99-335, as amended by Pub. L. 99-556, title III, §§301, 302, Oct. 27, 1986, 100 Stat. 3135, 3136; Pub. L. 100-20, §1(a), Apr. 7, 1987, 101 Stat. 265; Pub. L. 100-238, title I, §§106, 107, 113(a)(1), 118, 119, 134(b), (c), Jan. 8, 1988, 101 Stat. 1746, 1747, 1750, 1752, 1764, 1765; Pub. L. 108-176, title II, §226(b)(2)(D), Dec. 12, 2003, 117 Stat. 2530, provided that:

“SEC. 301. ELECTIONS.

“(a) ELECTIONS FOR INDIVIDUALS SUBJECT TO THE CIVIL SERVICE RETIREMENT SYSTEM.—(1)(A) Any individual (other than an individual under subsection (b)) who, as of June 30, 1987, is employed by the Federal Government, and who is then subject to subchapter III of chapter 83 of title 5, United States Code, may elect to become subject to chapter 84 of such title.

“(B) An election under this paragraph may not be made before July 1, 1987, or after December 31, 1987.

“(2)(A) Any individual who, after June 30, 1987, becomes reemployed by the Federal Government, and who is then subject to subchapter III of chapter 83 of title 5, United States Code, may elect to become subject to chapter 84 of such title.

“(B) An election under this paragraph shall not be effective unless it is made during the six-month period beginning on the date on which reemployment commences.

“(3)(A) Except as provided in subparagraph (B), any individual—

“(i) who is excluded from the operation of subchapter III of chapter 83 of title 5, United States Code, under subsection (g), (i), (j), or (l) of section 8347 of such title, and

“(ii) with respect to whom chapter 84 of title 5, United States Code, does not apply because of section 8402(b)(2) of such title,

shall, for purposes of an election under paragraph (1) or (2), be treated as if such individual were subject to subchapter III of chapter 83 of title 5, United States Code.

“(B) An election under this paragraph may not be made by any individual who would be excluded from

the operation of chapter 84 of title 5, United States Code, under section 8402(c) of such title (relating to exclusions based on the temporary or intermittent nature of one’s employment).

“(4) A member of the Foreign Service described in section 103(6) of the Foreign Service Act of 1980 [22 U.S.C. 3903(6)] shall be ineligible to make any election under this subsection.

“(b) ELECTIONS FOR CERTAIN INDIVIDUALS SERVING CONTINUOUSLY SINCE DECEMBER 31, 1983.—The following rules shall apply in the case of any individual described in section 8402(b)(1) of title 5, United States Code:

“(1) If, as of December 31, 1986, the individual is subject to subchapter III of chapter 83 of title 5, United States Code, but is not subject to section 204 of the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 [section 204 of Pub. L. 98-168, set out below], the individual shall remain so subject to such subchapter unless the individual elects, after June 30, 1987, and before January 1, 1988—

“(A) to become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter; or

“(B) to become subject to chapter 84 of such title. An individual eligible to make an election under this paragraph may make the election described in subparagraph (A) or (B), but not both.

“(2) If, as of December 31, 1986, the individual is subject to subchapter III of chapter 83 of title 5, United States Code, and is also subject to section 204 of the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 [set out below], the individual—

“(A) shall, as of January 1, 1987, become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter; and

“(B) may (during the six-month period described in subsection (a)(1)(B)) elect to become subject to chapter 84 of such title.

“(3)(A) If, as of December 31, 1986, the individual is not subject to subchapter III of chapter 83 of title 5, United States Code, such individual may, during the 6-month period described in subsection (a)(1)(B)—

“(i) elect to become subject to chapter 84 of such title; or

“(ii) if such individual has not since made an election described in subparagraph (B), elect to become subject to subchapter III of chapter 83 of such title under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter.

“(B) Nothing in this paragraph shall be considered to preclude the individual from electing to become subject to subchapter III of chapter 83 of such title pursuant to notification under section 8331(2) of such title—

“(i) during the period after December 31, 1986, and before July 1, 1987; or

“(ii) after December 31, 1987, if such individual has not since become subject to subchapter III of chapter 83, or chapter 84, of such title.

“(C) Any individual who becomes subject to subchapter III of chapter 83 of such title pursuant to notification under section 8331(2) of such title after December 31, 1986, shall become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter.

“(c) EFFECTIVE DATE; IRREVOCABILITY.—An election made under this section—

“(1) shall take effect beginning with the first pay period beginning after the date of the election; and

“(2) shall be irrevocable.

“(d) CONDITION FOR MAKING AN ELECTION; EXTENSION TO SATISFY CONDITION.—(1) An election under this sec-

tion to become subject to chapter 84 of title 5, United States Code, shall not be considered effective in the case of an individual having one or more former spouses, unless the election is made with the written consent of such former spouse (or each such former spouse, if there is more than one).

“(2)(A) This subsection applies with respect to a former spouse who (based on the service of the individual involved) is entitled to benefits under section 8341(h) or 8345(j) of title 5, United States Code, under the terms of a decree of divorce or annulment, or a court order or court-approved property settlement incident to any such decree, with respect to which the Office of Personnel Management has been duly notified.

“(B) This subsection does not apply with respect to a former spouse who has ceased to be so entitled as a result of remarrying before age 55.

“(3) The requirement under paragraph (1) shall be considered satisfied with respect to a former spouse if the individual seeking to make the election establishes to the satisfaction of the Office (in accordance with regulations prescribed by the Office)—

“(A) that the former spouse’s whereabouts cannot be determined; or

“(B) that, due to exceptional circumstances, requiring the individual to seek the former spouse’s consent would otherwise be inappropriate.

“(4)(A) The Office shall, upon application of an individual, grant an extension for such individual to make an election referred to in paragraph (1) if such individual—

“(i) files application for extension before the end of the period during which such individual would otherwise be eligible to make such election; and

“(ii) demonstrates to the satisfaction of the Office that the extension is needed to secure the modification of a decree of divorce or annulment (or a court order or court-approved property settlement incident to any such decree) in order to satisfy the consent requirement under paragraph (1).

“(B) An extension under this paragraph shall be for 6 months or for such longer period as the Office considers appropriate.

“(e) EXCLUSIONS.—This section does not apply to an individual under section 8331(1)(G) of title 5, United States Code.

“SEC. 302. EFFECT OF AN ELECTION UNDER SECTION 301 TO BECOME SUBJECT TO THE FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.

“(a) GENERAL AND SPECIAL RULES.—All provisions of chapter 84 of title 5, United States Code (including those relating to disability benefits, survivor benefits, and any reductions to provide for survivor benefits) shall apply with respect to any individual who becomes subject to such chapter pursuant to an election under section 301, except if, or to the extent that, such provisions are inconsistent with the following:

“(1)(A) Any civilian service which is performed before the effective date of the election under section 301 shall not be creditable under chapter 84 of title 5, United States Code, except as otherwise provided in this subsection.

“(B) Any service described in subparagraph (A) which is covered service within the meaning of section 203(a)(3) of the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1107; 5 U.S.C. 8331 note) (hereinafter in this section referred to as ‘covered service’) shall be creditable under chapter 84 of title 5, United States Code, if—

“(i) with respect to any such service performed before January 1, 1987, 1.3 percent of basic pay for such service was withheld in accordance with such Act or, if either such withholding was not made or was made, but the amount so withheld was subsequently refunded, 1.3 percent of basic pay for such period is deposited to the credit of the Civil Service Retirement and Disability Fund (hereinafter in this section referred to as the ‘Fund’), with interest (computed under section 8334(e) of such title); and

“(ii) with respect to any such service performed after December 31, 1986, and before the effective date of the election, an amount equal to the percentage of basic pay for such service which would be required to be withheld under section 8422(a) of title 5, United States Code, has been contributed to the Fund by the individual involved, whether by withholdings from pay or, if either no withholding was made or was made, but the amount withheld was subsequently refunded, the aforementioned percentage of basic pay for such period is deposited to the credit of the Fund, with interest (computed under section 8334(e) of such title).

“(C) Any service described in subparagraph (A)—

“(i) which is not covered service;

“(ii) which constitutes service of a type described in section 8411(b)(3) of title 5, United States Code (determined without regard to whether such service was performed before, on, or after January 1, 1989, and without regard to the provisions of section 8411(f) of such title); and

“(iii) which, in the aggregate, is equal to less than 5 years;

shall be creditable under chapter 84 of such title, subject to section 8411(f) of such title.

“(D) Any service described in subparagraph (A)—

“(i) which is not covered service;

“(ii) which constitutes service of a type described in section 8411(b)(3) of title 5, United States Code (determined without regard to whether such service was performed before, on, or after January 1, 1989, and without regard to the provisions of section 8411(f) of such title); and

“(iii) which, in the aggregate, is equal to 5 years or more;

shall be creditable for purposes of—

“(I) section 8410 of such title, relating to the minimum period of civilian service required to be eligible for an annuity;

“(II) any provision of section 8412 (other than subsection (d) or (e) thereof), 8413, 8414, 8442(b)(1), 8443(a)(1), or 8451 of such title which relates to a minimum period of service for entitlement to an annuity;

“(III) the provisions of paragraphs (4) and (6);

“(IV) any provision of section 8412(d) of such title which relates to a minimum period of service for entitlement to an annuity, but only if and to the extent that the service described in subparagraph (A) was as a law enforcement officer or firefighter;

“(V) any provision of section 8412(e) of such title which relates to a minimum period of service for entitlement to an annuity, but only if and to the extent that the service described in subparagraph (A) was as an air traffic controller; and

“(VI) the provision of subsection (h) of section 8415 which relates to the minimum period of service required to qualify for the higher accrual rate under such subsection.

“(2)(A) Except as provided in subparagraph (B), the creditability under chapter 84 of title 5, United States Code, of any military service which is performed before the effective date of the election under section 301 shall be determined in accordance with applicable provisions of such chapter.

“(B) If the electing individual has performed service described in clauses (i) through (iii) of paragraph (1)(D), service described in subparagraph (A) which, but for the provisions of subsection (b), would be creditable under subchapter III of chapter 83 of title 5, United States Code, as in effect on December 31, 1986, shall be creditable for purposes of—

“(i) any provision of section 8412 (other than subsection (d) or (e) thereof), 8413, or 8414 of such title which relates to a minimum period of service for entitlement to an annuity; and

“(ii) the provisions of paragraph (4).

“(3)(A)(i) If the electing individual becomes entitled to an annuity under subchapter II of chapter 84 of title 5, United States Code, or dies leaving a sur-

vivor or survivors entitled to benefits under subchapter IV of such chapter, the annuity for such individual shall be equal to the sum of the individual's accrued benefits under the Civil Service Retirement System (as determined under paragraph (4)) and the individual's accrued benefits under the Federal Employees' Retirement System (as determined under paragraph (5)).

“(ii) An annuity computed under this subparagraph shall be deemed to be the individual's annuity computed under section 8415 of title 5, United States Code.

“(B) If the electing individual becomes entitled to an annuity under subchapter V of chapter 84 of title 5, United States Code, and if it becomes necessary to compute an annuity under section 8415 of such title with respect to such individual as a result of such individual's having become so entitled, the methodology set forth in subparagraph (A) shall be used in computing any such annuity under section 8415.

“(4) Accrued benefits under this paragraph shall be computed in accordance with applicable provisions of subchapter III of chapter 83 of title 5, United States Code (but without regard to subsection (j) or (k), or the second sentence of subsection (e), of section 8339 of such title) using only any civilian service under paragraph (1)(D), and any military service under paragraph (2)(B), which would be creditable for purposes of computing an annuity under such subchapter. Notwithstanding the preceding sentence, in computing accrued benefits under this paragraph for an individual retiring under section 8412(g) or 8413(b) of title 5, United States Code, section 8339(h) of such title (relating to reductions based on age at date of separation) shall not apply.

“(5) Accrued benefits under this paragraph shall be computed under section 8415 of title 5, United States Code, using—

“(A) total service creditable under chapter 84 of such title which is performed on or after the effective date of the election under section 301; and

“(B) with respect to service performed before such effective date—

“(i) creditable civilian service (as determined under applicable provisions of this subsection) other than any service described in paragraph (1)(D); and

“(ii) creditable military service (as determined under applicable provisions of this subsection) other than any service described in paragraph (2)(B).

“(6)(A) For purposes of any computation under paragraph (4) or (5), the average pay to be used shall be the largest annual rate resulting from averaging the individual's rates of basic pay in effect over any 3 consecutive years of creditable service or, in the case of an annuity based on service of less than 3 years, over the total period of service so creditable, with each rate weighted by the period it was in effect.

“(B) For purposes of subparagraph (A), service shall be considered creditable if it would be considered creditable for purposes of determining average pay under chapter 83 or 84 of title 5, United States Code.

“(7) The cost-of-living adjustments for the annuity of the electing individual shall be made as follows:

“(A) The portion of the annuity attributable to paragraph (4) shall be adjusted at the time and in the amount provided for under section 8340 of title 5, United States Code.

“(B) The portion of the annuity attributable to paragraph (5) shall be adjusted at the time and in the amount provided for under section 8462 of title 5, United States Code.

“(8) For purposes of any computation under paragraph (4) in the case of an individual who retires under section 8412 or 8414 of title 5, United States Code, or who dies leaving a survivor or survivors entitled to benefits under subchapter IV of such chapter, sick leave creditable under section 8339(m) of such title shall be equal to the number of days of unused

sick leave to the individual's credit as of the date of retirement or as of the effective date of the individual's election under section 301, whichever is less.

“(9) In computing the annuity under paragraph (3) for an individual retiring under section 8412(g) or 8413(b) of title 5, United States Code, the reduction under section 8415(g) of such title shall apply with respect to the sum computed under such paragraph.

“(10) An annuity supplement under section 8421 of title 5, United States Code, shall be computed using the same service as is used for the computation under paragraph (5).

“(11) Effective from its commencing date, an annuity payable to an annuitant's survivor (other than a child under section 8443 of title 5, United States Code) shall be increased by the total percent by which the deceased annuitant's annuity was increased under paragraph (7).

“(12)(A)(i) If the electing individual is a reemployed annuitant under section 8344 of title 5, United States Code, under conditions allowing the annuity to continue during reemployment, payment of the annuitant's annuity shall continue after the effective date of the election, and an amount equal to the annuity allocable to the period of actual employment shall continue to be deducted from the annuitant's pay and deposited as provided in subsection (a) of such section. Deductions from pay under section 8422(a) of such title and contributions under section 8423 of such title shall begin effective on the effective date of the election.

“(ii) Notwithstanding any provision of section 301, an election under such section shall not be available to any reemployed annuitant who would be excluded from the operation of chapter 84 of title 5, United States Code, under section 8402(c) of such title (relating to exclusions based on the temporary or intermittent nature of one's employment).

“(B) If the annuitant serves on a full-time basis for at least 1 year, or on a part-time basis for periods equivalent to at least 1 year of full-time service, such annuitant's annuity, on termination of reemployment, shall be increased by an annuity computed—

“(i) with respect to reemployment service before the effective date of the election, under section 8339(a), (b), (d), (e), (h), (i), and (n) of title 5, United States Code, as may apply based on the reemployment in which such annuitant was engaged before such effective date; and

“(ii) with respect to reemployment service on or after the effective date of the election, under section 8415(a) through (g) of such title, as may apply based on the reemployment in which such annuitant was engaged on or after such effective date;

with the ‘average pay’ used in any computation under clause (i) or (ii) being determined (based on rates of pay in effect during the period of reemployment, whether before, on, or after the effective date of the election) in the same way as provided for in paragraph (6). If the annuitant is receiving a reduced annuity as provided in section 8339(j) or section 8339(k)(2) of title 5, United States Code, the increase in annuity payable under this subparagraph is reduced by 10 percent and the survivor annuity payable under section 8341(b) of such title is increased by 55 percent of the increase in annuity payable under this subparagraph, unless, at the time of claiming the increase payable under this subparagraph, the annuitant notifies the Office of Personnel Management in writing that such annuitant does not desire the survivor annuity to be increased. If the annuitant dies while still reemployed, after having been reemployed for at least 1 full year (or the equivalent thereof, in the case of part-time employment), any survivor annuity payable under section 8341(b) of such title based on the service of such annuitant is increased as though the reemployment had otherwise terminated. In applying paragraph (7) to an amount under this subparagraph, any portion of such amount attributable to clause (i) shall be adjusted under subpara-

graph (A) of such paragraph, and any portion of such amount attributable to clause (ii) shall be adjusted under subparagraph (B) of such paragraph.

“(C)(i) If the annuitant serves on a full-time basis for at least 5 years, or on a part-time basis for periods equivalent to at least 5 years of full-time service, such annuitant may elect, instead of the benefit provided by subparagraph (B), to have such annuitant’s rights redetermined, effective upon separation from employment. If the annuitant so elects, the redetermined annuity will become payable as if such annuitant were retiring for the first time based on the separation from reemployment service, and the provisions of this section concerning computation of annuity (other than any provision of this paragraph) shall apply.

“(ii) If the annuitant dies while still reemployed, after having been reemployed for at least 5 full years (or the equivalent thereof, in the case of part-time employment), any person entitled to a survivor annuity under section 8341(b) of title 5, United States Code, based on the service of such annuitant shall be permitted to elect to have such person’s rights redetermined in accordance with regulations which the Office shall prescribe. Redetermined benefits elected under this clause shall be in lieu of any increased benefits which would otherwise be payable in accordance with the next to last sentence of subparagraph (B).

“(D) If the annuitant serves on a full-time basis for less than 1 year (or the equivalent thereof, in the case of part-time employment), any amounts withheld under section 8422(a) of title 5, United States Code, from such annuitant’s pay for the period (or periods) involved shall, upon written application to the Office, be payable to such annuitant (or the appropriate survivor or survivors, determined in the order set forth in section 8342(c) of such title).

“(E) For purposes of determining the period of an annuitant’s reemployment service under this paragraph, a period of reemployment service shall not be taken into account unless—

“(i) with respect to service performed before the effective date of the election under section 301, it is service which, if performed for at least 1 full year, would have allowed such annuitant to elect under section 8344(a) of title 5, United States Code, to have deductions withheld from pay; or

“(ii) with respect to service performed on or after the effective date of the election under section 301, it is service with respect to which deductions from pay would be required to be withheld under the second sentence of section 8468(a) of title 5, United States Code.

“(b) CHAPTER 83 GENERALLY INAPPLICABLE.—(1) Except as provided in subsection (a) or paragraph (2), subchapter III of chapter 83 of title 5, United States Code, shall not apply with respect to any individual who becomes subject to chapter 84 of title 5, United States Code, pursuant to an election under section 301.

“(2)(A) Nothing in paragraph (1), or in subchapter III of chapter 83 of title 5, United States Code, shall preclude the making of a deposit under such subchapter with respect to any civilian service under subsection (a)(1)(D) or military service under subsection (a)(2)(B) either by the electing individual or, for purposes of survivor annuities, by a survivor of such individual.

“(B) Nothing in paragraph (1) shall preclude the payment of any lump-sum credit in accordance with section 8342 of title 5, United States Code.

“(c) REFUNDS RELATING TO CERTAIN CIVILIAN SERVICE.—(1) Any individual who makes an election under section 301 to become subject to chapter 84 and who, with respect to any period before the effective date of the election, has made a contribution to the Civil Service Retirement System (whether by deductions from pay or by a deposit or redeposit) and has not taken a refund of the contribution (as so made), shall be entitled to a refund equal to—

“(A) for a period of service under clause (i) of subsection (a)(1)(B), the amount by which—

“(i) the amount contributed with respect to such period, exceeds

“(ii) the amount required under such clause (i) with respect to such period;

“(B) for a period of service under clause (ii) of subsection (a)(1)(B), the amount by which—

“(i) the amount so contributed with respect to such period, exceeds

“(ii) the amount required under such clause (ii) with respect to such period; and

“(C) for a period of service under subparagraph (C) of subsection (a)(1), the amount by which—

“(i) the amount so contributed with respect to such period, exceeds

“(ii) the amount required under such subparagraph with respect to such period.

“(2) In accordance with regulations prescribed by the Office of Personnel Management, a refund under this subsection shall be payable upon written application therefor filed with the Office and shall include interest at the rate provided in section 8334(e)(3) of title 5, United States Code. Interest on the refund shall accrue monthly and shall be compounded annually.

“SEC. 303. PROVISIONS RELATING TO AN ELECTION TO BECOME SUBJECT TO CHAPTER 83 SUBJECT TO CERTAIN OFFSETS RELATING TO SOCIAL SECURITY.

“(a) REFUND.—Any individual who makes an election under section 301(b)(1)(A) shall, upon written application to the Office of Personnel Management, be entitled to a refund equal to—

“(1) for the period beginning on January 1, 1984, and ending on December 31, 1986, the amount by which—

“(A) the total amount deducted from such individual’s basic pay under section 8334(a)(1) of title 5, United States Code, for such period, exceeds

“(B) 1.3 percent of such individual’s total basic pay for such period; and

“(2) for the period beginning on January 1, 1987, and ending on the day before the effective date of the election, the amount by which—

“(A) the total amount deducted from such individual’s basic pay under such section 8334(a)(1) for such period, exceeds

“(B) the total amount which would have been deducted if such individual’s basic pay had instead been subject to section 8334(k) of such title during such period.

A refund under this subsection shall be computed with interest in accordance with section 302(c)(2) and regulations prescribed by the Office of Personnel Management.

“(b) DEPOSIT REQUIREMENTS.—(1) In the case of an individual who becomes subject to subchapter III of chapter 83 of title 5, United States Code, pursuant to notification as described in the second sentence of section 301(b)(3)(B), service performed by such individual before the effective date of the notification shall not be considered creditable under such subchapter unless—

“(A) for any service during the period beginning on January 1, 1987, and ending on the day before such effective date, there is deposited to the credit of the Fund a percentage of basic pay for such period equal to the percentage which would have applied under section 8334(k) of such title if such individual’s pay had been subject to such section during such period;

“(B) for any period of service beginning on January 1, 1984, and ending on December 31, 1986, there is deposited to the credit of the Fund an amount equal to 1.3 percent of basic pay for such period; and

“(C) for any period of service before January 1, 1984, there is deposited to the credit of the Fund any amount required with respect to such period under such subchapter.

“(2) A deposit under this subsection may be made by the individual or, for purposes of survivor annuities, a survivor of such individual.”

[Section 113(a)(2) of Pub. L. 100-238 provided that: “The amendment made by paragraph (1) [amending sec-

tion 301(a) of Pub. L. 99-335 set out above] shall be effective as of June 30, 1987. Any refund which becomes payable as a result of the preceding sentence shall, to the extent that such refund involves an individual's contributions to the Thrift Savings Fund (established under section 8437 of title 5, United States Code), be adjusted to reflect any earnings attributable thereto."

[Amendment by section 134(b) of Pub. L. 100-238 to section 302(a) of Pub. L. 99-335 applicable with respect to any election made by a reemployed annuitant on or after Jan. 8, 1988, see section 134(d) of Pub. L. 100-238, set out as an Effective Date of 1988 Amendment note under section 8468 of this title.]

CONSTRUCTION OF ADJUSTMENTS IN RETIREMENT PROVISIONS MADE BY PUB. L. 98-353

Section 117 of Pub. L. 98-353 provided that: "The adjustments in the retirement provisions made by this Act shall not be construed to be a 'new government retirement system' for purposes of the Federal Employees Retirement Contribution Temporary Adjustment Act of 1983 (Public Law 98-168) [set out below]".

ELECTION OF RETIREMENT PLAN UNDER FEDERAL EMPLOYEES' RETIREMENT CONTRIBUTION TEMPORARY ADJUSTMENT ACT OF 1983

Pub. L. 98-369, div. B, title II, §2206, July 18, 1984, 98 Stat. 1059, provided that:

"(a) For the purposes of this section, the term 'covered retirement system' shall have the same meaning as provided in section 203(a)(2) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (Public Law 98-168; 97 Stat. 1107) [set out below].

"(b)(1) Any individual who was entitled to make an election under section 208(a) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1111) [set out below], but who did not make such an election, may make an election under such section not later than September 15, 1984.

"(2)(A) Not later than September 15, 1984, any such individual who made an election under paragraph (1) of section 208(a) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [set out below] may—

"(i) make any other election which such individual was entitled to make under such section before January 1, 1984; or

"(ii) elect to become a participant in a covered retirement system (if such individual is otherwise eligible to participate in such system), subject to sections 201 through 207 of such Act [set out below].

"(B) Not later than September 15, 1984, any such individual who made an election under paragraph (2) of section 208(a) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 may—

"(i) make any other election which such individual was entitled to make under such section before January 1, 1984; or

"(ii) elect to terminate participation in the covered retirement system with respect to which such individual made the election under such paragraph (2).

"(3) An election under this subsection shall be made by a written application submitted to the official by whom the electing individual is paid.

"(4) An election made as provided in this subsection shall take effect with respect to service performed on or after the first day of the first applicable pay period commencing after September 15, 1984.

"(c)(1) Section 8342(a)(4) of title 5, United States Code, does not apply for the purpose of determining an entitlement to a refund under section 208(c) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1111) [set out below].

"(2) Paragraph (1) shall take effect with respect to any election made under section 208(a) of such Act or this Act before, on, or after January 1, 1984.

"(d) Nothing in this section or the Federal Employees' Retirement Contribution Temporary Adjustment

Act of 1983 [set out below] affects any entitlement to benefits accrued under a covered retirement system before January 1, 1984, except to the extent that any amount refunded under section 208(c) of such Act is not redeposited in the applicable retirement fund."

FEDERAL EMPLOYEES' RETIREMENT CONTRIBUTION TEMPORARY ADJUSTMENT

Pub. L. 98-168, title II, Nov. 29, 1983, 97 Stat. 1106, as amended by Pub. L. 99-190, §147, Dec. 19, 1985, 99 Stat. 1324; Pub. L. 99-335, title III, §§305(a), 309, June 6, 1986, 100 Stat. 606, 607; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"SHORT TITLE

"SEC. 201. This title may be cited as the 'Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983'.

"STATEMENT OF POLICY

"SEC. 202. It is the policy of the Government—

"(1) that the amount required to be contributed to certain public retirement systems by employees and officers of the Government who are also required to pay employment taxes relating to benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] for service performed after December 31, 1983, be modified until the date on which such employees and officers are covered by a new Government retirement system (the design, structure, and provisions of which have not been determined on the date of enactment of this Act [Nov. 29, 1983]) or January 1, 1987, whichever is earlier;

"(2) that the Treasury be required to pay into such retirement systems the remainder of the amount such employees and officers would have contributed during such period but for the temporary modification;

"(3) that the employing agencies make contributions to the retirement systems with respect to such service in amounts required by law in effect before January 1, 1984, without reduction in such amounts;

"(4) that such employees and officers accrue credit for service for the purposes of the public retirement systems in effect on the date of enactment of this Act [Nov. 29, 1983] until a new Government retirement system covering such employees and officers is established;

"(5) that, where appropriate, deposits to the credit of such a retirement system be required with respect to service performed by an employee or officer of the Government during the period described in clause (1), and, where appropriate, annuities be offset by the amount of certain social security benefits attributable to such service; and

"(6) that such employees and officers who are first employed in civilian service by the Government or first take office in civilian service in the Government on or after January 1, 1984, become subject to such new Government retirement system as may be established for employees and officers of the Government on or after January 1, 1984, and before January 1, 1987, with credit for service performed after December 31, 1983, by such employees and officers transferred to such new Government retirement system.

"DEFINITIONS

"SEC. 203. (a) For the purposes of this title—

"(1) the term 'covered employee' means any individual whose service is covered service;

"(2) the term 'covered retirement system' means—

"(A) the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code;

"(B) the Foreign Service Retirement and Disability System under chapter 8 of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.);

"(C) the Central Intelligence Agency Retirement and Disability System under the Central Intel-

ligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); and

“(D) any other retirement system (other than a new Government retirement system) under which a covered employee who is a participant in the system is required to make contributions to the system in an amount equal to a portion of the participant’s basic pay for covered service, as determined by the President;

“(3) the term ‘covered service’ means service which is employment for the purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.] and chapter 21 of the Internal Revenue Code of 1986 [26 U.S.C. 3101 et seq.] by reason of the amendments made by section 101 of the Social Security Amendments of 1983 (97 Stat. 67) [amending section 3121 of Title 26, Internal Revenue Code, and sections 409 and 410 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under section 3121 of Title 26 and section 410 of Title 42]; and

“(4) the term ‘new Government retirement system’ means any retirement system which (A) is established for officers or employees of the Government by or pursuant to a law enacted after December 31, 1983, and before January 1, 1987, and (B) takes effect on or before January 1, 1987.

“(b) The President shall publish the determinations made for the purpose of subsection (a)(2)(D) in an Executive order.

“CONTRIBUTION ADJUSTMENTS

“SEC. 204. (a) In the case of a covered employee who is participating in a covered retirement system, an employing agency shall deduct and withhold only 1.3 percent of the basic pay of such employee under—

“(1) section 8334 of title 5, United States Code;

“(2) section 805 of the Foreign Service Act of 1980 (22 U.S.C. 4045);

“(3) section 211 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); or

“(4) any provision of any other covered retirement system which requires a participant in the system to make contributions of a portion of the basic pay of the participant;

for covered service which is performed after December 31, 1983, and before the earlier of the effective date of a new Government retirement system or January 1, 1987. Deductions shall be made and withheld as provided by such provisions in the case of covered service which is performed on or after such effective date or January 1, 1987, as the case may be, and is not subject to a new Government retirement system.

“(b) Employing agencies of the Government shall make contributions with respect to service to which subsection (a) of this section applies under the second sentence of section 8334(a)(1) of title 5, United States Code, the second sentence of section 805(a) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a)), the second sentence of section 211(a) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note), and any provision of any other covered retirement system requiring a contribution by the employing agency, as if subsection (a) of this section had not been enacted.

“REIMBURSEMENT FOR CONTRIBUTION DEFICIENCY

“SEC. 205. (a) For purposes of this section—

“(1) the term ‘contribution deficiency’, when used with respect to a covered retirement system, means the excess of—

“(A) the total amount which, but for section 204(a) of this Act, would have been deducted and withheld under a provision referred to in such section from the pay of covered employees participating in such retirement system for service to which such section applies, over

“(B) the total amount which was deducted and withheld from the pay of covered employees for

such service as provided in section 204(a) of this Act; and

“(2) the term ‘appropriate agency head’ means—

“(A) the Director of the Office of Personnel Management, with respect to the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code;

“(B) the Secretary of State, with respect to the Foreign Service Retirement and Disability System under chapter 8 of the Foreign Service Retirement Act of 1980 (22 U.S.C. 404 et seq.) [22 U.S.C. 4041 et seq.];

“(C) the Director of Central Intelligence, with respect to the Central Intelligence Agency Retirement and Disability System under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); and

“(D) the officer designated by the President for that purpose in the case of any retirement system described in section 203(a)(2)(D) of this Act.

“(b) At the end of each of fiscal years 1984, 1985, 1986, and 1987, the appropriate agency head—

“(1) shall determine the amount of the contribution deficiency for such fiscal year in the case of each covered retirement system, including the interest that those contributions would have earned had they been credited to the fund established for the payment of benefits under such retirement system in the same manner and at the same time as deductions under the applicable provision of law referred to in section 204(a) of this Act; and

“(2) shall notify the Secretary of the Treasury of the amount of the contribution deficiency in each such case.

“(c) Before closing the accounts for each of fiscal years 1984, 1985, 1986, and 1987, the Secretary of the Treasury shall credit to the fund established for the payment of benefits under each covered retirement system, as a Government contribution, out of any money in the Treasury not otherwise appropriated, an amount equal to the amount determined under subsection (b) with respect to that covered retirement system for the fiscal year involved.

“(d) Amounts credited to a fund under subsection (c) shall be accounted for separately than amounts credited to such fund under any other provision of law.

“SPECIAL DEPOSIT AND OFFSET RULES RELATING TO RETIREMENT BENEFITS FOR INTERIM COVERED SERVICE

“SEC. 206. (a) For the purposes of this section, the term ‘interim covered service’ means covered service to which section 204(a) applies.

“(b)(1) Paragraphs (2) and (3) apply according to the provisions thereof only with respect to a covered employee who is employed by the Government on December 31, 1983.

“(2)(A) Notwithstanding any other provision of law, the interim covered service of such covered employee shall be considered—

“(i) in determining entitlement to and computing the amount of an annuity (other than a disability or survivor annuity) commencing under a covered retirement system during the period beginning January 1, 1984, and ending on the earlier of the date a new Government retirement system takes effect or January 1, 1987, by reason of the retirement of such covered employee during such period only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f); and

“(ii) in computing a disability or survivor annuity which commences under a covered retirement system during such period and is based in any part on such interim covered service.

“(B) Notwithstanding any other provision of law, an annuity to which subparagraph (A)(ii) applies shall be reduced by the portion of the amount of any benefits which is payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] and is attributable to the in-

terim covered service considered in computing the amount of such annuity, as determined under subsection (g), unless, in the case of a survivor annuity, a covered employee has made a deposit with respect to such covered service for the purposes of subparagraph (A)(i) before the date on which payment of such annuity commences.

“(3) Notwithstanding any other provision of law, if a new Government retirement system is not established or is inapplicable to such a covered employee who retires or dies subject to a covered retirement system after the date on which such new Government retirement system takes effect, the interim covered service of such covered employee shall be considered in determining entitlement to and computing the amount of an annuity under a covered retirement system based on the service of such covered employee only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f).

“(c)(1) Paragraphs (2) and (3) apply according to the provisions thereof only with respect to a covered employee who was not employed by the Government on December 31, 1983.

“(2) Notwithstanding any other provision of law, any annuity which commences under a covered retirement system during the period described in subsection (b)(2)(A)(i) and is based, in any part, on interim covered service shall be reduced by the portion of the amount of any benefits which is payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] to the annuitant and is attributable to such service, as determined under subsection (g).

“(3) Notwithstanding any other provision of law, if a new Government retirement system is not established, the interim covered service of such a covered employee who retires or dies after January 1, 1987, shall be considered in determining entitlement to and computing the amount of an annuity under a covered retirement system based on the service of such covered employee only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f).

“(d) If a covered employee with respect to whom subsection (b)(3) or (c)(3) applies dies without having made a deposit pursuant to such subsection, any individual who is entitled to an annuity under a covered retirement system based on the service of such covered employee or who would be entitled to such an annuity if such deposit had been made by the covered employee before death may make such deposit after the date of death of such covered employee. Service covered by a deposit made pursuant to the first sentence shall be considered in determining, in the case of each individual to whom the first sentence applies, the entitlement to and the amount of an annuity under a covered retirement system based on the service of such covered employee.

“(e) A reduction in annuity under subsection (b)(2)(B) or (c)(2) shall commence on the first day of the first month after the date on which payment of benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] commence and shall be redetermined each time an increase in such benefits takes effect pursuant to section 215(i) of the Social Security Act [42 U.S.C. 415(i)]. In the case of an annuity of a participant or former participant in a covered retirement system, of a surviving spouse or child of such participant or former participant, or of any other person designated by such participant or former participant to receive an annuity, under a covered retirement system (other than a former spouse) the reduction in annuity under subsection (b)(2)(B) or (c)(2) shall be calculated before any reduction in such annuity provided under such system for the purpose of paying an annuity under such system to any former spouse of such participant or former participant based on the service of such participant or former participant.

“(f) For the purposes of subsection (b) or (c), the amount of a deposit to the credit of the applicable covered retirement system shall be equal to the excess of—

“(1) the total amount which would have been deducted and withheld from the basic pay of the covered employee for the interim covered service under such covered retirement system but for the application of section 204(a), over

“(2) the amount which was deducted and withheld from such basic pay for such interim covered service pursuant to section 204(a) and was not refunded to such covered employee.

“(g) For the purpose of subsections (b)(2)(B) and (c)(2), the portion of the amount of the benefits which is payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] to an individual and is attributable to interim covered service shall be determined by—

“(1) computing the amount of such benefits including credit for such service;

“(2) computing the amount of such benefits, if any, without including credit for such service; and

“(3) subtracting the amount computed under clause (2) from the amount computed under clause (1).

“(h) The Secretary of Health and Human Services shall furnish to the appropriate agency head (as defined in section 205(a)(2)) such information as such agency head considers necessary to carry out this section.

“TRANSFER OF CREDIT TO NEW RETIREMENT SYSTEM

“SEC. 207. [Repealed. Pub. L. 99-335, title III, §309, June 6, 1986, 100 Stat. 607]

“SEC. 208. (a) Any individual performing service of a type referred to in clause (i), (ii), (iii), or (iv) of section 210(a)(5) of the Social Security Act [42 U.S.C. 410(a)(5)(i)-(iv)] beginning on or before December 31, 1983, may—

“(1) if such individual is then currently a participant in a covered retirement system, elect by written application submitted before January 1, 1984—

“(A) to terminate participation in such system, effective after December 31, 1983; or

“(B) to remain under such system, as if the preceding sections of this Act [probably means this ‘title’] and the amendments made by this Act had not been enacted; or

“(2) if such individual is then currently not a participant in a covered retirement system, elect by written application—

“(A) to become a participant under such system (if such individual is otherwise eligible to participate in the system), subject to the preceding sections of this Act [probably means this ‘title’] and the amendments made by this Act; or

“(B) to become a participant under such system (if such individual is otherwise eligible to participate in the system), as if the preceding sections of this Act and the amendments made by this Act had not been enacted.

“(b) An application by an individual under subsection (a) shall be submitted to the official by whom such covered employee is paid.

“(c) Any individual who elects to terminate participation in a covered retirement system under subsection (a)(1)(A) is entitled to have such individual’s contributions to the retirement system refunded, in accordance with applicable provisions of law, as if such individual had separated from service as of the effective date of the election.

“(d) Any individual who is eligible to make an election under subparagraph (A) or (B) of subsection (a)(1), but who does not make an election under either such subparagraph, shall be subject to the preceding sections of this Act [probably means this ‘title’] and the amendments made by this Act.”

[Amendment to section 206(c)(3) of Pub. L. 98-168 by section 305(a)(1) of Pub. L. 99-335 directing the substitution of “January 1, 1987” for “January 1, 1986” has been executed by substituting “January 1, 1987” for “April 30, 1986” to reflect the probable intent of Congress.]

[Section 305(b) of Pub. L. 99-335 provided that:

“(1) The amendments made by subsection (a) [amending Pub. L. 98-168 set out above] shall be effective as of May 1, 1986.

“(2) Any refund payable to an individual as a result of paragraph (1) shall be paid out of funds of the appropriate retirement system.

“(3) For purposes of this subsection, the term ‘retirement system’ means a covered retirement system as defined by section 203(a)(2) of the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1107; 5 U.S.C. 8331 note).”]

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 401 of Title 50, War and National Defense.]

[The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in Pub. L. 98-168, set out above, is Pub. L. 88-643, Oct. 13, 1964, 78 Stat. 1043, which was revised generally by Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196, is known as the Central Intelligence Agency Retirement Act and is classified generally to chapter 38 (§2001 et seq.) of Title 50, War and National Defense.]

CANAL ZONE GOVERNMENT AND PANAMA CANAL COMPANY EMPLOYEES

Section 13 of Pub. L. 85-550, July 25, 1958, 72 Stat. 410, as amended by Pub. L. 87-845, §2, Oct. 18, 1962, 76A Stat. 697, provided that:

“(a) Effective on and after the first day of the first pay period which begins in the third calendar month following the calendar month in which this Act is enacted [July 1958]—

“The Act of July 8, 1937 (50 Stat. 478; 68 Stat. 17; Public Numbered 191, Seventy-fifth Congress; Public Law 299, Eighty-third Congress), shall apply only with respect to those individuals within the classes of individuals subject to such Act of July 8, 1937, whose employment shall have been terminated, prior to such first day of such first pay period, in the manner provided by the first section of such Act; and

“(b) On or before the first day of the first pay period which begins in the third calendar month following the calendar month in which this Act is enacted [July 1958], the Panama Canal Company shall pay, as an agency contribution, into the civil service retirement and disability fund created by the Act of May 22, 1920, for each individual—

“(1) who is employed, on such first day of such first pay period, by the Canal Zone Government or by the Panama Canal Company, and

“(2) who, by reason of the enactment of this section and the operation of the Civil Service Retirement Act (5 U.S.C. 2251-2267) [this subchapter], is subject to such Act on and after such first day of such first pay period, for service performed by such individual in the employment of—

“(A) the Panama Railroad Company during the period which began on June 29, 1948, and ended on June 30, 1951, or

“(B) the Panama Canal (former independent agency), the Canal Zone Government, or the Panama Canal Company during the period which began on July 1, 1951, and which ends immediately prior to such first day of such first pay period,

an amount equal to the aggregate amount which such individual would have been required to contribute for retirement purposes if he had been subject to the Civil Service Retirement Act during such periods of service.

“(c) Nothing contained in this section shall affect—

“(1) the rights of any individual existing immediately prior to such first day of such first pay period above specified, or

“(2) the continuing obligations of the Canal Zone Government and the Panama Canal Company under section 4(a) of the Civil Service Retirement Act (5 U.S.C. 2254(a)) [section 8334(a) of this title], to reimburse the civil service retirement and disability fund for Government contributions to such fund covering service performed, on or after such first day of such first pay period above specified, by the employees concerned.”

MEMBERS OF CIVILIAN FACULTIES OF UNITED STATES NAVAL ACADEMY AND UNITED STATES NAVAL POST- GRADUATE SCHOOL

Section 402 of act July 31, 1956, ch. 804, title IV, 70 Stat. 760, provided that:

“(a) On and after the effective date of this title [on the first day of the first month beginning more than sixty days after July 31, 1956] persons employed as members of the civilian faculties of the United States Naval Academy and the United States Naval Postgraduate School shall be included within the terms of the Civil Service Retirement Act [this subchapter], and on and after that date the Act of January 16, 1936 (49 Stat. 1092), as amended [covered by section 7081 et seq. of Title 10, Armed Forces] shall not apply to such persons.

“(b) In lieu of the deposit prescribed by section 4(c) of the Civil Service Retirement Act [section 8334(c) of this title] an employee who by virtue of subsection (a) is included within the terms of such Act [this subchapter] shall deposit, for service rendered prior to the effective date of this title as a member of the civilian faculty of the United States Naval Academy or of the United States Naval Postgraduate School, a sum equal to so much of the repurchase price of his annuity policy carried as required by the Act of January 16, 1936, as amended [covered by section 7081 et seq. of Title 10, Armed Forces], as is based on the monthly allotments which were registered with the Navy Allotment Office toward the purchase of that annuity, the deposit to be made within six months after the effective date of this title. Should the deposit not be made within that period no credit shall be allowed under the Civil Service Retirement Act [this subchapter] for service rendered as a member of the civilian faculty of the United States Naval Academy or of the United States Naval Postgraduate School subsequent to July 31, 1920, and prior to the effective date of this title. If the deposit is made, such service shall be held and considered to be service during which the employee was subject to the Civil Service Retirement Act [this subchapter].”

EX. ORD. NO. 12461. DESIGNATION AS A FEDERAL RETIREMENT SYSTEM

Ex. Ord. No. 12461, Feb. 17, 1984, 49 F.R. 6471, provided: By the authority vested in me as President by the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 (title II of Public Law 98-168) (“the Act”) [set out as a note above], it is hereby ordered as follows:

SECTION 1. The District of Columbia Police and Firefighters’ Retirement and Disability System, insofar as it applies to Federal employees who are covered under section 203(a)(1) of the Act [set out as a note above], is designated a covered retirement system under section 203(a)(2)(D) of the Act. The Secretary of the Treasury is designated the appropriate agency head with respect to such system, under section 205(a)(2)(D) of the Act [set out as a note above]. In discharging the responsibilities delegated by this Order, the Secretary shall be guided by the information and recommendations provided by the Mayor of the District of Columbia.

SEC. 2. This Order shall be effective as of January 1, 1984.

RONALD REAGAN.

§ 8332. Creditable service

(a) The total service of an employee or Member is the full years and twelfth parts thereof, excluding from the aggregate the fractional part of a month, if any.

(b) The service of an employee shall be credited from the date of original employment to the date of separation on which title to annuity is based in the civilian service of the Government. Except as provided in paragraph (13)¹ of this subsection, credit may not be allowed for a period of separation from the service in excess of 3 calendar days. The service includes—

(1) employment as a substitute in the postal field service;

(2) service in the Pan American Sanitary Bureau;

(3) subject to sections 8334(c) and 8339(i) of this title, service performed before July 10, 1960, as an employee of a county committee established under section 590h(b) of title 16 or of a committee or an association of producers described by section 610(b) of title 7;

(4) service as a student-employee as defined by section 5351 of this title only if he later becomes subject to this subchapter;

(5) a period of satisfactory service of a volunteer or volunteer leader under chapter 34 of title 22 only if he later becomes subject to this subchapter;

(6) employment under section 709 of title 32 or any prior corresponding provision of law;

(7) a period of service of a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, or a period of service of a full-time volunteer enrolled in a program of at least one year's duration under part A, B,² or C of title I of the Domestic Volunteer Service Act of 1973 only if he later becomes subject to this subchapter;

(8) subject to sections 8334(c) and 8339(i) of this title, service performed after February 18, 1929, and before noon on January 3, 1971, as a United States Capitol Guide;

(9) subject to sections 8334(c) and 8339(i) of this title, service as a substitute teacher for the government of the District of Columbia after July 1, 1955, if such service is not credited for benefits under any other retirement system established by a law of the United States;

(10) periods of imprisonment of a foreign national for which compensation is provided under section 410 of the Foreign Service Act of 1980, if the individual (A) was subject to this subchapter during employment with the Government last preceding imprisonment, or (B) is qualified for an annuity under this subchapter on the basis of other service of the individual;

(11) subject to sections 8334(c) and 8339(i) of this title, service in any capacity of at least 130 days (or its equivalent) per calendar year performed after July 1, 1946, for the National Committee for a Free Europe; Free Europe Committee, Incorporated; Free Europe, Incorporated; Radio Liberation Committee; Radio

Liberty Committee; subdivisions of any of those organizations; Radio Free Europe/Radio Liberty, Incorporated, Radio Free Asia; the Asia Foundation; or the Armed Forces Network, Europe (AFN-E), but only if such service is not credited for benefits under any other retirement system which is established for such entities and funded in whole or in part by the Government and only if the individual later becomes subject to this subchapter;

(12) service as a justice or judge of the United States, as defined by section 451 of title 28, and service as a judge of a court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States, but no credit shall be allowed for such service if the employee is entitled to a salary or an annuity under section 371, 372, or 373 of title 28;

(13) subject to sections 8334(c) and 8339(i) of this title, service performed on or after December 6, 1967, and before the effective date of this paragraph as an employee of the House Beauty Shop, only if he serves as such an employee for a period of at least five years after such effective date;

(14) one year of service to be credited for each year in which a Native of the Pribilof Islands performs service in the taking and curing of fur seal skins and other activities in connection with the administration of the Pribilof Islands, notwithstanding any period of separation from the service, and regardless of whether the Native who performs the service retires before, on, or after the effective date of this paragraph;

(15) subject to sections 8334(c) and 8339(i) of this title, service performed on or after January 3, 1969, and before January 4, 1973, as the Washington Representative for Guam or the Washington Representative for the Virgin Islands, only if the individual serves as a Member for a period of at least five years after January 2, 1973;

(16) service performed by any individual as an employee described in section 2105(c) of this title after June 18, 1952, and before January 1, 1966, if (A) such service involved conducting an arts and crafts, drama, music, library, service club, youth activities, sports, or recreation program (including any outdoor recreation program) for personnel of the armed forces, and (B) such individual is an employee subject to this subchapter on the day before the date of the enactment of the Nonappropriated Fund Instrumentalities Employees' Retirement Credit Act of 1986; and

(17) service performed by any individual as an employee paid from nonappropriated funds of an instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) that is not covered by paragraph (16) and that is not otherwise creditable, if the individual elects (in accordance with regulations prescribed by the Office) to have such service credited under this paragraph.

The Office of Personnel Management shall accept the certification of the Secretary of Agriculture or his designee concerning service for the purpose of this subchapter of the type performed by an employee named by paragraph (3)

¹ So in original. Probably should be paragraph "(14)".

² See References in Text note below.

of this subsection. The Office of Personnel Management shall accept the certification of the Secretary of Commerce or his designee concerning service for the purpose of this subchapter of the type performed by an employee named by paragraph (14) of this subsection. The Office of Personnel Management shall accept the certification of the Capitol Guide Board concerning service for the purpose of this subchapter of the type described in paragraph (8) of this subsection and performed by an employee. The Office of Personnel Management shall accept the certification of the Chief Administrative Officer of the House of Representatives concerning service for the purpose of this subchapter of the type described in paragraph (13) of this subsection. For the purpose of paragraph (5) of this subsection—

(A) a volunteer and a volunteer leader are deemed receiving pay during their service at the respective rates of readjustment allowances payable under sections 2504(c) and 2505(1) of title 22; and

(B) the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22 is the period between enrollment as a volunteer or volunteer leader and the termination of that service by the President or by death or resignation.

The Office of Personnel Management shall accept the certification of the Executive Director of the Board for International Broadcasting, and the Secretary of State with respect to the Asia Foundation and the Secretary of Defense with respect to the Armed Forces Network, Europe (AFN-E), concerning services for the purposes of this subchapter of the type described in paragraph (11) of this subsection. For the purpose of this subchapter, service of the type described in paragraph (15) of this subsection shall be considered Member service. The Office of Personnel Management shall accept, for the purposes of this subchapter, the certification of the head of a nonappropriated fund instrumentality of the United States concerning service of the type described in paragraph (16) or (17) of this subsection which was performed for such appropriated fund instrumentality. Service credited under paragraph (17) may not also be credited under any other retirement system provided for employees paid from nonappropriated funds of a nonappropriated fund instrumentality.

(c)(1) Except as provided in paragraphs (2) and (4) of this subsection and subsection (d) of this section—

(A) the service of an individual who first becomes an employee or Member before October 1, 1982, shall include credit for each period of military service performed before the date of the separation on which the entitlement to an annuity under this subchapter is based, subject to section 8332(j) of this title; and

(B) the service of an individual who first becomes an employee or Member on or after October 1, 1982, shall include credit for—

(i) each period of military service performed before January 1, 1957, and

(ii) each period of military service performed after December 31, 1956, and before the separation on which the entitlement to annuity under this subchapter is based, only

if a deposit (with interest, if any) is made with respect to that period, as provided in section 8334(j) of this title.

(2) If an employee or Member is awarded retired pay based on any period of military service, the service of the employee or Member may not include credit for such period of military service unless the retired pay is awarded—

(A) based on a service-connected disability—

(i) incurred in combat with an enemy of the United States; or

(ii) caused by an instrumentality of war and incurred in line of duty during a period of war as defined by section 1101 of title 38; or

(B) under chapter 1223 of title 10 (or under chapter 67 of that title as in effect before the effective date of the Reserve Officer Personnel Management Act).

(3)(A) Notwithstanding paragraph (2) of this subsection, for purposes of computing a survivor annuity for a survivor of an employee or Member—

(i) who was awarded retired pay based on any period of military service, and

(ii) whose death occurs before separation from the service,

creditable service of the deceased employee or Member shall include each period of military service includable under subparagraph (A) or (B) of paragraph (1) of this subsection, as applicable. In carrying out this subparagraph, any amount deposited under section 8334(h) of this title shall be taken into account.

(B) A survivor annuity computed based on an amount which, under authority of subparagraph (A), takes into consideration any period of military service shall be reduced by the amount of any survivor's benefits—

(i) payable to a survivor (other than a child) under a retirement system for members of the uniformed services;

(ii) if, or to the extent that, such benefits are based on such period of military service.

(C) The Office of Personnel Management shall prescribe regulations to carry out this paragraph, including regulations under which—

(i) a survivor may elect not to be covered by this paragraph; and

(ii) this paragraph shall be carried out in any case which involves a former spouse.

(4) If, after January 1, 1997, an employee or Member waives retired pay that is subject to a court order for which there has been effective service on the Secretary concerned for purposes of section 1408 of title 10, the military service on which the retired pay is based may be credited as service for purposes of this subchapter only if the employee or Member authorizes the Director to deduct and withhold from the annuity payable to the employee or Member under this subchapter an amount equal to the amount that, if the annuity payment was instead a payment of the employee's or Member's retired pay, would have been deducted and withheld and paid to the former spouse covered by the court order under such section 1408. The amount deducted and withheld under this paragraph shall be paid to

that former spouse. The period of civil service employment by the employee or Member shall not be taken into consideration in determining the amount of the deductions and withholding or the amount of the payment to the former spouse. The Director of the Office of Personnel Management shall prescribe regulations to carry out this paragraph.

(d) For the purpose of section 8339(c)(1) of this title, a Member—

(1) shall be allowed credit only for periods of military service not exceeding 5 years, plus military service performed by the Member on leaving his office, for the purpose of performing military service, during a war or national emergency proclaimed by the President or declared by Congress and before his final separation from service as Member; and

(2) may not receive credit for military service for which credit is allowed for purpose of retired pay under other statute.

(e) This subchapter does not affect the right of an employee or Member to retired pay, pension, or compensation in addition to an annuity payable under this subchapter.

(f) Credit shall be allowed for leaves of absence without pay granted an employee while performing military service or while receiving benefits under subchapter I of chapter 81 of this title. An employee or former employee who returns to duty after a period of separation is deemed, for the purpose of this subsection, to have been in a leave of absence without pay for that part of the period in which he was receiving benefits under subchapter I of chapter 81 of this title or any earlier statute on which such subchapter is based. Except for a substitute in the postal field service and service described in paragraph (14) of subsection (b) of this section,³ credit may not be allowed for so much of other leaves of absence without pay as exceeds 6 months in the aggregate in a calendar year.

(g) An employee who during the period of a war, or of a national emergency as proclaimed by the President or declared by Congress, leaves his position to enter the military service is deemed, for the purpose of this subchapter, as not separated from his civilian position because of that military service, unless he applies for and receives a lump-sum credit under this subchapter. However, the employee is deemed as not retaining his civilian position after December 31, 1956, or after the expiration of 5 years of that military service, whichever is later.

(h) An employee who—

(1) has at least 5 years' Member service; and

(2) serves as a Member at any time after August 2, 1946;

may not be allowed credit for service which is used in the computation of an annuity under section 8339(c) of this title.

(i) An individual who qualifies as an employee under section 8331(1)(E) of this title is entitled to credit for his service as a United States Commissioner, which is not credited for the purpose of this subchapter for service performed by him in a capacity other than Commissioner, on the basis of—

(1) 1/313 of a year for each day on which he performed service as a Commissioner before July 1, 1945; and

(2) 1/260 of a year for each day on which he performed service as a Commissioner after June 30, 1945.

Credit for service performed as Commissioner may not exceed 313 days in a year before July 1, 1945, or 260 days in a year after June 30, 1945. For the purpose of this subchapter, the employment and pay of a Commissioner is deemed on a daily basis when actually employed.

(j)(1) Notwithstanding any other provision of this section, military service, except military service covered by military leave with pay from a civilian position, performed by an individual after December 1956, the period of an individual's services as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, the period of an individual's service as a full-time volunteer enrolled in a program of at least 1 year's duration under part A, B,² or C of title I of the Domestic Volunteer Service Act of 1973, and the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22, shall be excluded in determining the aggregate period of service on which an annuity payable under this subchapter to the individual or to his spouse, former spouse or child is based, if the individual, spouse, former spouse, or child is entitled, or would on proper application be entitled, at the time of that determination, to monthly old-age or survivors benefits under section 402 of title 42 based on the individual's wages and self-employment income. If the military service or service as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, as a full-time volunteer enrolled in a program of at least 1 year's duration under part A, B,² or C of title I of the Domestic Volunteer Service Act of 1973, or as a volunteer or volunteer leader under chapter 34 of title 22 is not excluded by the preceding sentence, but on becoming 62 years of age, the individual or spouse, former spouse⁴ becomes entitled, or would on proper application be entitled, to the described benefits, the Office of Personnel Management shall redetermine the aggregate period of service on which the annuity is based, effective as of the first day of the month in which he or she becomes 62 years of age, so as to exclude that service. The Secretary of Health, Education, and Welfare, on request of the Office, shall inform the Office whether or not the individual, spouse, former spouse, or child is entitled at any named time to the described benefits. For the purpose of this subsection, the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22 is the period between enrollment as a volunteer or volunteer leader and termination of that service by the President or by death or resignation, and the period of an individual's service as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964 or under part A, B,² or C of title I of the Domestic Volunteer Service Act of 1973 is the period between enrollment as a volunteer and termination of that service by the Director of the

³ So in original.

⁴ So in original. Probably should be "individual, spouse, or former spouse".

Office of Economic Opportunity or the Chief Executive Officer of the Corporation for National and Community Service, as appropriate, or by death or resignation.

(2) The provisions of paragraph (1) of this subsection relating to credit for military service shall not apply to—

(A) any period of military service of an employee or Member with respect to which the employee or Member has made a deposit with interest, if any, under section 8334(j) of this title; or

(B) the service of any employee or Member described in section 8332(c)(1)(B) of this title.

(3) The provisions of paragraph (1) relating to credit for service as a volunteer or volunteer leader under the Economic Opportunity Act of 1964, part A, B,² or C of title I of the Domestic Volunteer Service Act of 1973, or the Peace Corps Act shall not apply to any period of service as a volunteer or volunteer leader of an employee or Member with respect to which the employee or Member has made the deposit with interest, if any, required by section 8334(l).

(k)(1) An employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to receive full retirement credit for his periods of that leave without pay and arrange to pay currently into the Fund, through his employing agency, amounts equal to the retirement deductions and agency contributions that would be applicable if he were in pay status. If the election and all payments provided by this paragraph are not made, the employee may not receive credit for the periods of leave without pay occurring after July 17, 1966, notwithstanding the third⁵ sentence of subsection (f) of this section. For the purpose of the preceding sentence, "employee" includes an employee who was on approved leave without pay and serving as a full-time officer or employee of such an organization on July 18, 1966, and who filed a similar election before September 17, 1966.

(2) An employee may deposit with interest an amount equal to retirement deductions representing any period or periods of approved leave without pay while serving, before July 18, 1966, as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) of this title. An employee who makes the deposit shall be allowed full retirement credit for the period or periods of leave without pay. If the employee dies, a survivor as defined by section 8331(10) of this title may make the deposit. If the deposit is not made in full, retirement credit shall be allowed in accordance with the third⁵ sentence of subsection (f) of this section.

(l)(1) Any employee or Member who—

(A) is of Japanese ancestry; and

(B) while a citizen of the United States or an alien lawfully admitted to the United States for permanent residence, was interned or

otherwise detained at any time during World War II in any camp, installation, or other facility in the United States, or in any territory or possession of the United States, under any policy or program of the United States respecting individuals of Japanese ancestry which was established during World War II in the interests of national security pursuant to—

(i) Executive Order Numbered 9066, dated February 19, 1942;

(ii) section 67 of the Act entitled "An Act to provide a government for the Territory of Hawaii", approved April 30, 1900 (chapter 339, Fifty-sixth Congress; 31 Stat. 153);

(iii) Executive Order Numbered 9489, dated October 18, 1944;

(iv) sections 4067 through 4070 of the Revised Statutes of the United States; or

(v) any other statute, rule, regulation, or order; or

(C) is of Aleut ancestry and while a citizen of the United States was interned or otherwise detained in, or relocated to any camp, installation, or other facility in the Territory of Alaska which was established during World War II for the purpose of the internment, detention, or relocation of Aleuts pursuant to any statute, rule, regulation, or order;

shall be allowed credit (as civilian service) for any period during which such employee or Member was so interned or otherwise detained after such employee became 18 years of age.

(2) For the purpose of this subsection, "World War II" means the period beginning on December 7, 1941, and ending on December 31, 1946.

(m)(1) Upon application to the Office of Personnel Management, any individual who is an employee on the date of the enactment of this subsection, and who has on such date or thereafter acquires 5 years or more of creditable civilian service under this section (exclusive of service for which credit is allowed under this subsection) shall be allowed credit (as service as a Congressional employee) for service before the date of the enactment of this subsection while employed by the Democratic Senatorial Campaign Committee, the Republican Senatorial Campaign Committee, the Democratic National Congressional Committee, or the Republican National Congressional Committee, if—

(A) such employee has at least 4 years and 6 months of service on such committees as of December 12, 1980; and

(B) such employee makes a deposit to the Fund in an amount equal to the amount which would be required under section 8334(c) of this title if such service were service as a Congressional employee.

(2) Upon application to the Office of Personnel Management, any individual who was an employee on the date of enactment of this paragraph, and who has on such date or thereafter acquires 5 years or more of creditable civilian service under this section (exclusive of service for which credit is allowed under this subsection) shall be allowed credit (as service as a congressional employee) for service before December 31, 1990, while employed by the Democratic Senatorial Campaign Committee, the Re-

⁵ See 1986 Amendment note below.

publican Senatorial Campaign Committee, the Democratic National Congressional Committee, or the Republican National Congressional Committee, if—

(A) such employee has at least 4 years and 6 months of service on such committees as of December 31, 1990; and

(B) such employee makes a deposit to the Fund in an amount equal to the amount which would be required under section 8334(c) if such service were service as a congressional employee.

(3) The Office shall accept the certification of the President of the Senate (or his designee) or the Speaker of the House (or his designee), as the case may be, concerning the service of, and the amount of compensation received by, an employee with respect to which credit is to be sought under this subsection.

(4) An individual receiving credit for service for any period under this subsection shall not be granted credit for such service under the provisions of the Social Security Act.

(n) Any employee who—

(1) served in a position in which the employee was excluded from coverage under this subchapter because the employee was covered under a retirement system established under section 10 of the Federal Reserve Act; and

(2) transferred without a break in service to a position to which the employee was appointed by the President, with the advice and consent of the Senate, and in which position the employee is subject to this subchapter,

shall be treated for all purposes of this subchapter as if any service that would have been creditable under the retirement system established under section 10 of the Federal Reserve Act was service performed while subject to this subchapter if any employee and employer deductions, contributions or rights with respect to the employee's service are transferred from such retirement system to the Fund.

(o)(1) Notwithstanding any other provision of this subchapter, the service of an individual finally convicted of an offense described in paragraph (2) shall not be taken into account for purposes of this subchapter, except that this sentence applies only to service rendered as a Member (irrespective of when rendered). Any such individual (or other person determined under section 8342(c), if applicable) shall be entitled to be paid so much of such individual's lump-sum credit as is attributable to service to which the preceding sentence applies.

(2)(A) An offense described in this paragraph is any offense described in subparagraph (B) for which the following apply:

(i) Every act or omission of the individual (referred to in paragraph (1)) that is needed to satisfy the elements of the offense occurs while the individual is a Member.

(ii) Every act or omission of the individual that is needed to satisfy the elements of the offense directly relates to the performance of the individual's official duties as a Member.

(iii) The offense is committed after the date of enactment of this subsection.

(B) An offense described in this subparagraph is only the following, and only to the extent that the offense is a felony:

(i) An offense under section 201 of title 18 (relating to bribery of public officials and witnesses).

(ii) An offense under section 219 of title 18 (relating to officers and employees acting as agents of foreign principals).

(iii) An offense under section 1343 of title 18 (relating to fraud by wire, radio, or television, including as part of a scheme to deprive citizens of honest services thereby).

(iv) An offense under section 104(a) of the Foreign Corrupt Practices Act of 1977 (relating to prohibited foreign trade practices by domestic concerns).

(v) An offense under section 1957 of title 18 (relating to engaging in monetary transactions in property derived from specified unlawful activity).

(vi) An offense under section 1512 of title 18 (relating to tampering with a witness, victim, or an informant).

(vii) An offense under chapter 96 of title 18 (relating to racketeer influenced and corrupt organizations).

(viii) An offense under section 371 of title 18 (relating to conspiracy to commit offense or to defraud United States), to the extent of any conspiracy to commit an act which constitutes—

(I) an offense under clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or

(II) an offense under section 207 of title 18 (relating to restrictions on former officers, employees, and elected officials of the executive and legislative branches).

(ix) Perjury committed under section 1621 of title 18 in falsely denying the commission of an act which constitutes—

(I) an offense under clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or

(II) an offense under clause (viii), to the extent provided in such clause.

(x) Subornation of perjury committed under section 1622 of title 18 in connection with the false denial or false testimony of another individual as specified in clause (ix).

(3) An individual convicted of an offense described in paragraph (2) shall not, after the date of the final conviction, be eligible to participate in the retirement system under this subchapter or chapter 84 while serving as a Member.

(4) The Office of Personnel Management shall prescribe any regulations necessary to carry out this subsection. Such regulations shall include—

(A) provisions under which interest on any lump-sum payment under the second sentence of paragraph (1) shall be limited in a manner similar to that specified in the last sentence of section 8316(b); and

(B) provisions under which the Office may provide for—

(i) the payment, to the spouse or children of any individual referred to in the first sentence of paragraph (1), of any amounts which (but for this clause) would otherwise have been nonpayable by reason of such first sentence, subject to paragraph (5); and

(ii) an appropriate adjustment in the amount of any lump-sum payment under the second sentence of paragraph (1) to reflect the application of clause (i).

(5) Regulations to carry out clause (i) of paragraph (4)(B) shall include provisions to ensure that the authority to make any payment to the spouse or children of an individual under such clause shall be available only to the extent that the application of such clause is considered necessary and appropriate taking into account the totality of the circumstances, including the financial needs of the spouse or children, whether the spouse or children participated in an offense described in paragraph (2) of which such individual was finally convicted, and what measures, if any, may be necessary to ensure that the convicted individual does not benefit from any such payment.

(6) For purposes of this subsection—

(A) the terms “finally convicted” and “final conviction” refer to a conviction (i) which has not been appealed and is no longer appealable because the time for taking an appeal has expired, or (ii) which has been appealed and the appeals process for which is completed;

(B) the term “Member” has the meaning given such term by section 2106, notwithstanding section 8331(2); and

(C) the term “child” has the meaning given such term by section 8341.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 567; Pub. L. 90-83, §1(73), Sept. 11, 1967, 81 Stat. 214; Pub. L. 90-486, §5(a), Aug. 13, 1968, 82 Stat. 757; Pub. L. 91-177, title I, §112(a), Dec. 30, 1969, 83 Stat. 831; Pub. L. 91-510, title IV, §442(b), Oct. 26, 1970, 84 Stat. 1191; Pub. L. 91-658, §1, Jan. 8, 1971, 84 Stat. 1961; Pub. L. 92-297, §7(1), May 16, 1972, 86 Stat. 144; Pub. L. 92-454, §1, Oct. 2, 1972, 86 Stat. 760; Pub. L. 93-113, title VI, §602, Oct. 1, 1973, 87 Stat. 417; Pub. L. 94-183, §2(32), (33), (39), Dec. 31, 1975, 89 Stat. 1058, 1059; Pub. L. 95-382, §1(a), Sept. 22, 1978, 92 Stat. 727; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-54, §2(a)(48), Aug. 14, 1979, 93 Stat. 384; Pub. L. 96-465, title II, §2313, Oct. 17, 1980, 94 Stat. 2167; Pub. L. 96-523, §4(a), Dec. 12, 1980, 94 Stat. 3040; Pub. L. 97-164, title II, §207(a), Apr. 2, 1982, 96 Stat. 54; Pub. L. 97-253, title III, §306(b), (c), Sept. 8, 1982, 96 Stat. 795, 796; Pub. L. 97-346, §3(a), (b), Oct. 15, 1982, 96 Stat. 1647; Pub. L. 98-51, title I, §111(2), July 14, 1983, 97 Stat. 269; Pub. L. 89-702, title II, §209(a)-(e), as added Pub. L. 98-129, §2, Oct. 14, 1983, 97 Stat. 843; Pub. L. 98-369, div. B, title II, §2208(a), July 18, 1984, 98 Stat. 1060; Pub. L. 99-251, title II, §202, Feb. 27, 1986, 100 Stat. 23; Pub. L. 99-335, title II, §207(g), June 6, 1986, 100 Stat. 595; Pub. L. 99-556, title V, §502(a), Oct. 27, 1986, 100 Stat. 3140; Pub. L. 99-638, §2(b)(2), Nov. 10, 1986, 100 Stat. 3536; Pub. L. 100-204, title V, §503, Dec. 22, 1987, 101 Stat. 1383; Pub. L. 101-530, §1, Nov. 6, 1990, 104 Stat. 2338; Pub. L. 102-83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102-242, title IV, §466(a), Dec. 19, 1991, 105 Stat. 2384; Pub. L. 102-378, §2(58), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 103-82, title III, §371(a)(1), title IV, §405(b), Sept. 21, 1993, 107 Stat. 909, 921; Pub. L. 103-337, div. A, title XVI, §1677(a)(3), Oct. 5, 1994, 108 Stat. 3019; Pub. L. 104-186, title II, §215(11), Aug. 20, 1996, 110 Stat. 1746; Pub. L. 104-201, div. A, title VI, §637(a), Sept. 23, 1996, 110 Stat. 2580; Pub. L. 106-57, title III, §312, Sept. 29, 1999, 113 Stat. 428; Pub. L. 106-554, §1(a)(4) [div. A, §901(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A-195; Pub. L. 107-107, div. A,

title XI, §1132(a)(1), Dec. 28, 2001, 115 Stat. 1242; Pub. L. 110-81, title IV, §401(a), Sept. 14, 2007, 121 Stat. 754.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2253 (less (f) and (g)).	July 31, 1956, ch. 804, §401 “Sec. 3 (less (f) and (g))”, 70 Stat. 745. Aug. 1, 1956, ch. 837, §409. 70 Stat. 877. June 17, 1957, Pub. L. 85-56, §2201(2), 71 Stat. 157. Sept. 2, 1958, Pub. L. 85-857, §13(c), 72 Stat. 1264. Sept. 21, 1959, Pub. L. 86-306, §1, 73 Stat. 583. Sept. 22, 1961, Pub. L. 87-293, §21, 75 Stat. 623.
.....	5 U.S.C. 2252(g) (2d sentence).	July 31, 1956, ch. 804, §401 “Sec. 2(g) (2d sentence)”, 70 Stat. 745.
.....	5 U.S.C. 2252(h)(2), (3).	July 1, 1960, Pub. L. 86-568, §115(b)(1) “(h)(2), (3)”, 74 Stat. 302. Oct. 4, 1961, Pub. L. 87-350, §2(a), 75 Stat. 770.
.....	5 U.S.C. 1054 (less 1st 27 words).	Aug. 4, 1947, ch. 452, §5 (less 1st 27 words), 61 Stat. 728.
.....	22 U.S.C. 2504(f) (as applicable to the Civil Service Retirement Act, as amended).	Sept. 22, 1961, Pub. L. 87-293, §5(f) (as applicable to the Civil Service Retirement Act, as amended), 75 Stat. 614. Dec. 13, 1963, Pub. L. 88-200, §2(c) (as applicable to the Civil Service Retirement Act, as amended), 77 Stat. 359.

The section is reorganized for clarity.

Subsection (b)(B) is added on authority of section 2522(e) of title 22.

In subsection (c)(1)(B), the words “as that term is defined by section 301 of title 38” are coextensive with and substituted for “as that term is used in chapter 11 of Title 38”.

In subsection (c)(2), the words “under chapter 67 of title 10” are substituted for “title III of Public Law 810, Eightieth Congress” on authority of the Act of Aug. 10, 1956, ch. 104, §49(b), 70A Stat. 640.

In subsection (f), the words “without pay” are added after “leaves of absence” in the first sentence for clarity and to align it with the use of the term in the second sentence. The words “postal field service” are coextensive with and substituted for “postal service”.

In subsection (g), the words “has left” are omitted as executed.

In subsection (i), the words “but nothing contained in this chapter [chapter 30 of title 5] shall affect, otherwise than for the purposes of this chapter, the basis, under applicable law other than this chapter, on which such United States Commissioner is employed or on which his compensation is determined and paid” are omitted from the last sentence as surplusage as there is nothing in the chapter that can reasonably be construed to affect that basis other than for the purposes of the chapter.

In subsection (j), the words “or section 2504(f) of Title 22” are omitted as unnecessary since the provisions of that section applicable to this subchapter are carried into subsection (b). The last sentence is added on authority of section 2522(e) of title 22.

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

Section of title 5	Source (U.S. Code)	Source (Statutes at Large)
8332(k)(1) ...	5 App.: 2253(k)(1).	July 18, 1966, Pub. L. 89-504,
8332(k)(2) ...	5 App.: 2253(k)(2).	§ 503, 80 Stat. 300.

In subsection (k)(1), the words “as defined by section 8331(1) of this title” are substituted for “as defined in section 1(a) of this Act”. The words “occurring after July 17, 1966” are substituted for “occurring on or after date of enactment of this subsection”. The words “notwithstanding the second sentence of subsection (f) of this section” are substituted for “notwithstanding the provisions of the second sentence of section 3(c) of this Act”. The last sentence is substituted for the second sentence of former subsection (k)(1) to reflect the current effect of the subsection with regard to those employees who were on leave without pay on July 18, 1966, and who filed a similar election within the time prescribed by that sentence.

In subsection (k)(2), the words “before July 18, 1966” are substituted for “prior to the date of enactment of this subsection”. The words “as defined by section 8331(1) of this title” are substituted for “as defined in section 1(a) of this Act”. The second sentence is substituted for “and may receive full retirement credit for such period or periods of leave without pay”. The words “If the employee dies” are substituted for “In the event of his death”. The words “as defined by section 8331(10) of this title” are substituted for “as defined in section 1(o) of this Act”. In the last sentence, the words “described in this paragraph” following “If the deposit” are omitted as unnecessary. The words “the second sentence of subsection (f) of this section” are substituted for “the second sentence of section 3(c) of this Act”.

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in subsecs. (b)(7) and (j)(1), (3), is Pub. L. 88-452, Aug. 20, 1964, 73 Stat. 508, which was classified generally to chapter 34 (§2701 et seq.) of Title 42, The Public Health and Welfare, prior to repeal, except for titles VIII and X, by Pub. L. 97-35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. Titles VIII and X of the Act are classified generally to subchapters VIII (§2991 et seq.) and X (§2996 et seq.) of chapter 34 of Title 42. Part A of title VIII of that Act is part A of title VIII of Pub. L. 88-452 as added by Pub. L. 90-222, title I, §110, Dec. 23, 1967, 81 Stat. 722, which was classified generally to part A (§2992 et seq.) of subchapter VIII of chapter 34 of Title 42, prior to its repeal by Pub. L. 93-113, title VI, §603, Oct. 1, 1973, 87 Stat. 417. See sections 4951 et seq. and 5055 of Title 42. For complete classification of this Act to the Code, see Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsecs. (b)(7) and (j)(1), (3), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394. Parts A and C of title I of the Act are classified generally to parts A (§4951 et seq.) and C (§4991 et seq.), respectively, of subchapter I of chapter 66 of Title 42, The Public Health and Welfare. Part B of title I of the Act, which was classified generally to part B (§4971 et seq.) of subchapter I of chapter 66 of Title 42, was repealed by Pub. L. 111-13, title II, §2121, Apr. 21, 2009, 123 Stat. 1584. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of Title 42 and Tables.

Section 410 of the Foreign Service Act of 1980, referred to in subsec. (b)(10), is classified to section 3970 of Title 22, Foreign Relations and Intercourse.

The effective date of this paragraph, referred to in subsec. (b)(13), is Jan. 3, 1978, the effective date of section 111(2) of Pub. L. 98-51. See Effective Date of 1983 Amendment note below.

The effective date of this paragraph, referred to in subsec. (b)(14), is Oct. 14, 1983, the date of enactment of Pub. L. 98-129.

The date of the enactment of the Nonappropriated Fund Instrumentalities Employees' Retirement Credit

Act of 1986, referred to in subsec. (b)(16), is the date of enactment of section 2 of Pub. L. 99-638, which was approved Nov. 10, 1986.

Chapter 67 of that title as in effect before the effective date of the Reserve Officer Personnel Management Act, referred to in subsec. (c)(2)(B), means chapter 67 (§1331 et seq.) of Title 10, Armed Forces, prior to its transfer to part II of subtitle E of Title 10, its renumbering as chapter 1223, and its general revision by section 1662(j)(1) of Pub. L. 103-337. A new chapter 67 (§1331) of Title 10 was added by section 1662(j)(7) of Pub. L. 103-337. For effective date of the Reserve Officer Personnel Management Act (Pub. L. 103-337, title XVI), see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10.

The Peace Corps Act, referred to in subsec. (j)(3), is Pub. L. 87-293, Sept. 22, 1961, 75 Stat. 612, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

Section 67 of the Act entitled “An Act to provide a government for the Territory of Hawaii”, approved April 30, 1900 (chapter 339, Fifty-sixth Congress; 31 Stat. 153), referred to in subsec. (l)(1)(B)(ii), formerly classified to section 532 of Title 48, Territories and Insular Possessions, was omitted from such Title following the statehood of Hawaii.

Sections 4067 through 4070 of the Revised Statutes, referred to in subsec. (l)(1)(B)(iv), are classified to sections 21 through 24 of Title 50, War and National Defense.

The date of enactment of this subsection, referred to in subsec. (m)(1), means the date of enactment of Pub. L. 96-523 which was approved Dec. 12, 1980.

The date of enactment of this paragraph, referred to in subsec. (m)(2), is the date of enactment of Pub. L. 106-554, which was approved Dec. 21, 2000.

The Social Security Act, referred to in subsec. (m)(4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 10 of the Federal Reserve Act, referred to in subsec. (n), is section 10 of act Dec. 23, 1913, ch. 6, 38 Stat. 260. For classification of section 10 to the Code, see Codification note set out under section 241 of Title 12, Banks and Banking, and Tables.

The date of enactment of this subsection, referred to in subsec. (o)(2)(A)(iii), is the date of enactment of Pub. L. 110-81, which was approved Sept. 14, 2007.

Section 104(a) of the Foreign Corrupt Practices Act of 1977, referred to in subsec. (o)(2)(B)(iv), is classified to section 78dd-2(a) of Title 15, Commerce and Trade.

AMENDMENTS

2007—Subsec. (o). Pub. L. 110-81 added subsec. (o).

2001—Subsec. (b). Pub. L. 107-107, §1132(a)(1)(D), (E), in concluding provisions, inserted “or (17)” after “service of the type described in paragraph (16)” and inserted at end “Service credited under paragraph (17) may not also be credited under any other retirement system provided for employees paid from nonappropriated funds of a nonappropriated fund instrumentality.”

Subsec. (b)(17). Pub. L. 107-107, §1132(a)(1)(A)-(C), added par. (17).

2000—Subsec. (m)(2) to (4). Pub. L. 106-554 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1999—Subsec. (m)(1)(A). Pub. L. 106-57 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “such employee has at least 5 years service on such committees as of the effective date of this section, and”.

1996—Subsec. (b). Pub. L. 104-186 substituted “Chief Administrative Officer” for “Clerk” in fourth sentence of concluding provisions.

Subsec. (c)(1). Pub. L. 104-201, §637(a)(2), in introductory provisions, substituted “Except as provided in

paragraphs (2) and (4)” for “Except as provided in paragraph (2)”.

Subsec. (c)(4). Pub. L. 104-201, §637(a)(1), added par. (4).

1994—Subsec. (c)(2)(B). Pub. L. 103-337 substituted “chapter 1223 of title 10 (or under chapter 67 of that title as in effect before the effective date of the Reserve Officer Personnel Management Act)” for “chapter 67 of title 10”.

1993—Subsec. (j)(1). Pub. L. 103-82, §405(b), which directed that “the Chief Executive Officer of the Corporation for National and Community Service” be substituted for “the Director of ACTION”, could not be executed because “the Director of ACTION” does not appear in text.

Pub. L. 103-82, §371(a)(1)(A)(i), in first sentence inserted “the period of an individual’s service as a full-time volunteer enrolled in a program of at least 1 year’s duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973,” after “Economic Opportunity Act of 1964.”

Pub. L. 103-82, §371(a)(1)(A)(ii), in second sentence inserted “, as a full-time volunteer enrolled in a program of at least 1 year’s duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973,” after “Economic Opportunity Act of 1964”.

Pub. L. 103-82, §371(a)(1)(A)(iii), in last sentence inserted “or under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973” after “Economic Opportunity Act of 1964”, and inserted “or the Chief Executive Officer of the Corporation for National and Community Service, as appropriate,” after “Director of the Office of Economic Opportunity”.

Subsec. (j)(3). Pub. L. 103-82, §371(a)(1)(B), added par. (3).

1992—Subsec. (b). Pub. L. 102-378 substituted “paragraph (16)” for “paragrph (16)”.

1991—Subsec. (c)(2)(A)(ii). Pub. L. 102-83 substituted “section 1101 of title 38” for “section 301 of title 38”.

Subsec. (n). Pub. L. 102-242 added subsec. (n).

1990—Subsec. (b). Pub. L. 101-530 struck out at beginning of last paragraph “service referred to in paragraph (6) is allowable only in the case of persons performing service under section 709 of title 32 after December 31, 1968.”

1987—Subsec. (b). Pub. L. 100-204 inserted “, and the Secretary of State with respect to the Asia Foundation and the Secretary of Defense with respect to the Armed Forces Network, Europe (AFN-E),” after “Board for International Broadcasting” in last paragraph.

1986—Subsec. (b). Pub. L. 99-638 which directed the amendment of subchapter (b) of section 8332 by adding par. (16) and closing provision relating to acceptance by the Office of Personnel Management of the certification of a nonappropriated fund instrumentality concerning service of the type described in par. (16) was executed to subsec. (b) of this section, as the probable intent of Congress.

Pub. L. 99-335, §207(g)(1)(C), (D), substituted “paragraph (14)” for “paragraph (13)” in second sentence following par. (15), and inserted last sentence providing that for purposes of this subchapter, service of the type described in par. (15) of this subsection shall be considered Member service.

Subsec. (b)(13) to (15). Pub. L. 99-335, §207(g)(1)(A), (B), redesignated the par. (13), relating to service credits for Pribilof Island Natives for taking and curing of fur seal skins and other activities, as par. (14), and added par. (15).

Subsec. (c)(3). Pub. L. 99-556 added par. (3).

Subsec. (f). Pub. L. 99-335, §207(g)(2), substituted “paragraph (14)” for “paragraph (13)”.

Subsec. (j)(1). Pub. L. 99-251 substituted “spouse, former spouse” for “widow” wherever appearing.

Subsec. (k). Pub. L. 99-335, §207(g)(3), which directed the substitution of “third” for “second” in last sentence of par. (1), was executed by substituting “third” for “second” in penultimate sentence of par. (1) and last sentence of par. (2) as the probable intent of Congress.

1984—Subsec. (b)(13). Pub. L. 98-369 inserted in the par. (13) added by Pub. L. 98-129 “, and regardless of whether the Native who performs the service retires before, on, or after the effective date of this paragraph”.

1983—Subsec. (b). Pub. L. 98-129 substituted “Except as provided in paragraph (13) of this subsection, credit” for “Credit” in provisions preceding par. (1), and inserted in provisions immediately following par. (13) the sentence providing that the Office of Personnel Management shall accept the certification of the Secretary of Commerce or his designee concerning service for the purpose of this subchapter of the type performed by an employee named by par. (13) of this subsection.

Pub. L. 98-51, §111(2)(D), inserted in provisions immediately following par. (13) the sentence providing that the Office of Personnel Management shall accept the certification of the Clerk of the House of Representatives concerning service for the purpose of this subchapter of the type described in par. (13) of this subsection.

Subsec. (b)(13). Pub. L. 98-129 added a par. (13) relating to service performed by Pribilof Island Natives.

Pub. L. 98-51, §111(2)(A)-(C), added a par. (13) relating to service by a person as an employee of the House Beauty Shop.

Subsec. (f). Pub. L. 98-129 inserted “and service described in paragraph (13) of subsection (b) of this section,” after “postal field service”.

Subsec. (l)(1)(C). Pub. L. 98-129 added subpar. (C).

1982—Subsec. (b)(12). Pub. L. 97-164 added par. (12).

Subsec. (c). Pub. L. 97-253, §306(b), designated existing first sentence as par. (1), inserted provision differentiating between individuals who become employees or Members before Oct. 1, 1982, and those who become so on or after Oct. 1, 1982, and designated existing second sentence as par. (2) with accommodating redesignations of paragraphs and subparagraphs as subparagraphs and clauses accordingly.

Subsec. (c)(1)(A). Pub. L. 97-346, §3(a), substituted “period” for “month”.

Subsec. (c)(1)(B). Pub. L. 97-346, §3(b), redesignated provisions following “shall include credit for” as cl. (i), substituted “each period of military service performed before January 1, 1957, and” for “each month of military service (performed before the date of the separation on which the entitlement to an annuity under this subchapter is based) only if a deposit with interest, if any, is made with respect to that month, as provided in section 8334(j) of this title”, and added cl. (2).

Subsec. (j). Pub. L. 97-253, §306(c), redesignated existing provisions as par. (1) and added par. (2).

Subsec. (j)(2)(A). Pub. L. 97-346, §3(a), substituted “period” for “month”.

1980—Subsec. (b)(10), (11). Pub. L. 96-465 added pars. (10) and (11) and last sentence relating to acceptance by the Office of Personnel Management of the certification of the Executive Director of the Board for International Broadcasting.

Subsec. (m). Pub. L. 96-523 added subsec. (m).

1979—Subsec. (b). Pub. L. 96-54, §2(a)(48)(B), substituted “after December 31, 1968” for “United States Code, on or after the effective date of the National Guard Technicians Act of 1968” in last sentence.

Subsec. (b)(6). Pub. L. 96-54, §2(a)(48)(A), struck out “, United States Code” after “32”.

1978—Subsecs. (b), (j). Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively, wherever appearing.

Subsec. (l). Pub. L. 95-382 added subsec. (l).

1975—Subsec. (b)(7). Pub. L. 94-183, §2(39), struck out “(—U.S.C.—)” after “Domestic Volunteer Service Act of 1973”.

Subsec. (b)(8). Pub. L. 94-183, §2(32), substituted “after February 18, 1929, and before noon on January 3, 1971” for “on and after February 19, 1929, and prior to the effective date of section 442 of the Legislative Reorganization Act of 1970”.

Subsec. (b)(9). Pub. L. 94-183, §2(33), substituted “8339(i)” for “8339(h)”.

1973—Subsec. (b)(7). Pub. L. 93-113 included period of service of a full-time volunteer enrolled in a program of at least one year's duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973.

1972—Subsec. (b). Pub. L. 92-454 added par. (9).

Pub. L. 92-297 substituted "8339(i)" for "8339(h)" in pars. (3) and (8).

1971—Subsec. (f). Pub. L. 91-658 provided for leave-without-pay status for retirement purposes of employees or former employees who return to duty after a period of separation during which compensation benefits were received.

1970—Subsec. (b). Pub. L. 91-510 added par. (8) and provision for Civil Service Commission acceptance of certification of Capitol Guide Board concerning service for purpose of this subchapter, respectively.

1969—Subsec. (b)(7). Pub. L. 91-177, §112(a)(1), added par. (7).

Subsec. (j). Pub. L. 91-177, §112(a)(2), excluded period of an individual's services as a VISTA volunteer under part A of subchapter VIII of title 42, from aggregate period of service determining annuity payments.

Pub. L. 91-177, §112(a)(3), inserted provision for computation of period of service of a VISTA volunteer under part A of subchapter VIII of title 42.

1968—Subsec. (b). Pub. L. 90-486 added par. (6), and provisions that service referred to in par. (6) is allowable only in the case of persons performing service under section 709 of title 32, on or after the specified effective date.

CHANGE OF NAME

Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title XI, §1132(c), Dec. 28, 2001, 115 Stat. 1244, provided that: "The amendments made by this section [amending this section and sections 8334, 8339, 8411, 8415, and 8422 of this title] shall apply only to separations from service as an employee of the United States on or after the date of the enactment of this Act [Dec. 28, 2001]."

EFFECTIVE DATE OF 1996 AMENDMENT

Section 637(c) of Pub. L. 104-201 provided that: "The amendments made by subsections (a) and (b) [amending this section and section 8411 of this title] shall take effect on January 1, 1997."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 371(c) of Pub. L. 103-82 provided that:

"(1) APPLICABILITY.—

"(A) AMENDMENTS RELATING TO CSRS.—

"(i) IN GENERAL.—The amendments made by subsection (a) [amending this section and section 8334 of this title] shall apply with respect to any individual entitled to an annuity on the basis of a separation from service occurring on or after the effective date of this subtitle [Oct. 1, 1993].

"(ii) RULES RELATING TO ANNUITIES BASED ON EARLIER SEPARATIONS.—An annuity under subchapter III of chapter 83 of title 5, United States Code, payable to an individual based on a separation from service occurring before the effective date of this subtitle shall be subject to the provisions of paragraph (2).

"(B) AMENDMENTS RELATING TO FERS.—

"(i) IN GENERAL.—The amendments made by subsection (b) [amending sections 8411 and 8422 of this title] shall apply with respect to any individual entitled to an annuity on the basis of a separation

from service occurring before, on, or after the effective date of this subtitle [Oct. 1, 1993], subject to clause (ii).

"(ii) RULE RELATING TO ANNUITIES BASED ON EARLIER SEPARATIONS.—In the case of any individual whose entitlement to an annuity is based on a separation from service occurring before the effective date of this subtitle, any increase in such individual's annuity on the basis of a deposit made under section 8442(f) of title 5, United States Code, as amended by subsection (b)(2), shall be effective beginning with the annuity payment payable for the first calendar month beginning after the effective date of this subtitle.

"(2) SPECIAL RULES.—

"(A) OLD-AGE OR SURVIVORS INSURANCE BENEFITS.—Subject to subparagraph (B), in any case in which an individual described in paragraph (1)(A)(ii) is also entitled to old-age or survivors insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing an application therefor), the amount of the annuity to which such individual is entitled under subchapter III of chapter 83 of title 5, United States Code (after taking into account any creditable service as a volunteer or volunteer leader under the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.], the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4950 et seq.], or the Peace Corps Act [22 U.S.C. 2501 et seq.]) which is payable for any month shall be reduced by an amount determined by multiplying the amount of such old-age or survivors insurance benefit for the determination month by a fraction—

"(i) the numerator of which is the total of the wages (within the meaning of section 209 of the Social Security Act [42 U.S.C. 409]) for service as a volunteer or volunteer leader under the Economic Opportunity Act of 1964, the Domestic Volunteer Service Act of 1973, or the Peace Corps Act of such individual credited for years before the calendar year in which the determination month occurs, up to the contribution and benefit base determined under section 230 of the Social Security Act [42 U.S.C. 430] (or other applicable maximum annual amount referred to in section 215(e)(1) of such Act [42 U.S.C. 415(e)(1)] for each such year); and

"(ii) the denominator of which is the total of all wages described in clause (i), plus all other wages (within the meaning of section 209 of such Act [42 U.S.C. 409]) and all self-employment income (within the meaning of section 211(b) of such Act [42 U.S.C. 411(b)]) of such individual credited for years after 1936 and before the calendar year in which the determination month occurs, up to the contribution and benefit base (or such other amount referred to in section 215(e)(1) of such Act [42 U.S.C. 415(e)(1)] for each such year.

"(B) LIMITATIONS.—

"(i) REDUCTION IN ANNUITY.—Subparagraph (A) shall not reduce the annuity of an individual below the amount of the annuity which would be payable to the individual for the determination month if the provisions of section 8332(j) of title 5, United States Code, relating to service as a volunteer or volunteer leader, applied to the individual for such month.

"(ii) APPLICATION.—Subparagraph (A) shall not apply in the case of an individual who, prior to the date of enactment of this Act [Sept. 21, 1993], made a deposit under section 8334(c) of title 5, United States Code, with respect to service as a volunteer or volunteer leader (as described in subparagraph (A)).

"(iii) DETERMINATION MONTH.—For purposes of this paragraph, the term 'determination month' means—

"(I) the first month the individual described in paragraph (1)(A)(ii) is entitled to old-age or survivors benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to

such benefits upon filing an application therefor); or

“(II) the first calendar month beginning after the date of enactment of this Act [Sept. 21, 1993], in the case of any individual entitled to such benefits for such month.

“(iv) RULE RELATING TO ANNUITIES BASED ON EARLIER SEPARATIONS.—Any increase in an annuity which occurs by virtue of the enactment of this paragraph shall be effective beginning with the annuity payment payable for the first calendar month beginning after the effective date of this subtitle [Oct. 1, 1993].

“(3) FURNISHING OF INFORMATION.—The Secretary of Health and Human Services shall furnish such information to the Office of Personnel Management as may be necessary to carry out this subsection.

“(4) ACTION TO INFORM INDIVIDUALS.—The Director of the Office of Personnel Management shall take such action as may be necessary and appropriate to inform individuals entitled to credit under this section for service as a volunteer or volunteer leader, or to have any annuity recomputed, or to make a deposit under this section, of such entitlement.”

Amendment by section 371(a)(1) of Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of Title 42, The Public Health and Welfare.

Section 406(b) of Pub. L. 103-82 provided that: “The amendments made by sections 404 and 405 [amending this section, section 558a of Title 16, Conservation, section 2501-1 of Title 22, Foreign Relations and Intercourse, section 1542 of Title 25, Indians, and sections 3012, 3013, 3035a, 4950, 4953, 4995, 5025, 5043, 5048, 5056, 5061, 5065, 5590, 5616, 6863, 11312, 11851, 12312, 12638, and 12653 of Title 42, and amending provisions set out as notes under section 1701z-6 of Title 12, Banks and Banking, and sections 4954 and 5001 of Title 42] shall take effect on the effective date of section 203(c)(2).” [Section 203(c)(2) of Pub. L. 103-82 is effective Apr. 4, 1994, see section 203(d) of Pub. L. 103-82 and Proc. No. 6662, set out as notes under section 12651 of Title 42.]

EFFECTIVE DATE OF 1991 AMENDMENT

Section 466(c) of Pub. L. 102-242 provided that: “The amendment made by this section [amending this section and section 8411 of this title] shall apply with respect to any individual who transfers to a position in which he or she is subject to subchapter III of chapter 83 or chapter 84 of title 5, United States Code, on or after October 1, 1991.”

EFFECTIVE DATE OF 1990 AMENDMENT

Section 3(a) of Pub. L. 101-530 provided that:

“(1) GENERAL RULE.—

“(A) ELIGIBILITY.—Except as provided in paragraph (2), the amendment made by section 1 [amending this section] applies only with respect to individuals who—

“(i) separate from employment with the Government on or after the date of enactment of this Act [Nov. 6, 1990]; and

“(ii) make an appropriate deposit, in accordance with section 8334(c) or 8411(f) of title 5, United States Code (as appropriate), for additional service that is creditable under such amendment.

“(B) DEPOSIT.—Any such deposit—

“(i) shall include interest, which shall be computed under section 8334(e) of such title (except that the rate of interest shall be 3 percent a year) from the midpoint of the period of additional service to the date deposit is made; and

“(ii) shall be made before date of retirement.

“(2) EXCEPTION.—

“(A) RULE FOR INDIVIDUALS SEPARATING AFTER DECEMBER 31, 1968, AND BEFORE THE ENACTMENT OF THIS ACT.—In the case of any individual who—

“(i) was employed under section 709 of title 32, United States Code, relating to National Guard

technicians, or any prior corresponding provision of law, before January 1, 1969, and

“(ii) was separated from employment with the Government on or after January 1, 1969, and before the date of enactment of this Act [Nov. 6, 1990],

any annuity under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, based on such individual's service (as defined in section 8331(12) or 8401(26) of such title, as applicable) shall be determined or redetermined to take into account the amendment made by section 1 [amending this section], if application therefor is received by the Office of Personnel Management within 1 year after the date of enactment of this Act, and an appropriate deposit is made for any additional service that is creditable under such amendment. Any such deposit shall be computed, and must be paid either in a lump sum at the time of application or in installments over the 2-year period which begins on the date of application, or such shorter period as the Office may by regulation prescribe.

“(B) EARLIER PAYMENTS NOT AFFECTED BY RECOMPUTATION.—Any change in an annuity resulting from a redetermination under subparagraph (A) shall apply only with respect to monthly payments accruing after the date the deposit required under subparagraph (A) is made (or, if payments are to be made in installments, after an agreement has been entered into regarding the manner in which such payments will be made).

“(3) PAYMENT BY SURVIVORS.—For the purpose of survivor annuities, any deposit or installment payment required by paragraph (1) or (2) relating to service of an individual may also be made by a survivor of such individual.”

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 2(c) of Pub. L. 99-638 provided that: “Notwithstanding any other provision of this Act [amending this section and section 2105 of this title and enacting provisions set out as notes under this section and section 8331 of this title] which specifies an effective date for amendments made by this Act, the amendments made by this section [amending this section and section 2105 of this title] shall take effect on the date of the enactment of this Act [Nov. 10, 1986].”

Section 502(c) of Pub. L. 99-556 provided that:

“(1) The amendments made by this section [amending this section and section 8411 of this title] shall apply to a survivor of an employee or Member who dies on or after the 180th day after the date of the enactment of this Act [Oct. 27, 1986].

“(2) Upon application to the Office of Personnel Management, such amendments shall also apply to a survivor of an employee or Member whose date of death precedes such 180th day, except that any resulting recomputation shall not be effective for any period beginning before the 60th day after the date on which the application is received.”

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Oct. 14, 1983, see section 2208(c) of Pub. L. 98-369, set out as a note under section 1169a of Title 16, Conservation.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 111(2) of Pub. L. 98-51 provided that the amendment made by that section is effective Jan. 3, 1978.

EFFECTIVE DATE OF 1982 AMENDMENTS

Section 3(n) of Pub. L. 97-346 provided that: “The amendments made by this section [amending this section and sections 8334, 8342, 8344, and 8348 of this title and provisions set out as notes under this section and sections 5504, 5532, 5728, 8331, 8334, and 8337 of this title]

shall take effect as of the date of the enactment of the Omnibus Budget Reconciliation Act of 1982 [Sept. 8, 1982].”

Amendment by Pub. L. 97-253 effective Oct. 1, 1982, except that any employee or Member who retired after Sept. 8, 1982, and before Oct. 1, 1985, or is entitled to an annuity under chapter 83 of this title based on a separation from service occurring during such period, or a survivor of such individual, may make a payment under section 8334(j)(1) of this title, and regulations required to be issued under section 8334(j)(1) of this title, to be issued by the Office of Personnel Management within 90 days after such effective date, see section 306(g) of Pub. L. 97-253, as amended, set out as a note under section 8331 of this title.

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 4(b) of Pub. L. 96-523 provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 12, 1980].”

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; APPLICABILITY TO ANNUITIES; RECOMPUTATION

Section 2 of Pub. L. 95-382 provided that:
“(a) The amendments made by this Act [amending this section and section 8334 of this title] shall take effect on the later of—

“(1) the date of the enactment of this Act [Sept. 22, 1978], or

“(2) October 1, 1978.

“(b) Subject to subsection (c) of this section, the amendments made by the first section of this Act [amending this section and section 8334 of this title], shall apply with respect to annuities which commence before, on, or after the effective date of this Act, but no monetary benefit by reason of such amendments shall accrue for any period before such effective date.

“(c)(1) An annuity or survivor annuity based on the service of an employee or Member who performed service described in section 8332(l) of title 5, United States Code, as added by the first section of this Act, shall, upon application to the Civil Service Commission, be recomputed in accordance with such section 8332(l).

“(2) Any recomputation of an annuity under paragraph (1) shall apply with respect to months beginning more than 30 days after the date on which application for such recomputation is received in the Commission.

“(d)(1) The Civil Service Commission shall take such action as may be necessary and appropriate to inform individuals entitled to have any service credited under section 8332(l) of title 5, United States Code, as added by the first section of this Act, or to have any annuity recomputed under subsection (c), of their entitlement to such credit or recomputation.

“(2) The Civil Service Commission shall, on request, assist any individual referred to in paragraph (1) in obtaining from any department, agency, or other instrumentality of the United States such information possessed by such instrumentality as may be necessary to verify the entitlement of such individual to have any

service credited under such section 8332(l) or to have any annuity recomputed under subsection (c).

“(3) Any department, agency, or other instrumentality of the United States which possesses any information with respect to the internment or other detention of any employee or Member as described in such section 8332(l) shall, at the request of the Commission, furnish such information to the Commission.”

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92-297, set out as an Effective Date note under section 3381 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 5(a) of Pub. L. 91-658 provided that: “The amendment made by the first section of this Act [amending this section] is effective only with respect to annuity accruing for full months beginning after the date of enactment of this Act [Jan. 8, 1971]; but any part of a period of separation referred to in such amendment in which the employee or former employee was receiving benefits under subchapter I of chapter 81 of title 5, United States Code, or any earlier statute on which such subchapter is based shall be counted whether the employee returns to duty before, on, or after such date of enactment. With respect to any person retired before such date of enactment any such part of a period of separation shall be counted only upon application of the former employee.”

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-510 effective immediately prior to noon on Jan. 3, 1971, see section 601(1) of Pub. L. 91-510, set out as a note under section 72a of Title 2, The Congress.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-177 effective as to all former volunteers employed by the United States Government on or after the effective date of Pub. L. 91-177 which was approved on Dec. 30, 1969, see section 112(c) of Pub. L. 91-177.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-486 effective Jan. 1, 1969, except that no deductions or withholding from salary which result shall commence before first day of first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90-486, set out as a note under section 709 of Title 32, National Guard.

REGULATIONS

Section 4 of Pub. L. 101-530 provided that: “The Office of Personnel Management shall prescribe any regulations necessary for the implementation of this Act [amending this section, enacting provisions set out as a note above, and enacting and amending provisions set out as notes under section 709 of Title 32, National Guard].”

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

RETIREMENT CREDIT FOR SERVICE OF CERTAIN EMPLOYEES TRANSFERRED FROM DISTRICT OF COLUMBIA SERVICE TO FEDERAL SERVICE

Pub. L. 111-84, div. A, title XIX, §1905, Oct. 28, 2009, 123 Stat. 2617, provided that:

“(a) RETIREMENT CREDIT.—

“(1) IN GENERAL.—Any individual who is treated as an employee of the Federal Government for purposes of chapter 83 or chapter 84 of title 5, United States Code, on or after the date of enactment of this Act [Oct. 28, 2009] who performed qualifying District of Columbia service shall be entitled to have such service included in calculating the individual’s creditable service under section 8332 or 8411 of title 5, United States Code, but only for purposes of the following provisions of such title:

“(A) Sections 8333 and 8410 (relating to eligibility for annuity).

“(B) Sections 8336 (other than subsections (d), (h), and (p) thereof) and 8412 (relating to immediate retirement).

“(C) Sections 8338 and 8413 (relating to deferred retirement).

“(D) Sections 8336(d), 8336(h), 8336(p), and 8414 (relating to early retirement).

“(E) Section 8341 and subchapter IV of chapter 84 (relating to survivor annuities).

“(F) Section 8337 and subchapter V of chapter 84 (relating to disability benefits).

“(2) TREATMENT OF DETENTION OFFICER SERVICE AS LAW ENFORCEMENT OFFICER SERVICE.—Any portion of an individual’s qualifying District of Columbia service which consisted of service as a detention officer under section 2604(2) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (sec. 1-626.04(2), D.C. Official Code) shall be treated as service as a law enforcement officer under sections 8331(20) or 8401(17) of title 5, United States Code, for purposes of applying paragraph (1) with respect to the individual.

“(3) SERVICE NOT INCLUDED IN COMPUTING AMOUNT OF ANY ANNUITY.—Qualifying District of Columbia service shall not be taken into account for purposes of computing the amount of any benefit payable out of the Civil Service Retirement and Disability Fund.

“(b) QUALIFYING DISTRICT OF COLUMBIA SERVICE DEFINED.—In this section, ‘qualifying District of Columbia service’ means any of the following:

“(1) Service performed by an individual as a non-judicial employee of the District of Columbia courts—

“(A) which was performed prior to the effective date of the amendments made by section 11246(b) of the Balanced Budget Act of 1997 [Pub. L. 105-33, see Effective Date of 1997 Amendment note set out under section 3121 of Title 26, Internal Revenue Code]; and

“(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

“(2) Service performed by an individual as an employee of an entity of the District of Columbia government whose functions were transferred to the Pretrial Services, Parole, Adult Supervision, and Offender Supervision Trustee under section 11232 of the Balanced Budget Act of 1997 [111 Stat. 746]—

“(A) which was performed prior to the effective date of the individual’s coverage as an employee of the Federal Government under section 11232(f) of such Act [111 Stat. 747]; and

“(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

“(3) Service performed by an individual as an employee of the District of Columbia Public Defender Service—

“(A) which was performed prior to the effective date of the amendments made by section 7(e) of the District of Columbia Courts and Justice Technical Corrections Act of 1998 [112 Stat. 2427]; and

“(B) for which the individual did not ever receive credit under the provisions of subchapter III of

chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

“(4) In the case of an individual who was an employee of the District of Columbia Department of Corrections who was separated from service as a result of the closing of the Lorton Correctional Complex and who was appointed to a position with the Bureau of Prisons, the District of Columbia courts, the Pretrial Services, Parole, Adult Supervision, and Offender Supervision Trustee, the United States Parole Commission, or the District of Columbia Public Defender Service, service performed by the individual as an employee of the District of Columbia Department of Corrections—

“(A) which was performed prior to the effective date of the individual’s coverage as an employee of the Federal Government; and

“(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

“(c) CERTIFICATION OF SERVICE.—The Office of Personnel Management shall accept the certification of the appropriate personnel official of the government of the District of Columbia or other independent employing entity concerning whether an individual performed qualifying District of Columbia service and the length of the period of such service the individual performed.”

FORMER EMPLOYEES OF LEGISLATIVE SERVICE ORGANIZATIONS

Pub. L. 106-554, §1(a)(4) [div. A, §901(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-196, provided that:

“(1) SERVICE OF EMPLOYEES OF LEGISLATIVE SERVICE ORGANIZATIONS.—

“(A) IN GENERAL.—Subject to succeeding provisions of this paragraph, upon application to the Office of Personnel Management in such form and manner as the Office shall prescribe, any individual who performed service as an employee of a legislative service organization of the House of Representatives (as defined and authorized in the One Hundred Third Congress) and whose pay was paid in whole or in part by a source other than the Clerk Hire account of a Member of the House of Representatives (other than an individual described in paragraph (6)) shall be entitled—

“(i) to receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (whichever would be appropriate), as congressional employee service, for all such service; and

“(ii) to have all pay for such service which was so paid by a source other than the Clerk Hire account of a Member included (in addition to any amounts otherwise included in basic pay) for purposes of computing an annuity payable out of the Civil Service Retirement and Disability Fund.

“(B) DEPOSIT REQUIREMENT.—In order to be eligible for the benefits described in subparagraph (A), an individual shall be required to pay into the Civil Service Retirement and Disability Fund an amount equal to the difference between—

“(i) the employee contributions that were actually made to such Fund under applicable provisions of law with respect to the service described in subparagraph (A); and

“(ii) the employee contributions that would have been required with respect to such service if the amounts described in subparagraph (A)(ii) had also been treated as basic pay.

The amount required under this subparagraph shall include interest, which shall be computed under section 8334(e) of title 5, United States Code.

“(C) CERTAIN OFFSETS REQUIRED IN ORDER TO PREVENT DOUBLE CONTRIBUTIONS AND BENEFITS.—In the case of any period of service as an employee of a legislative service organization which constituted em-

ployment for purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.]—

“(i) any pay for such service (as described in subparagraph (A)(ii) with respect to which the deposit under subparagraph (B) would otherwise be computed by applying the first sentence of section 8334(a)(1) of title 5, United States Code, shall instead be computed in a manner based on section 8334(k) of such title; and

“(ii) any retirement benefits under subchapter III of chapter 83 of title 5, United States Code, shall be subject to offset (to reflect that portion of benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] attributable to pay referred to in subparagraph (A)) similar to that provided for under section 8349 of such title.

“(2) SURVIVOR ANNUITANTS.—For purposes of survivor annuities, an application authorized by this section may, in the case of an individual under paragraph (1) who has died, be made by a survivor of such individual.

“(3) RECOMPUTATION OF ANNUITIES.—Any annuity or survivor annuity payable as of when an individual makes the deposit required under paragraph (1) shall be recomputed to take into account the crediting of service under such paragraph for purposes of amounts accruing for any period beginning on or after the date on which the individual makes the deposit.

“(4) CERTIFICATION OF SPEAKER.—The Office of Personnel Management shall accept the certification of the Speaker of the House of Representatives (or the Speaker's designee) concerning the service of, and the amount of compensation received by, an employee with respect to whom credit is to be sought under this subsection.

“(5) NOTIFICATION AND OTHER DUTIES OF THE OFFICE OF PERSONNEL MANAGEMENT.—

“(A) NOTICE.—The Office of Personnel Management shall take such action as may be necessary and appropriate to inform individuals of any rights they might have as a result of enactment of this subsection.

“(B) ASSISTANCE.—The Office shall, on request, assist any individual in obtaining from any department, agency, or other instrumentality of the United States any information in the possession of such instrumentality which may be necessary to verify the entitlement of such individual to have any service credited under this subsection or to have an annuity recomputed under paragraph (3).

“(C) INFORMATION.—Any department, agency, or other instrumentality of the United States which possesses any information with respect to an individual's performance of any service described in paragraph (1) shall, at the request of the office, furnish such information to the Office.

“(6) EXCLUSION OF CERTAIN EMPLOYEES.—An individual is not eligible for credit under this subsection if the individual served as an employee of the House of Representatives for an aggregate period of 5 years or longer after the individual's final period of service as an employee of a legislative service organization of the House of Representatives.

“(7) MEMBER DEFINED.—In this subsection, the term ‘Member of the House of Representatives’ includes a Delegate or Resident Commissioner to Congress.”

CREDITABILITY OF ICC EMPLOYEE'S ANNUAL LEAVE FOR PURPOSES OF MEETING MINIMUM ELIGIBILITY REQUIREMENTS FOR IMMEDIATE ANNUITY

Pub. L. 104-88, title I, § 105, Dec. 29, 1995, 109 Stat. 920, provided that:

“(a) IN GENERAL.—An employee of the Interstate Commerce Commission who is separated from Government service pursuant to the abolition of that agency under section 101 [49 U.S.C. 701 note] shall, upon appropriate written application, be given credit, for purposes of determining eligibility for and computing the amount of any annuity under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, for accrued annual leave standing to such employee's credit at the time of separation.

“(b) LIMITATION AND OTHER CONDITIONS.—Any regulations necessary to carry out this section shall be prescribed by the Office of Personnel Management. Such regulations shall include provisions—

“(1) defining the types of leave for which credit may be given under this section (such definition to be similar to the corresponding provisions of the regulations under section 351.608(c)(2) of title 5 of the Code of Federal Regulations, as in effect on the date of the enactment of this Act [Dec. 29, 1995]);

“(2) limiting the amount of accrued annual leave which may be used for the purposes specified in subsection (a) to the minimum period of time necessary in order to permit such employee to attain first eligibility for an immediate annuity under section 8336, 8412, or 8414 of title 5, United States Code (in a manner similar to the corresponding provisions of the regulations referred to in paragraph (1));

“(3) under which contributions (or arrangements for the making of contributions) shall be made so that—

“(A) employee contributions for any period of leave for which retirement credit may be obtained under this section shall be made by the employee; and

“(B) Government contributions with respect to such period shall similarly be made by the Interstate Commerce Commission or other appropriate officer or entity (out of appropriations otherwise available for such contributions); and

“(4) under which subsection (a) shall not apply with respect to an employee who declines a reasonable offer of employment in another position in the Department of Transportation made under this Act [see Tables for classification] or any amendment made by this Act.

“(c) EXTINGUISHMENT OF ELIGIBILITY FOR LUMP-SUM PAYMENT.—A lump-sum payment under section 5551 of title 5, United States Code, shall not be payable with respect to any leave for which retirement credit is obtained under this section.”

[Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 701 of Title 49.]

CREDITABILITY UNDER CSRS OF CERTAIN SERVICE PERFORMED UNDER PERSONAL SERVICE CONTRACT WITH UNITED STATES

Pub. L. 100-238, title I, § 110, Jan. 8, 1988, 101 Stat. 1749, provided that:

“(a) IN GENERAL.—

“(1) CONDITIONS FOR RECEIVING CREDIT.—Subject to the making of a deposit under section 8334(c) of title 5, United States Code, upon application to the Office of Personnel Management within 2 years after the date of the enactment of this Act [Jan. 8, 1988], any individual who is an employee (as defined by section 8331(1) or 8401(11) of such title) on such date shall be allowed credit under subchapter III of chapter 83 of such title for any service if such service was performed—

“(A) before November 5, 1985; and

“(B) under a personal service contract with the United States, except as provided in paragraph (3).

“(2) CERTIFICATION.—

“(A) IN GENERAL.—The Office shall, with respect to any service for which credit is sought under this subsection, accept the certification of the head of the agency which was party to the contract referred to in paragraph (1)(B), but only if such certification—

“(i) states that the agency had intended, through such contract, that the individual involved (or that persons like the individual involved) be considered as having been appointed to a position in which such individual would be subject to subchapter III of chapter 83 of title 5, United States Code; and

“(ii) indicates the period of service which was performed under the contract by the individual involved, and includes copies of appropriate records or other documentation to support the determination as to the length of such period.

“(B) FINALITY.—A decision by an agency head concerning whether or not to make a certification under this paragraph in any particular instance shall be at the sole discretion of the agency head, and shall not be subject to administrative or judicial review.

“(3) EXCEPTION.—Nothing in this subsection shall apply with respect to any service performed under—

“(A) a contract for which any appropriations, allocations, or funds were used under section 636(a)(3) of the Foreign Assistance Act of 1961 [22 U.S.C. 2396(a)(3)];

“(B) a contract entered into under section 10(a)(5) of the Peace Corps Act [22 U.S.C. 2509(a)(5)];

“(C) a contract under which the services of an individual may be terminated by a person other than the individual or the Government; or

“(D) a contract for a single transaction or a contract under which services are paid for in a single payment.

“(b) APPLICABILITY TO ANNUITANTS.—

“(1) IN GENERAL.—In the case of any individual who—

“(A) performed service for which credit is allowable under subsection (a), and

“(B) retired on an annuity payable under subchapter III of chapter 83 of title 5, United States Code, after January 23, 1980, and before the date of the enactment of this Act [Jan. 8, 1988],

any annuity under such subchapter based on the service of such individual shall be redetermined to take into account the amendment made by subsection (a) if application therefor is made, and the deposit requirement under such subsection is met, within 2 years after the date of the enactment of this Act.

“(2) AMOUNTS TO WHICH APPLICABLE.—Any change in an annuity resulting from a redetermination under paragraph (1) shall be effective with respect to payments accruing for months beginning after the date of the enactment of this Act.”

CLARIFICATION RELATING TO CONSIDERATION OF PRE-1987 SERVICE AS AIR TRAFFIC CONTROLLER FOR RETIREMENT PURPOSES

Pub. L. 100-92, § 2, Aug. 18, 1987, 101 Stat. 679, provided that:

“(a) For purposes of subchapter III of chapter 83 of title 5, United States Code, and chapter 84 of such title—

“(1) service as an air traffic controller shall, with respect to any annuity which is based on a separation from service, or death, occurring on or after January 1, 1987, include any service as an air traffic controller whether performed before, on, or after January 1, 1987; and

“(2) the Office of Personnel Management shall accept the certification of the Secretary, or the designee of the Secretary, in determining the amount of any service performed by an individual as an air traffic controller.

“(b) For purposes of this section—

“(1) the term ‘air traffic controller’ has the meaning given such term by section 2109(1) of title 5, United States Code, as amended by section 207(b) of the Federal Employees’ Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 594); and

“(2) the term ‘Secretary’ has the meaning given such term by section 2109(2) of title 5, United States Code.”

CADET NURSE CORPS

Section 1 of Pub. L. 99-638 provided: “That (a) service described in subsection (b) shall be considered creditable civilian service for purposes of subchapter III of

chapter 83, or chapter 84, of title 5, United States Code, as applicable, in the case of any individual who meets the requirements of subsection (c).

“(b) This section relates to any period of training as a student or graduate nurse under a plan approved under section 2 of the Act of June 15, 1943 (57 Stat. 153) [former 50 U.S.C. App. 1452], if the total period of training under such plan was at least 2 years.

“(c)(1) An individual may not receive credit for service pursuant to this Act [amending sections 2105 and 8332 of this title and enacting provisions set out as notes under sections 8331 and 8332 of this title] unless—

“(A) within 14 months after the date of the enactment of this Act [Nov. 10, 1986], and in accordance with regulations under subsection (d), the individual files appropriate written application with the Office of Personnel Management;

“(B) at the time of filing the application under subparagraph (A), the individual is employed by the Government and subject to subchapter III of chapter 83 of title 5, United States Code (other than section 8344 of such title), or chapter 84 of such title (other than section 8468 of such title);

“(C) before the date of the separation on which is based the individual’s entitlement to an annuity under subchapter III of chapter 83 of title 5, United States Code, or chapter 84 of such title, as applicable, such individual deposits into the Civil Service Retirement and Disability Fund the amount required under paragraph (2) with respect to the period of training involved.

“(2) The amount to be deposited shall be determined by the Office of Personnel Management in a manner consistent with applicable provisions of subchapter III of chapter 83 of title 5, United States Code, chapter 84 of such title or title III of the Federal Employees’ Retirement System Act of 1986 [Pub. L. 99-335, title III, see Tables for classification], as the case may be, relating to deposits for earlier periods of civilian service for which deductions from basic pay have not been made.

“(d) The Office of Personnel Management shall, not later than 2 months after the date of the enactment of this Act [Nov. 10, 1986], prescribe regulations to carry out this Act [amending sections 2105 and 8332 of this title and enacting provisions set out as notes under sections 8331 and 8332 of this title].”

RECOMPUTATION AT AGE 62 OF CREDIT FOR MILITARY SERVICE OF CURRENT ANNUITANTS

Section 307 of Pub. L. 97-253, as amended by Pub. L. 97-346, § 3(k), Oct. 15, 1982, 96 Stat. 1649, provided that:

“(a) The provisions of section 8332(j) of title 5, United States Code, relating to credit for military service, shall not apply with respect to any individual who is entitled to an annuity under subchapter III of chapter 83 of title 5, United States Code, on or before the date of enactment of this Act [Sept. 8, 1982] or who is entitled to an annuity based on a separation from service occurring on or before such date of enactment.

“(b) Subject to subsection (b), in any case in which an individual described in subsection (a) is also entitled to old-age or survivors’ insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing application therefor), the amount of the annuity to which such individual is entitled under subchapter III of chapter 83 of title 5, United States Code, (after taking into account subsection (a)) which is payable for any month shall be reduced by an amount determined by multiplying the amount of such old-age or survivors’ insurance benefit for the determination month by a fraction—

“(1) the numerator of which is the total of the wages (within the meaning of section 209 of the Social Security Act [42 U.S.C. 409]) for service referred to in section 210(l) of such Act [42 U.S.C. 410(l)] (relating to service in the uniformed services) and deemed additional wages (within the meaning of section 229 of such Act [42 U.S.C. 429]) of such individual credited for years after 1956 and before the calendar year in which the determination month occurs, up to the

contribution and benefit base determined under section 230 of the Social Security Act [42 U.S.C. 430] (or other applicable maximum annual amount referred to in section 215(e)(1) of such Act [42 U.S.C. 415(e)(1)]) for each such year, and

“(2) the denominator of which is the total of all wages and deemed additional wages described in paragraph (1) of this subsection plus all other wages (within the meaning of section 209 of such Act [42 U.S.C. 409]) and all self-employment income (within the meaning of section 211(b) of such Act [42 U.S.C. 411(b)]) of such individual credited for years after 1936 and before the calendar year in which the determination month occurs, up to the contribution and benefit base (or such other amount referred to in such section 215(e)(1) [42 U.S.C. 415(e)(1)]) for each such year.

“(c) Subsection (b) shall not reduce the annuity of any individual below the amount of the annuity which would be payable under this subchapter to the individual for the determination month if section 8332(j) of title 5, United States Code, applied to the individual for such month.

“(d) For purposes of this section, the term ‘determination month’ means—

“(1) the first month the individual described in subsection (a) is entitled to old-age or survivors’ insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing application therefor); or

“(2) October 1982, in the case of any individual so entitled to such benefits for such month.

“(e) The preceding provisions of this section shall take effect with respect to any annuity payment payable under subchapter III of chapter 83 of title 5, United States Code, for calendar months beginning after September 30, 1982.

“(f) The Secretary of Health and Human Services shall furnish such information to the Office of Personnel Management as may be necessary to carry out the preceding provisions of this section.”

DISTRICT OF COLUMBIA SUBSTITUTE TEACHERS

Section 2 of Pub. L. 92-454 provided that: “An annuity or survivor annuity based on the service of an employee or annuitant who performed service described in section 1 of this Act [amending this section] shall, upon application to the Civil Service Commission, be recomputed, effective on the first day of the first month following the date of enactment of this Act [Oct. 2, 1972], in accordance with section 1 of this Act.”

NATIONAL GUARD TECHNICIANS

Amendment by section 5(a)(4) of Pub. L. 90-486 not applicable to persons employed prior to Jan. 1, 1969 whose employment was covered by the civil service retirement provisions of section 8331 et seq. of this title, see section 5(d) of Pub. L. 90-486, set out as a note under section 709 of Title 32, National Guard.

CREDITABLE SERVICE OF CERTAIN COMMISSIONED OFFICERS OF THE REGULAR OR RESERVE CORPS OF THE PUBLIC HEALTH SERVICE

Section 6(a), (b) of Pub. L. 86-415, Apr. 8, 1960, 74 Stat. 35, provided that:

“(a) Except as provided in subsection (b), service as a commissioned officer in the Regular Corps of the Public Health Service prior to July 1, 1960, shall be considered, for purposes of credit under the Civil Service Retirement Act [this subchapter], other than section 3(f) thereof [section 8333(a) of this title], as civilian service performed by an employee (as defined in such Act [this subchapter]) and commissioned officers of the Reserve Corps of the Public Health Service, subject to the Civil Service Retirement Act [this subchapter] on June 30, 1960, shall be considered as voluntarily separated on that date, with respect to service as such officers, from civilian positions subject to such Act [this subchapter].

“(b) If a commissioned officer of the Regular or Reserve Corps of the Public Health Service is retired after

June 30, 1960, and becomes entitled to retired pay from the Public Health Service, all service in the Regular or Reserve Corps of the Public Health Service prior to July 1, 1960, together with any other service which is performed at any time with the Public Health Service, other than as a commissioned officer, and which is credited to the officer for purposes of such retirement, shall be considered as military service for purposes of section 3(b) of the Civil Service Retirement Act [subsecs. (c)–(e) of this section]; except that, in the case of any such officer who is retired pursuant to subsection (a) of section 211 of the Public Health Service Act [section 212(a) of Title 42], any such service which was performed prior to July 1, 1960, which was subject to the Civil Service Retirement Act [this subchapter], and with respect to which he has not, prior to his retirement, received a refund of deductions under the Civil Service Retirement Act [this subchapter], shall not be considered as military service for purposes of such section 3(b) [subsecs. (c)–(e) of this section], but only if he waives his right to have such service included for purposes of computing the amount of his retired pay from the Service.”

§ 8333. Eligibility for annuity

(a) An employee must complete at least 5 years of civilian service before he is eligible for an annuity under this subchapter.

(b) An employee or Member must complete, within the last 2 years before any separation from service, except a separation because of death or disability, at least 1 year of creditable civilian service during which he is subject to this subchapter before he or his survivors are eligible for annuity under this subchapter based on the separation. If an employee or Member, except an employee or Member separated from the service because of death or disability, fails to meet the service requirement of the preceding sentence, the amounts deducted from his pay during the service for which no eligibility for annuity is established based on the separation shall be returned to him on the separation. Failure to meet this service requirement does not deprive the individual or his survivors of annuity rights which attached on a previous separation.

(c) A Member or his survivor is eligible for an annuity under this subchapter only if the amounts named by section 8334 of this title have been deducted or deposited with respect to his last 5 years of civilian service, or, in the case of a survivor annuity under section 8341(d) or (e)(1) of this title, with respect to his total service.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 569; Pub. L. 91-93, title II, §201(b), Oct. 20, 1969, 83 Stat. 138; Pub. L. 94-183, §2(34), Dec. 31, 1975, 89 Stat. 1058.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a), (b)	5 U.S.C. 2253(f), (g).	July 31, 1956, ch. 804, §401 “Sec. 3(f), (g)”, 70 Stat. 746.
(c)	5 U.S.C. 2256(f) (last sentence).	July 31, 1956, ch. 804, §401 “Sec. 6(f) (last sentence)”, 70 Stat. 750. Aug. 27, 1958, Pub. L. 85-772, §1(a), 72 Stat. 930.

In subsection (c), the words “eligible for” are substituted for “entitled to”.

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

AMENDMENTS

1975—Subsec. (c). Pub. L. 94-183 substituted “of this title” for “of title 5” and “of this title” for “of this chapter”.

1969—Subsec. (c). Pub. L. 91-93 provided for eligibility for a survivor annuity under section 8341(d) or (e)(1) of this title only if the requisite amounts are deducted or deposited with respect to total service period.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-93 inapplicable in cases of persons retired or otherwise separated prior to Oct. 20, 1969, their rights and of their survivors continued as if such amendment had not been enacted, see section 207(a) of Pub. L. 91-93, set out as a note under section 8331 of this title.

§ 8334. Deductions, contributions, and deposits

(a)(1)(A) The employing agency shall deduct and withhold from the basic pay of an employee, Member, Congressional employee, law enforcement officer, firefighter, bankruptcy judge, judge of the United States Court of Appeals for the Armed Forces, United States magistrate,¹ Court of Federal Claims judge, member of the Capitol Police, member of the Supreme Court Police, nuclear materials courier, or customs and border protection officer, as the case may be, the percentage of basic pay applicable under subsection (c).

(B)(i) Except as provided in clause (ii), an equal amount shall be contributed from the appropriation or fund used to pay the employee or, in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment. When an employee in the legislative branch is paid by the Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may pay from the applicable accounts of the House of Representatives the contribution that otherwise would be contributed from the appropriation or fund used to pay the employee.

(ii) In the case of an employee of the United States Postal Service, no amount shall be contributed under this subparagraph.

(2) The amounts so deducted and withheld, together with the amounts so contributed, shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Secretary of the Treasury may prescribe. Deposits made by an employee or Member also shall be credited to the Fund.

(b) Each employee or Member is deemed to consent and agree to these deductions from basic pay. Notwithstanding any law or regulation affecting the pay of an employee or Member, payment less these deductions is a full and complete discharge and acquittance of all claims and demands for regular services during the period covered by the payment, except the right to the benefits to which the employee or Member is entitled under this subchapter.

(c) Each employee or Member credited with civilian service after July 31, 1920, for which retirement deductions or deposits have not been made, may deposit with interest an amount equal to the following percentages of his basic pay received for that service:

	Percentage of basic pay	Service period	
Employee	2½	August 1, 1920, to June 30, 1926.	
	3½	July 1, 1926, to June 30, 1942.	
	5	July 1, 1942, to June 30, 1948.	
	6	July 1, 1948, to October 31, 1956.	
	6½	November 1, 1956, to December 31, 1969.	
	7	January 1, 1970, to December 31, 1998.	
	7.25	January 1, 1999, to December 31, 1999.	
	7.4	January 1, 2000, to December 31, 2000.	
	7	After December 31, 2000.	
	Member or employee for Congressional employee service.	2½	August 1, 1920, to June 30, 1926.
3½		July 1, 1926, to June 30, 1942.	
5		July 1, 1942, to June 30, 1948.	
6		July 1, 1948, to October 31, 1956.	
6½		November 1, 1956, to December 31, 1969.	
7.5		January 1, 1970, to December 31, 1998.	
7.75		January 1, 1999, to December 31, 1999.	
7.9		January 1, 2000, to December 31, 2000.	
7.5		After December 31, 2000.	
Member for Member service.		2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.	
	5	July 1, 1942, to August 1, 1946.	
	6	August 2, 1946, to October 31, 1956.	
	7½	November 1, 1956, to December 31, 1969.	
	8	January 1, 1970, to December 31, 1998.	
	8.25	January 1, 1999, to December 31, 1999.	
	8.4	January 1, 2000, to December 31, 2000.	
	8.5	January 1, 2001, to December 31, 2002.	
	8	After December 31, 2002.	
Law enforcement officer for law enforcement service, member of the Supreme Court Police for Supreme Court Police service, and firefighter for firefighter service.	2½	August 1, 1920, to June 30, 1926.	
	3½	July 1, 1926, to June 30, 1942.	
	5	July 1, 1942, to June 30, 1948.	
	6	July 1, 1948, to October 31, 1956.	
	6½	November 1, 1956, to December 31, 1969.	
	7	January 1, 1970, to December 31, 1974.	
	7.5	January 1, 1975, to December 31, 1998.	
	7.75	January 1, 1999, to December 31, 1999.	
	7.9	January 1, 2000, to December 31, 2000.	
	7.5	After December 31, 2000.	
Bankruptcy judge.	2½	August 1, 1920, to June 30, 1926.	
	3½	July 3, 1926, to June 30, 1942.	
	5	July 1, 1942, to June 30, 1948.	
	6	July 1, 1948, to October 31, 1956.	
	6½	November 1, 1956, to December 31, 1969.	
	7	January 1, 1970, to December 31, 1983.	
	8	January 1, 1984, to December 31, 1998.	
	8.25	January 1, 1999, to December 31, 1999.	
	8.4	January 1, 2000, to December 31, 2000.	
	8	After December 31, 2000.	
Judge of the United States Court of Appeals for the Armed Forces for service as a judge of that court.	6	May 5, 1950, to October 31, 1956.	
	6½	November 1, 1956, to December 31, 1969.	
	7	January 1, 1970, to (but not including) the date of the enactment of the Department of Defense Authorization Act, 1984.	
	8	The date of enactment of the Department of Defense Authorization Act, 1984, to December 31, 1998.	
	8.25	January 1, 1999, to December 31, 1999.	
	8.4	January 1, 2000, to December 31, 2000.	
	8	After December 31, 2000.	
	United States magistrate judge.	2½	August 1, 1920, to June 30, 1926.
		3½	July 1, 1926, to June 30, 1942.
		5	July 1, 1942, to June 30, 1948.
6		July 1, 1948, to October 31, 1956.	
6½		November 1, 1956, to December 31, 1969.	

¹ So in original. Probably should be “United States magistrate judge.”

	Percentage of basic pay	Service period
	7	January 1, 1970, to September 30, 1987.
	8	October 1, 1987, to December 31, 1998.
	8.25	January 1, 1999, to December 31, 1999.
	8.4	January 1, 2000, to December 31, 2000.
Court of Federal Claims Judge.	8	After December 31, 2000.
	2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	January 1, 1970, to September 30, 1988.
	8	October 1, 1988, to December 31, 1998.
	8.25	January 1, 1999, to December 31, 1999.
	8.4	January 1, 2000, to December 31, 2000.
Member of the Capitol Police.	8	After December 31, 2000.
	2.5	August 1, 1920, to June 30, 1926.
	3.5	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6.5	November 1, 1956, to December 31, 1969.
	7.5	January 1, 1970, to December 31, 1998.
	7.75	January 1, 1999, to December 31, 1999.
	7.9	January 1, 2000, to December 31, 2000.
	7.5	After December 31, 2000.
Nuclear materials courier.	7	October 1, 1977 to October 16, 1998.
	7.5	October 17, 1998 to December 31, 1998.
	7.75	January 1, 1999 to December 31, 1999.
	7.9	January 1, 2000 to December 31, 2000.
Customs and border protection officer.	7.5	After December 31, 2000.
	7.5	After June 29, 2008.

Notwithstanding the preceding provisions of this subsection and any provision of section 206(b)(3) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, the percentage of basic pay required under this subsection in the case of an individual described in section 8402(b)(2) shall, with respect to any covered service (as defined by section 203(a)(3) of such Act) performed by such individual after December 31, 1983, and before January 1, 1987, be equal to 1.3 percent, and, with respect to any such service performed after December 31, 1986, be equal to the amount that would have been deducted from the employee's basic pay under subsection (k) of this section if the employee's pay had been subject to that subsection during such period.

(d)(1) Each employee or Member who has received a refund of retirement deductions under this or any other retirement system established for employees of the Government covering service for which he may be allowed credit under this subchapter may deposit the amount received, with interest. Credit may not be allowed for the service covered by the refund until the deposit is made.

(2)(A) This paragraph applies with respect to any employee or Member who—

(i) separates before March 1, 1991, and receives (or elects, in accordance with applicable provisions of this subchapter, to receive) a refund (described in paragraph (1)) which relates to a period of service ending before March 1, 1991;

(ii) is entitled to an annuity under this subchapter (other than a disability annuity)

which is based on service of such employee or Member, and which commences on or after December 2, 1990; and

(iii) does not make the deposit (described in paragraph (1)) required in order to receive credit for the period of service with respect to which the refund relates.

(B) Notwithstanding the second sentence of paragraph (1), the annuity to which an employee or Member under this paragraph is entitled shall (subject to adjustment under section 8340) be equal to an amount which, when taken together with the unpaid amount referred to in subparagraph (A)(iii), would result in the present value of the total being actuarially equivalent to the present value of the annuity which would otherwise be provided the employee or Member under this subchapter, as computed under subsections (a)–(i) and (n) of section 8339 (treating, for purposes of so computing the annuity which would otherwise be provided under this subchapter, the deposit referred to in subparagraph (A)(iii) as if it had been timely made).

(C) The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this paragraph.

(e)(1) Interest under subsection (c), (d)(1), (j), (k), or (l) of this section is computed in accordance with paragraphs (2) and (3) of this subsection and regulations prescribed by the Office of Personnel Management.

(2) Interest accrues annually on the outstanding portion of any amount that may be deposited under subsection (c), (d)(1), (j), (k), or (l) of this section, and is compounded annually, until the portion is deposited. Such interest is computed from the mid-point of each service period included in the computation, or from the date refund was paid. The deposit may be made in one or more installments. Interest may not be charged for a period of separation from the service which began before October 1, 1956.

(3) The rate of interest is 4 percent a year through December 31, 1947, and 3 percent a year beginning January 1, 1948, through December 31, 1984. Thereafter, the rate of interest for any calendar year shall be equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 8348(c), (d), and (e) of this title, as determined by the Secretary.

(f) Under such regulations as the Office of Personnel Management may prescribe, amounts deducted under subsection (a) or (k) of this section and deposited under subsections (c) and (d)(1) of this section shall be entered on individual retirement records.

(g) Deposit may not be required for—

(1) service before August 1, 1920;

(2) military service, except to the extent provided under section 8332(c) or section 8334(j) of this title;

(3) service for the Panama Railroad Company before January 1, 1924;

(4) service performed before October 29, 1983,² by natives of the Pribilof Islands in the taking and curing of fur seal skins and other

² So in original.

activities in connection with the administration of the Pribilof Islands except where deductions, contributions, and deposits were made before October 29, 1983;

(5) days of unused sick leave credited under section 8339(m) of this title; or

(6) any period for which credit is allowed under section 8332(l) of this title.

(h) For the purpose of survivor annuities, deposits authorized by subsections (c), (d)(1), (j), and (k) of this section may also be made by a survivor of an employee or Member.

(i)(1) The Director of the Administrative Office of the United States Courts shall pay to the Fund the amount which an employee may deposit under subsection (c) of this section for service creditable under section 8332(b)(12) of this title if such creditable service immediately precedes service as an employee subject to this subchapter with a break in service of no more than ninety working days. The Director shall pay such amount from any appropriation available to him as a necessary expense of the appropriation concerned.

(2) The amount the Director pays in accordance with paragraph (1) of this subsection shall be reduced by the amount of any refund to the employee under section 376 of title 28. Except to the extent of such reduction, the amount the Director pays to the Fund shall satisfy the deposit requirement of subsection (c) of this section.

(3) Notwithstanding any other provision of law, the amount the Director pays under this subsection shall constitute an employer contribution to the Fund, excludable under section 402 of the Internal Revenue Code of 1986 from the employee's gross income until such time as the contribution is distributed or made available to the employee, and shall not be subject to refund or to lump-sum payment to the employee.

(4) Notwithstanding any other provision of law, a bankruptcy judge or magistrate judge who is covered by section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 shall not be subject to deductions and contributions to the Fund, if the judge or magistrate judge notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such an election, the judge or magistrate judge shall be entitled to a lump-sum credit under section 8342(a) of this title.

(5) Notwithstanding any other provision of law, a judge who is covered by section 7296 of title 38 shall not be subject to deductions and contributions to the Fund, if the judge notifies the Director of the Office of Personnel Management of an election of a retirement annuity under that section. Upon such an election, the judge shall be entitled to a lump-sum credit under section 8342(a) of this title.

(6) Notwithstanding any other provision of law, a judge of the United States Court of Federal Claims who is covered by section 178 of title 28 shall not be subject to deductions and contributions to the Fund if the judge notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such an election, the judge shall be entitled to a

lump-sum credit under section 8342(a) of this title.

(j)(1)(A) Except as provided in subparagraph (B), and subject to paragraph (5), each employee or Member who has performed military service before the date of the separation on which the entitlement to any annuity under this subchapter is based may pay, in accordance with such regulations as the Office shall issue, to the agency by which the employee is employed, or, in the case of a Member or a Congressional employee, to the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives, as appropriate, an amount equal to 7 percent of the amount of the basic pay paid under section 204 of title 37 to the employee or Member for each period of military service after December 1956. The amount of such payments shall be based on such evidence of basic pay for military service as the employee or Member may provide, or if the Office determines sufficient evidence has not been so provided to adequately determine basic pay for military service, such payment shall be based upon estimates of such basic pay provided to the Office under paragraph (4).

(B) In any case where military service interrupts creditable civilian service under this subchapter and reemployment pursuant to chapter 43 of title 38 occurs on or after August 1, 1990, the deposit payable under this paragraph may not exceed the amount that would have been deducted and withheld under subsection (a)(1) from basic pay during civilian service if the employee had not performed the period of military service.

(2) Any deposit made under paragraph (1) of this subsection more than two years after the later of—

(A) October 1, 1983; or

(B) the date on which the employee or Member making the deposit first becomes an employee or Member following the period of military service for which such deposit is due,

shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the two-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under subsection (e) of this section.

(3) Any payment received by an agency, the Secretary of the Senate, or the Chief Administrative Officer of the House of Representatives under this subsection shall be immediately remitted to the Office for deposit in the Treasury of the United States to the credit of the Fund.

(4) The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, as appropriate, shall furnish such information to the Office as the Office may determine to be necessary for the administration of this subsection.

(5) Effective with respect to any period of military service after December 31, 1998, the percentage of basic pay under section 204 of title 37 payable under paragraph (1) shall be equal to the same percentage as would be applicable under subsection (c) of this section for that same period for service as an employee, subject to paragraph (1)(B).

(k)(1) Effective with respect to pay periods beginning after December 31, 1986, in administering this section in the case of an individual described in section 8402(b)(2) of this title—

(A) the amount to be deducted and withheld by the employing agency shall be determined in accordance with paragraph (2) of this subsection instead of subsection (a)(1)(A); and

(B) the amount of the contribution under subparagraph (B) of subsection (a)(1) shall be the amount which would have been contributed under such subparagraph if this subsection had not been enacted.

(2)(A) With respect to Federal wages of an employee or Member (or that portion thereof) not exceeding the contribution and benefit base during the calendar year involved, the appropriate amount to be deducted and withheld under this subsection is the amount by which—

(i) the total deduction for those wages (or for that portion) exceeds;

(ii) the OASDI contribution with respect to those wages (or that portion).

(B) With respect to any portion of Federal wages of an employee or Member which exceed the contribution and benefit base during the calendar year involved, the appropriate amount to be deducted and withheld under this subsection is an amount equal to the total deduction for that portion.

(C) For purposes of this paragraph—

(i) the term “Federal wages” means basic pay for service as an employee or Member, as the case may be;

(ii) the term “contribution and benefit base” means the contribution and benefit base in effect with respect to the period involved, as determined under section 230 of the Social Security Act;

(iii) the term “total deduction”, as used with respect to any Federal wages (or portion thereof), means an amount equal to the amount of those wages (or of that portion), multiplied by the percentage which (but for this subsection) would apply under subsection (a)(1)(A) with respect to the individual involved; and

(iv) the term “OASDI contribution”, with respect to any income, means the amount of tax which may be imposed under section 3101(a) of the Internal Revenue Code of 1986 with respect to such income (determined without regard to any income which is not a part of Federal wages).

(3) The amount of a deposit under subsection (c) of this section for any service with respect to which paragraph (1) of this subsection applies shall be equal to an amount determined based on the preceding provisions of this subsection, and shall include interest.

(4) In administering paragraphs (1) through (3)—

(A) the term “an individual described in section 8402(b)(2) of this title” shall be considered to include any individual—

(i) who is subject to this subchapter as a result of a provision of law described in section 8347(o), and

(ii) whose employment (as described in section 8347(o)) is also employment for purposes

of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986; and

(B) the term “Federal wages”, as applied with respect to any individual to whom this subsection applies as a result of subparagraph (A), means basic pay for any employment referred to in subparagraph (A)(ii).

(D)(1) Each employee or Member who has performed service as a volunteer or volunteer leader under part A of title VIII of the Economic Opportunity Act of 1964, as a full-time volunteer enrolled in a program of at least 1 year’s duration under part A, B,³ or C of title I of the Domestic Volunteer Service Act of 1973, or as a volunteer or volunteer leader under the Peace Corps Act before the date of the separation on which the entitlement to any annuity under this subchapter is based may pay, in accordance with such regulations as the Office of Personnel Management shall issue, an amount equal to 7 percent of the readjustment allowance paid to the employee or Member under title VIII of the Economic Opportunity Act of 1964 or section 5(c) or 6(1) of the Peace Corps Act or the stipend paid to the employee or Member under part A, B,³ or C of title I of the Domestic Volunteer Service Act of 1973, for each period of service as such a volunteer or volunteer leader. This paragraph shall be subject to paragraph (4).

(2) Any deposit made under paragraph (1) more than 2 years after the later of—

(A) October 1, 1993; or

(B) the date on which the employee or Member making the deposit first becomes an employee or Member,

shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the 2-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under subsection (e).

(3) The Director of the Peace Corps and the Chief Executive Officer of the Corporation for National and Community Service shall furnish such information to the Office of Personnel Management as the Office may determine to be necessary for the administration of this subsection.

(4) Effective with respect to any period of service after December 31, 1998, the percentage of the readjustment allowance or stipend (as the case may be) payable under paragraph (1) shall be equal to the same percentage as would be applicable under subsection (c) of this section for the same period for service as an employee.

(m) A Member who has served in a position in the executive branch for which the rate of basic pay was reduced for the duration of the service of the Member to remove the impediment to the appointment of the Member imposed by article I, section 6, clause 2 of the Constitution, or the survivor of such a Member, may deposit to the credit of the Fund an amount equal to the difference between the amount deducted from the basic pay of the Member during that period of service and the amount that would have been

³ See References in Text note below.

deducted if the rate of basic pay which would otherwise have been in effect during that period had been in effect, plus interest computed under subsection (e).

(n) Notwithstanding subsection (c), no deposit may be made with respect to service credited under section 8332(b)(17).

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 569; Pub. L. 90-83, §1(74), Sept. 11, 1967, 81 Stat. 214; Pub. L. 90-486, §5(b), Aug. 13, 1968, 82 Stat. 757; Pub. L. 91-93, title I, §102(a), title II, §202, Oct. 20, 1969, 83 Stat. 136, 138; Pub. L. 92-297, §7(2), May 16, 1972, 86 Stat. 144; Pub. L. 93-350, §3, July 12, 1974, 88 Stat. 356; Pub. L. 94-126, §§1(a), 2(a), Nov. 12, 1975, 89 Stat. 679; Pub. L. 95-382, §1(b), Sept. 22, 1978, 92 Stat. 727; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-598, title III, §338(b), Nov. 6, 1978, 92 Stat. 2681; Pub. L. 97-164, title II, §207(b), Apr. 2, 1982, 96 Stat. 54; Pub. L. 97-253, title III, §§303(a)(1), 306(d), (e), Sept. 8, 1982, 96 Stat. 793, 796, 797; Pub. L. 97-346, §3(a), (c)-(e)(1), Oct. 15, 1982, 96 Stat. 1647, 1648; Pub. L. 98-94, title XII, §§1256(a), 1257, Sept. 24, 1983, 97 Stat. 701, 702; Pub. L. 89-702, title II, §209(f), as added Pub. L. 98-129, §2, Oct. 14, 1983, 97 Stat. 843; Pub. L. 98-353, title I, §116(b), July 10, 1984, 98 Stat. 344; Pub. L. 98-615, §2(2), Nov. 8, 1984, 98 Stat. 3195; Pub. L. 99-335, title II, §201(a), (c), June 6, 1986, 100 Stat. 588, 591; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-53, §2(b), June 18, 1987, 101 Stat. 367; Pub. L. 100-238, title I, §§102, 108(b)(1), Jan. 8, 1988, 101 Stat. 1744, 1748; Pub. L. 100-659, §6(b), Nov. 15, 1988, 102 Stat. 3919; Pub. L. 101-94, title I, §102(a), Aug. 16, 1989, 103 Stat. 626; Pub. L. 101-508, title VII, §7001(b)(1), (2)(A), (B), Nov. 5, 1990, 104 Stat. 1388-328, 1388-329; Pub. L. 101-650, title III, §§306(c)(2), (e)(2), 321, Dec. 1, 1990, 104 Stat. 5110, 5112, 5117; Pub. L. 102-40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 102-378, §2(59), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 102-572, title IX, §902(b), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103-66, title XI, §11004(a)(3), Aug. 10, 1993, 107 Stat. 412; Pub. L. 103-82, title III, §371(a)(2), Sept. 21, 1993, 107 Stat. 910; Pub. L. 103-337, div. A, title IX, §924(d)(1)(A), Oct. 5, 1994, 108 Stat. 2832; Pub. L. 103-353, §5(b), Oct. 13, 1994, 108 Stat. 3173; Pub. L. 104-186, title II, §215(12), Aug. 20, 1996, 110 Stat. 1746; Pub. L. 104-316, title I, §103(g), Oct. 19, 1996, 110 Stat. 3829; Pub. L. 105-33, title VII, §7001(a)(3), (4), Aug. 5, 1997, 111 Stat. 653, 657; Pub. L. 105-61, title V, §516(a)(1), Oct. 10, 1997, 111 Stat. 1306; Pub. L. 105-261, div. C, title XXXI, §3154(c)(1), (2), Oct. 17, 1998, 112 Stat. 2254; Pub. L. 106-65, div. A, title X, §1066(d)(3), Oct. 5, 1999, 113 Stat. 773; Pub. L. 106-346, §101(a) [title V, §505(a)], Oct. 23, 2000, 114 Stat. 1356, 1356A-50; Pub. L. 106-553, §1(a)(2) [title III, §308(b)(1)], Dec. 21, 2000, 114 Stat. 2762, 2762A-86; Pub. L. 107-107, div. A, title XI, §1132(a)(2), Dec. 28, 2001, 115 Stat. 1243; Pub. L. 108-18, §2(b), Apr. 23, 2003, 117 Stat. 624; Pub. L. 109-435, title VIII, §802(a)(1), Dec. 20, 2006, 120 Stat. 3249; Pub. L. 110-161, div. E, title V, §535(a)(2), Dec. 26, 2007, 121 Stat. 2075; Pub. L. 111-84, div. A, title XIX, §1902(a), Oct. 28, 2009, 123 Stat. 2615.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	2 U.S.C. 129.	July 1, 1957, Pub. L. 85-75, §101 (proviso on p. 248), 71 Stat. 248.
.....	5 U.S.C. 2254.	July 31, 1956, ch. 804, §401 "Sec. 4", 70 Stat. 747. June 29, 1957, Pub. L. 85-65, §1, 71 Stat. 209. May 27, 1958, Pub. L. 85-426, §214(b) (words before comma), 72 Stat. 143. Aug. 27, 1958, Pub. L. 85-772, §1(d), 72 Stat. 930.

In subsection (a), the words "From and after the first day of the first pay period which begins on or after the effective date of the Civil Service Retirement Act Amendments of 1956" and "From and after the first day of the first pay period which begins after June 30, 1957" in former section 2254 are omitted as executed. The words "on and after July 1, 1957" in former section 129 of title 2 are omitted as executed.

In subsection (b), the word "rule" 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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8334(g)(4) ...	5 App.: 2254(g).	Nov. 2, 1966, Pub. L. 89-702, §208(c), 80 Stat. 1096.

REFERENCES IN TEXT

The date of the enactment of the Department of Defense Authorization Act, 1984, referred to in the table in subsec. (c), is the date of enactment of Pub. L. 98-94 which was approved Sept. 24, 1983.

Sections 203 and 206 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [Pub. L. 98-168], referred to in subsec. (c), are set out as a note under section 8331 of this title.

Sections 402 and 3101(a) and chapter 21 of the Internal Revenue Code of 1986, referred to in subsecs. (i)(3) and (k)(2)(C)(iv), (4)(A)(ii), are classified to sections 402 and 3101(a) and chapter 21 (§3101 et seq.), respectively, of Title 26, Internal Revenue Code.

Section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, referred to in subsec. (i)(4), is section 2(c) of Pub. L. 100-659, which is set out as a note under section 377 of Title 28, Judiciary and Judicial Procedure.

The Social Security Act, referred to in subsec. (k)(2)(C)(ii), (4)(A)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Section 230 of the Social Security Act is classified to section 430 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Economic Opportunity Act of 1964, referred to in subsec. (l)(1), is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508. Title VIII of the Act probably means title VIII of Pub. L. 88-452 as added by Pub. L. 89-794, title VIII, §801, Nov. 8, 1966, 80 Stat. 1472, and generally revised and amended by Pub. L. 90-222, title I, §110, Dec. 23, 1967, 81 Stat. 722, which was classified generally to subchapter VIII (§2991 et seq.) of chapter 34 of Title 42, prior to its repeal by Pub. L. 93-113, title VI, §603, Oct. 1, 1973, 87 Stat. 417. Part A of title VIII of the Act is part A of title VIII of Pub. L. 88-452 as added by Pub. L. 90-222, §110, which was classified generally to part A (§2992 et seq.) of subchapter VIII of chapter 34 of Title 42, prior to its repeal by Pub. L. 93-113, §603. See sections 4951 et

seq. and 5055 of Title 42. For complete classification of this Act to the Code, see Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (l)(1), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394. Parts A and C of title I of the Act are classified generally to parts A (§ 4951 et seq.) and C (§ 4991 et seq.), respectively, of subchapter I of chapter 66 of Title 42, The Public Health and Welfare. Part B of title I of the Act, which was classified generally to part B (§ 4971 et seq.) of subchapter I of chapter 66 of Title 42, was repealed by Pub. L. 111–13, title II, § 2121, Apr. 21, 2009, 123 Stat. 1584. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of Title 42 and Tables.

The Peace Corps Act, referred to in subsec. (l)(1), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. Sections 5(c) and 6(1) of the Act are classified to sections 2504(c) and 2505(1), respectively, of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

AMENDMENTS

2009—Subsec. (d)(2)(A)(i). Pub. L. 111–84 substituted “March 1, 1991” for “October 1, 1990” in two places.

2007—Subsec. (a)(1)(A). Pub. L. 110–161, § 535(a)(2)(A), substituted “nuclear materials courier, or customs and border protection officer,” for “or nuclear materials courier.”

Subsec. (c). Pub. L. 110–161, § 535(a)(2)(B), inserted table relating to customs and border protection officer.

2006—Subsec. (a)(1)(B)(ii). Pub. L. 109–435 added cl. (ii) and struck out former cl. (ii) which read as follows: “In the case of an employee of the United States Postal Service, the amount to be contributed under this subparagraph shall (instead of the amount described in clause (i)) be equal to the product derived by multiplying the employee’s basic pay by the percentage equal to—

“(I) the normal-cost percentage for the applicable employee category listed in subparagraph (A), minus

“(II) the percentage deduction rate that applies with respect to such employee under subparagraph (A).”

2003—Subsec. (a)(1). Pub. L. 108–18, § 2(b)(1), designated first sentence as subpar. (A), designated second and third sentences as subpar. (B)(i), substituted “Except as provided in clause (ii), an equal” for “An equal” in subpar. (B)(i), and added subpar. (B)(ii).

Subsec. (k)(1)(A). Pub. L. 108–18, § 2(b)(2)(A), substituted “subsection (a)(1)(A)” for “the first sentence of subsection (a)(1) of this section”.

Subsec. (k)(1)(B). Pub. L. 108–18, § 2(b)(2)(B), substituted “subparagraph (B) of subsection (a)(1)” for “the second sentence of subsection (a)(1) of this section” and “such subparagraph” for “such sentence”.

Subsec. (k)(2)(C)(iii). Pub. L. 108–18, § 2(b)(2)(C), substituted “subsection (a)(1)(A)” for “the first sentence of subsection (a)(1)”.

2001—Subsec. (n). Pub. L. 107–107 added subsec. (n).

2000—Subsec. (a)(1). Pub. L. 106–553, § 1(a)(2) [title III, § 308(b)(1)(A)], inserted “member of the Supreme Court Police,” after “member of the Capitol Police.”

Subsec. (c). Pub. L. 106–553, § 1(a)(2) [title III, § 308(b)(1)(B)], in table relating to law enforcement officer for law enforcement service and firefighter for firefighter service, inserted “, member of the Supreme Court Police for Supreme Court Police service,” after “law enforcement service”.

Pub. L. 106–346, in tables relating to an employee, a Member or employee for Congressional employee service, a law enforcement officer for law enforcement service and firefighter for firefighter service, a bankruptcy judge, a judge of the United States Court of Appeals for the Armed Forces for service as a judge of that court, a United States magistrate judge, a Court of Federal Claims judge, a member of the Capitol Police, and a nuclear materials courier, substituted item relating to service period after December 31, 2000, for former items

relating to service periods January 1, 2001, to December 31, 2002, and after December 31, 2002.

1999—Subsec. (c). Pub. L. 106–65, in table relating to nuclear materials courier, substituted “October 16, 1998” for “the day before the date of the enactment of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999” and “October 17, 1998” for “The date of the enactment of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999”.

1998—Subsec. (a)(1). Pub. L. 105–261, § 3154(c)(1), substituted “member of the Capitol Police, or nuclear materials courier,” for “or member of the Capitol Police.”

Subsec. (c). Pub. L. 105–261, § 3154(c)(2), inserted table relating to nuclear materials courier.

1997—Subsec. (a)(1). Pub. L. 105–33, § 7001(a)(3)(A), amended first sentence generally. Prior to amendment, first sentence read as follows: “The employing agency shall deduct and withhold 7 percent of the basic pay of an employee, 7½ percent of the basic pay of a Congressional employee, a law enforcement officer, and a firefighter, and 8 percent of the basic pay of a Member, a Court of Federal Claims judge, a United States magistrate, a judge of the United States Court of Appeals for the Armed Forces, and a bankruptcy judge.”

Subsec. (c). Pub. L. 105–33, § 7001(a)(3)(B)(ix), inserted table relating to member of the Capitol Police.

Pub. L. 105–33, § 7001(a)(3)(B)(viii), in table relating to a Court of Federal Claims Judge, substituted items relating to service periods October 1, 1988, to after December 31, 2002, for former item relating to service period after September 30, 1988.

Pub. L. 105–33, § 7001(a)(3)(B)(vii), in table relating to a United States magistrate, substituted items relating to service periods October 1, 1987, to after December 31, 2002, for former item relating to service period after September 30, 1987.

Pub. L. 105–33, § 7001(a)(3)(B)(vi), in table relating to a judge of the United States Court of Appeals for the Armed Forces for service as a judge of that court, substituted items relating to service periods on and after the date of enactment of the Department of Defense Authorization Act, 1984, to after December 31, 2002, for former item relating to service period on and after the date of the enactment of the Department of Defense Authorization Act, 1984.

Pub. L. 105–33, § 7001(a)(3)(B)(v), in table relating to a bankruptcy judge, substituted items relating to service periods January 1, 1984, to after December 31, 2002, for former item relating to service period after December 31, 1983.

Pub. L. 105–33, § 7001(a)(3)(B)(iv), in table relating to a law enforcement officer for law enforcement service and firefighter for firefighter service, substituted items relating to service periods January 1, 1975, to after December 31, 2002, for former item relating to service period after December 31, 1974.

Pub. L. 105–33, § 7001(a)(3)(B)(i)–(iii), in tables relating to an employee, a Member or employee for Congressional employee service, and a Member for Member service, substituted items relating to service periods January 1, 1970, to after December 31, 2002, for former item relating to service period after December 31, 1969.

Subsec. (j)(1)(A). Pub. L. 105–33, § 7001(a)(4)(A)(i), inserted “and subject to paragraph (5),” after “Except as provided in subparagraph (B).”

Subsec. (j)(5). Pub. L. 105–33, § 7001(a)(4)(A)(ii), added par. (5).

Subsec. (l)(1). Pub. L. 105–33, § 7001(a)(4)(B)(i), inserted at end “This paragraph shall be subject to paragraph (4).”

Subsec. (l)(4). Pub. L. 105–33, § 7001(a)(4)(B)(ii), added par. (4).

Subsec. (m). Pub. L. 105–61 added subsec. (m).

1996—Subsec. (a)(1). Pub. L. 104–186, § 215(12)(A), substituted “Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may pay from the applicable accounts of the House of Representatives” for “Clerk of the House of Representa-

tives, the Clerk may pay from the contingent fund of the House”.

Subsec. (a)(2). Pub. L. 104-316 substituted “Secretary of the Treasury” for “Comptroller General of the United States”.

Subsec. (j)(1)(A), (3). Pub. L. 104-186, §215(12)(B), substituted “Chief Administrative Officer” for “Clerk”.

1994—Subsec. (a)(1). Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

Subsec. (c). Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals” in table.

Subsec. (j)(1). Pub. L. 103-353, §5(b)(1), designated existing provisions as subpar. (A) and substituted “Except as provided in subparagraph (B), each employee” for “Each employee” and added subpar. (B).

Subsec. (j)(2)(B). Pub. L. 103-353, §5(b)(2), inserted before comma at end “following the period of military service for which such deposit is due”.

1993—Subsec. (e)(1), (2). Pub. L. 103-82, §371(a)(2)(B), substituted “(k), or (l)” for “or (k)”.

Subsec. (h). Pub. L. 103-66 struck out “and by section 8339(j)(5)(C) and the last sentence of section 8339(k)(2) of this title” before “may also be made”.

Subsec. (l). Pub. L. 103-82, §371(a)(2)(A), added subsec. (l).

1992—Subsec. (a)(1). Pub. L. 102-572, §902(b)(2), substituted “Court of Federal Claims” for “Claims Court”.

Subsec. (c). Pub. L. 102-572, §902(b)(2), substituted “Court of Federal Claims” for “Claims Court” in table.

Subsec. (i)(5). Pub. L. 102-378 redesignated par. (5), relating to United States Claims Court judges, as (6).

Subsec. (i)(6). Pub. L. 102-572, §902(b)(1), substituted “United States Court of Federal Claims” for “United States Claims Court”.

Pub. L. 102-378 redesignated par. (5), relating to United States Claims Court judges, as (6).

1991—Subsec. (i)(5). Pub. L. 102-40 substituted “section 7296 of title 38” for “section 4096 of title 38”.

1990—Subsec. (a)(1). Pub. L. 101-650, §306(c)(2)(A), inserted “a Claims Court Judge,” after “Member.”

Subsec. (c). Pub. L. 101-650, §306(c)(2)(B), inserted table covering percentages of pay and service periods for a Claims Court Judge.

Subsec. (d). Pub. L. 101-508, §7001(b)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (e)(1), (2). Pub. L. 101-508, §7001(b)(2)(A), substituted “(d)(1),” for “(d),”.

Subsec. (f). Pub. L. 101-508, §7001(b)(2)(B), substituted “(d)(1)” for “(d)”.

Subsec. (h). Pub. L. 101-508, §7001(b)(2)(A), substituted “(d)(1),” for “(d),”.

Subsec. (i)(5). Pub. L. 101-650, §3069(e)(2), added par. (5) relating to judges covered by a section of title 28.

1989—Subsec. (i)(5). Pub. L. 101-94 added par. (5) relating to judges covered by a section of title 38.

1988—Subsec. (c). Pub. L. 100-238, §102, struck out period at end and inserted “, and, with respect to any such service performed after December 31, 1986, be equal to the amount that would have been deducted from the employee’s basic pay under subsection (k) of this section if the employee’s pay had been subject to that subsection during such period.”

Subsec. (i)(4). Pub. L. 100-659 added par. (4).

Subsec. (k)(4). Pub. L. 100-238, §108(b)(1), added par. (4).

1987—Subsec. (a)(1). Pub. L. 100-53, §2(b)(1), substituted “Member, a United States magistrate, a judge” for “Member and a judge” and “Appeals,” for “Appeals”.

Subsec. (c). Pub. L. 100-53, §2(b)(2), inserted table covering percentages of basic pay and service periods for United States magistrates.

1986—Subsec. (c). Pub. L. 99-335, §201(c), inserted provision that notwithstanding preceding provisions of this subsection and any provision of section 206(b)(3) of Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983, the percentage of basic pay required under this subsection in case of an indi-

vidual described in section 8402(b)(2) of this title shall, with respect to any covered service performed after Dec. 31, 1983, and before Jan. 1, 1987, be equal to 1.3 percent.

Subsec. (e)(1), (2). Pub. L. 99-335, §201(a)(2)(A), substituted “(j), or (k)” for “or (j)”.

Subsec. (f). Pub. L. 99-335, §201(a)(2)(B), inserted “or (k)” after “subsection (a)”.

Subsec. (h). Pub. L. 99-335, §201(a)(2)(C), substituted “(j), and (k)” for “and (j)”.

Subsec. (i)(3). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

Subsec. (k). Pub. L. 99-335, §201(a)(1), added subsec. (k).

Subsec. (k)(2)(C)(iv). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1984—Subsec. (a)(1). Pub. L. 98-353, §116(b)(1), inserted “and a bankruptcy judge”.

Subsec. (c). Pub. L. 98-353, §116(b)(2), substituted in the table relating to bankruptcy judges the items relating to 7 percent for the period Jan. 1, 1970 to Dec. 31, 1983, and 8 percent for the period after Dec. 31, 1983, for the prior item relating to 7 percent for the period after Jan. 1, 1970.

Subsec. (h). Pub. L. 98-615 substituted “annuities, deposits authorized by subsections (c), (d), and (j) of this section and by section 8339(j)(5)(C) and the last sentence of section 8339(k)(2) of this title may also be made by a survivor” for “annuity, deposits authorized by subsections (c), (d), and (j) of this section may also be made by the survivor”.

1983—Subsec. (a)(1). Pub. L. 98-94, §1256(a)(1), inserted “and a judge of the United States Court of Military Appeals” after “and 8 percent of the basic pay of a Member”.

Subsec. (c). Pub. L. 98-94, §1256(a)(2), added to the table items covering a judge of the United States Court of Military Appeals for service as a judge of that court.

Subsec. (g)(4). Pub. L. 98-129 substituted “October 29, 1983,” for “January 1, 1950,” and directed that the phrase “except where deductions, contributions, and deposits were made before October 29, 1983” be inserted after “the Pribilof Islands” which amendment was executed by inserting that phrase after “the Pribilof Islands” the second time those words appear, as the probable intent of Congress.

Subsec. (j)(2)(A). Pub. L. 98-94, §1257, substituted “October 1, 1983” for “October 1, 1982”.

1982—Subsec. (e). Pub. L. 97-253, §303(a)(1), redesignated existing provisions as par. (2), inserted provision that interest accrues annually on the outstanding portion of any amount that may be deposited under subsec. (c), (d), or (j) of this section, and is compounded annually until the portion is deposited, substituted “Such interest” for “Interest under subsection (c) or (d) of this section”, struck out “, to the date of deposit or commencing date of annuity, whichever is earlier” after “date refund was paid”, and struck out provision that the interest was computed at the rate of four percent a year to Dec. 31, 1947, and 3 percent thereafter compounded annually, and added pars. (1) and (3).

Subsec. (e)(3). Pub. L. 97-346, §3(c), substituted “the preceding fiscal year” for “the preceding calendar year” and “during such fiscal year” for “during such calendar year”.

Subsec. (g)(2). Pub. L. 97-253, §306(e), inserted “, except to the extent provided under section 8332(c) or section 8334(j) of this title”.

Subsec. (h). Pub. L. 97-346, §3(d), inserted reference to subsec. (j).

Subsec. (i). Pub. L. 97-164 added subsec. (i).

Subsec. (j). Pub. L. 97-253, §306(d), added subsec. (j).

Subsec. (j)(1). Pub. L. 97-346, §3(a), substituted “period” for “month”.

Pub. L. 97-346, §3(e)(1), struck out “within 90 days after the effective date of this subsection” after “regulations as the Office shall issue”, and substituted “The amount of such payments shall be based on such evi-

dence of basic pay for military service as the employee or Member may provide, or if the Office determines sufficient evidence has not been so provided to adequately determine basic pay for military service, such payment shall be based upon estimates of such basic pay provided to the Office under paragraph (4)" for "as certified to the agency, the Secretary of the Senate, or the Clerk of the House of Representatives, as appropriate, by the Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, as appropriate, upon the employee's or Member's request".

1978—Subsec. (c). Pub. L. 95-598 inserted bankruptcy judge schedule of deposits.

Subsec. (f). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (g)(6). Pub. L. 95-382 added par. (6).

1975—Subsec. (c). Pub. L. 94-126, §1(a), struck out last sentence requiring that deposit, with respect to a period of service referred to in section 8332(b)(6) of this title performed before Jan. 1, 1969, shall be an amount equal to 55 percent of a deposit computed in accordance with such provisions.

Subsec. (g)(5). Pub. L. 94-126, §2(a), substituted reference to "section 8339(m) of this title" for "section 8339(n) of this title".

1974—Subsec. (a)(1). Pub. L. 93-350, §3(a), inserted "a law enforcement officer, and a firefighter," after "Congressional employee."

Subsec. (c). Pub. L. 93-350, §3(b), inserted schedule for law enforcement officer for law enforcement service and firefighter for firefighter service.

1972—Subsec. (g)(5). Pub. L. 92-297 substituted "section 8339(n)" for "section 8339(m)".

1969—Subsec. (a)(1). Pub. L. 91-93, §102(a)(1), designated first and second sentences of subsec. (a) as subsec. (a)(1), increasing by one-half percent the deduction from the basic pay of an employee and a Member to 7 and 8 percent, respectively, and providing for a 7½ percent deduction from basic pay of a Congressional employee.

Subsec. (a)(2). Pub. L. 91-93, §102(a)(1), designated third and fourth sentences of subsec. (a) as subsec. (a)(2), deleting "under this section" after "Member".

Subsec. (c). Pub. L. 91-93, §102(a)(2), substituted service period Nov. 1, 1956, to Dec. 31, 1969, for prior service period after Oct. 31, 1956, for deductions of 6½ percent of basic pay of an employee, inserted provision for 7 percent deduction from basic pay of an employee for service period after Dec. 31, 1969, inserted percentage of basic pay and service period provisions for Member or employee for Congressional employee service, substituted service period Nov. 1, 1956; to Dec. 31, 1969, for prior service period after Oct. 31, 1956, for deduction of 7½ percent of basic pay of Member for Member service, inserted provision for 8 percent deduction from basic pay of Member for Member service after Dec. 31, 1969, and inserted provision for amount of deposit for period of service performed before Jan. 1, 1969.

Subsec. (g)(5). Pub. L. 91-93, §202, added par. (5).

1968—Subsec. (c). Pub. L. 90-486 inserted provisions that the deposit with respect to a period of service referred to in section 8332(b)(6) of this title which was performed prior to the specified effective date shall be an amount equal to 55 percent of a deposit computed in accordance with such provisions.

CHANGE OF NAME

"United States magistrate judge" and "magistrate judge" substituted for "United States magistrate" and "magistrate", respectively, wherever appearing in subsecs. (c) and (i)(4) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-84, div. A, title XIX, §1902(b), Oct. 28, 2009, 123 Stat. 2615, provided that: "The amendment made by subsection (a) [amending this section] shall be effective

with respect to any annuity, entitlement to which is based on a separation from service occurring on or after the date of enactment of this Act [Oct. 28, 2009]."

EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110-161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110-161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-435, title VIII, §805, Dec. 20, 2006, 120 Stat. 3253, provided that:

"(a) IN GENERAL.—Except as provided under subsection (b), this title [see Short Title of 2006 Amendment note set out under section 101 of this title] shall take effect on October 1, 2006.

"(b) TERMINATION OF EMPLOYER CONTRIBUTION.—The amendment made by paragraph (1) of section 802(a) [amending this section] shall take effect on the first day of the first pay period beginning on or after October 1, 2006."

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-18, §4, Apr. 23, 2003, 117 Stat. 630, provided that: "This Act [see section 1 of Pub. L. 108-18, set out as a Short Title of 2003 Amendments note under section 101 of this title] and the amendments made by this Act shall become effective on the date of the enactment of this Act [Apr. 23, 2003], except that the amendments made by section 2(b) [amending this section] shall apply with respect to pay periods beginning on or after such date."

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-107 applicable only to separations from service as an employee of the United States on or after Dec. 28, 2001, see section 1132(c) of Pub. L. 107-107, set out as a note under section 8332 of this title.

EFFECTIVE DATE OF 2000 AMENDMENTS

Amendment by Pub. L. 106-553 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 1(a)(2) [title III, §308(i), (j)] of Pub. L. 106-553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

Pub. L. 106-346, §101(a) [title V, §505(i)], Oct. 23, 2000, 114 Stat. 1356, 1356A-54, provided that: "The amendments made by this section [amending this section, section 8422 of this title, sections 4045, 4071c, and 4071e of Title 22, Foreign Relations and Intercourse, and section 2082 of Title 50, War and National Defense, enacting provisions set out as notes under this section, section 4045 of Title 22, and section 2021 of Title 50, and amending provisions set out as notes under section 4045 of Title 22 and section 2021 of Title 50] shall take effect upon the close of calendar year 2000, and shall apply thereafter."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-261 effective at the beginning of the first pay period that begins after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105-261, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Section 516(b) of Pub. L. 105-61 provided that: "The amendments made by subsection (a) [amending this section and sections 8337, 8339, 8341, 8343a, 8344, 8415,

8422, and 8468 of this title] shall be applicable to any annuity commencing before, on, or after the date of enactment of this Act [Oct. 10, 1997], and shall be effective with regard to any payment made after the first month following the date of enactment."

Section 7001(f) of Pub. L. 105-33 provided that:

"(1) IN GENERAL.—This section [amending this section, section 8422 of this title, sections 4045, 4071c, and 4071e of Title 22, Foreign Relations and Intercourse, and section 2082 of Title 50, War and National Defense, and enacting provisions set out as notes under this section, section 8422 of this title, sections 4045 and 4071c of Title 22, and section 2021 of Title 50] shall take effect on—

"(A) October 1, 1997; or

"(B) if later, the date of enactment of this Act [Aug. 5, 1997].

"(2) SPECIAL RULE.—If the date of enactment of this Act is later than October 1, 1997, then any reference to October 1, 1997, in subsection (a)(1), (c)(1), or (d)(1) shall be treated as a reference to the date of enactment of this Act."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103-353, set out as an Effective Date note under section 4301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1993 AMENDMENTS

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, and applicable with respect to any individual entitled to an annuity on the basis of a separation from service occurring on or after Oct. 1, 1993, see sections 371(c) and 392 of Pub. L. 103-82, set out as notes under section 8332 of this title and section 4951 of Title 42, The Public Health and Welfare, respectively.

Amendment by Pub. L. 103-66 effective on first day of first month beginning at least 30 days after Aug. 10, 1993, and applicable to all deposits required under section 8339(j)(3) or (5), 8339(k)(2), or 8418 of this title, on which no payment has been made prior to such effective date, see section 11004(c) of Pub. L. 103-66, set out as a note under section 8339 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101-650 applicable to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after Dec. 1, 1990, see section 306(f) of Pub. L. 101-650, set out as a note under section 8331 of this title.

Section 7001(b)(3) of Pub. L. 101-508 provided that: "The amendments made by this subsection [amending this section and sections 8339 and 8342 of this title] shall be effective with respect to any annuity having a commencement date later than December 1, 1990."

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-659 effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrate judges who retire on or after Nov. 15, 1988, with exception for judges and magistrate judges retiring on or after July 31, 1987, see section 9 of Pub. L. 100-659, as amended, set out as an Effective Date note under section 377 of Title 28, Judiciary and Judicial Procedure.

Section 108(b)(3) of Pub. L. 100-238 provided that: "The amendments made by this subsection [amending this section and section 8349 of this title] shall be effective as of January 1, 1987."

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-53 effective Oct. 1, 1987, and applicable to bankruptcy judges and United States

magistrate judges in office on that date and to individuals subsequently appointed to such positions to whom this chapter otherwise applies, see section 3 of Pub. L. 100-53, as amended, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions and specific applicability provisions, see section 4(a)(1) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

Amendment by Pub. L. 98-353 effective July 10, 1984, and applicable to bankruptcy judges who retire on or after such date, see section 116(e) of Pub. L. 98-353, set out as a note under section 8331 of this title. See, also, section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1256(f) of Pub. L. 98-94 provided that: "The increase in deductions from the pay of a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] required by section 8334(a) of title 5, United States Code, as amended by subsection (a), shall take effect with respect to the first pay period that begins after the date of the enactment of this Act [Sept. 24, 1983]."

EFFECTIVE DATE OF 1982 AMENDMENTS

Section 303(d)(1) of Pub. L. 97-253, as amended by Pub. L. 97-346, §3(j)(1), Oct. 15, 1982, 96 Stat. 1649, provided that:

"The amendments made by subsections (a) and (b) [amending this section and sections 8339 and 8343 of this title] shall apply with respect to deposits for service performed on or after October 1, 1982, and with respect to refunds for which application is received by either the employing agency or the Office of Personnel Management on or after such date. The provisions of section 8334 and section 8339(i) of title 5, United States Code, as in effect the day before the date of the enactment of this Act [Sept. 7, 1982], shall continue to apply with respect to periods of service and refunds occurring on or before September 30, 1982. Notwithstanding the preceding two sentences, the amendments made by subsection (a) shall apply in the case of any deposit for military service under section 8334(j) of title 5, United States Code (as added by section 306(d) of this Act), regardless of whether such military service was performed before or after October 1, 1982."

Amendment by section 306(d), (e) of Pub. L. 97-253 effective Oct. 1, 1982, except that any employee or Member who retired after Sept. 8, 1982, and before Oct. 1, 1985, or is entitled to an annuity under chapter 83 of this title based on a separation from service occurring during such period, or a survivor of such individual, may make a payment under section 8334(j)(1) of this title, and regulations required to be issued under section 8334(j)(1) of this title, to be issued by the Office of Personnel Management within 90 days after such effective date, see section 306(g) of Pub. L. 97-253, as amended, set out as a note under section 8331 of this title.

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

Amendment by Pub. L. 95-382 effective Oct 1, 1978, and applicable to specified annuities, see section 2 of Pub. L. 95-382, set out as a note under section 8332 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 3 of Pub. L. 94-126 provided that: “The amendments made by the first section of this Act [amending this section and sections 8339 and 8345 of this title] shall become effective as of January 1, 1969, except that such amendments shall not apply to a person who, on the date of enactment of this Act [Nov. 12, 1975], is receiving or is entitled to receive benefits under any retirement system established by the United States or any instrumentality thereof, unless such person requests, in writing, the office which administers his retirement system to apply such amendments to him. Any additional benefits payable pursuant to such a written request shall commence on the first day of the month [December] following the date of the enactment of this Act.”

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-350 effective at beginning of first applicable pay period which begins after Dec. 31, 1974, see section 7 of Pub. L. 93-350, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92-297, set out as an Effective Date note under section 3381 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 102(b) of Pub. L. 91-93 provided that: “The amendment made by subsection (a)(1) of this section [amending this section] shall become effective at the beginning of the first applicable pay period beginning after December 31, 1969.”

Amendment by Pub. L. 91-93 inapplicable in cases of persons retired or otherwise separated prior to Oct. 20, 1969, their rights and of their survivors continued as if such amendment had not been enacted, see section 207(a) of Pub. L. 91-93, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-486 effective Jan. 1, 1969, except that no deductions or withholding from salary which result therefrom shall commence before first day of first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90-486, set out as a note under section 709 of Title 32, National Guard.

CONTRIBUTIONS TO FEDERAL CIVIL SERVICE RETIREMENT SYSTEM

Pub. L. 106-346, §101(a) [title V, §505(f)], Oct. 23, 2000, 114 Stat. 1356, 1356A-54, provided that: “Notwithstanding section 8334(a)(1) or (k)(1) of title 5, United States Code, during the period beginning on October 1, 2002, through December 31, 2002, each employing agency (other than the United States Postal Service or the Metropolitan Washington Airports Authority) shall contribute—

- “(1) 7.5 percent of the basic pay of an employee;
- “(2) 8 percent of the basic pay of a congressional employee, a law enforcement officer, a member of the Capitol Police, a firefighter, or a nuclear materials courier; and
- “(3) 8.5 percent of the basic pay of a Member of Congress, a Court of Federal Claims judge, a United States magistrate [now United States magistrate judge], a judge of the United States Court of Appeals for the Armed Forces, or a bankruptcy judge,

in lieu of the agency contributions otherwise required under section 8334(a)(1) of such title 5.”

Pub. L. 105-261, div. C, title XXXI, §3154(c)(3), Oct. 17, 1998, 112 Stat. 2255, provided that: “Notwithstanding subsection (a)(1) or (k)(1) of section 8334 of title 5, United States Code, or section 7001(a) of Public Law 105-33 [set out as a note below], during the period beginning on the effective date provided for under subsection (n)(1) [set out as an Effective Date of 1998 Amendment note under section 8331 of this title] and ending on September 30, 2002, the Department of Energy shall deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund on behalf of each nuclear materials courier from whose basic pay a deduction is made under such subsection (a)(1) during that period an amount equal to 9.01 percent of such basic pay, in lieu of the agency contributions otherwise required under such subsection (a)(1) during that period.”

Section 7001(a)(1), (2) of Pub. L. 105-33 provided that:

“(1) AGENCY CONTRIBUTIONS.—

“(A) IN GENERAL.—Notwithstanding section 8334(a)(1) or (k)(1) of title 5, United States Code, during the period beginning on October 1, 1997, through September 30, 2002, each employing agency (other than the United States Postal Service or the Metropolitan Washington Airports Authority) shall contribute—

- “(i) 8.51 percent of the basic pay of an employee;
- “(ii) 9.01 percent of the basic pay of a congressional employee, a law enforcement officer, a member of the Capitol police, or a firefighter; and
- “(iii) 9.51 percent of the basic pay of a Member of Congress, a Court of Federal Claims judge, a United States magistrate [now United States magistrate judge], a judge of the United States Court of Appeals for the Armed Forces, or a bankruptcy judge;

in lieu of the agency contributions otherwise required under section 8334(a)(1) of title 5, United States Code.

“(B) APPLICATION.—For purposes of subparagraph (A) and notwithstanding the amendments made by paragraph (3) [amending this section], during the period beginning on January 1, 1999 through December 31, 2002, with respect to the United States Postal Service and the Metropolitan Washington Airports Authority, the agency contribution shall be determined as though those amendments had not been made.

“(2) NO REDUCTION IN AGENCY CONTRIBUTIONS BY THE POSTAL SERVICE.—Contributions by the Treasury of the United States or the United States Postal Service under section 8348(g), (h), or (m) of title 5, United States Code—

“(A) shall not be reduced as a result of the amendments made under paragraph (3) of this subsection; and

“(B) shall be computed as though such amendments had not been enacted.”

OFFSETS TO PREVENT FULL DOUBLE COVERAGE FOR EMPLOYEES OF PARK POLICE AND SECRET SERVICE

Section 103(e) of Pub. L. 100-238 provided that: “Notwithstanding any other provision of law, in the case of an employee of the United States Secret Service or the United States Park Police whose pay is simultaneously subject to a deposit requirement under the District of Columbia Police and Firefighters’ Retirement and Disability System and the contribution requirement under section 3101(a) of the Internal Revenue Code of 1986 [26 U.S.C. 3101(a)]—

“(1) any deposits under the District of Columbia Police and Firefighters’ Retirement and Disability System shall be adjusted in a manner consistent with section 8334(k) of title 5, United States Code (relating to offsets in deductions from pay to reflect OASDI contributions); and

“(2) any benefits payable under the District of Columbia Police and Firefighters’ Retirement and Disability System based on the service of any such employee shall be adjusted in a manner consistent with

section 8349 of title 5, United States Code (relating to offsets to reflect benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.].)

[For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

REFUNDS OF CERTAIN EXCESS DEDUCTIONS TAKEN
AFTER 1983 TO OFFSET EMPLOYEES UNDER CSRS

Section 128 of Pub. L. 100-238 provided that:

“(a) REFUND ELIGIBILITY.—An individual shall upon written application to the Office of Personnel Management, receive a refund under subsection (b), if such individual—

“(1) was subject to section 8334(a)(1) of title 5, United States Code, for any period of service after December 31, 1983, because of an election under section 208(a)(1)(B) of the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1107; 5 U.S.C. 8331 note);

“(2) is not eligible to make an election under section 301(b) of the Federal Employees’ Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 599) [5 U.S.C. 8331 note]; and

“(3) becomes subject to section 8334(k) of title 5, United States Code.

“(b) REFUND COMPUTATION.—An individual eligible for a refund under subsection (a) shall receive a refund—

“(1) for the period beginning on January 1, 1984, and ending on December 31, 1986, for the amount by which—

“(A) the total amount deducted from such individual’s basic pay under section 8334(a)(1) of title 5, United States Code, for service described in subsection (a)(1) of this section, exceeds

“(B) 1.3 percent of such individual’s total basic pay for such period; and

“(2) for the period beginning on January 1, 1987, and ending on the day before such individual becomes subject to section 8334(k) of title 5, United States Code, for the amount by which—

“(A) the total amount deducted from such individual’s basic pay under section 8334(a)(1) of title 5, United States Code, for service described in subsection (a)(1) of this section, exceeds

“(B) the total amount which would have been deducted if such individual’s basic pay had instead been subject to section 8334(k) of title 5, United States Code, during such period.

“(c) INTEREST COMPUTATION.—A refund under this section shall be computed with interest in accordance with section 8334(e) of title 5, United States Code, and regulations prescribed by the Office of Personnel Management.”

NATIONAL GUARD TECHNICIANS

Amendment by Pub. L. 90-486 not applicable to persons employed prior to Jan. 1, 1969, whose employment was covered by the civil service retirement provisions of section 8331 et seq. of this title, see section 5(d) of Pub. L. 90-486, set out as a note under section 709 of Title 32, National Guard.

§ 8335. Mandatory separation

(a) An air traffic controller shall be separated from the service on the last day of the month in which he becomes 56 years of age or completes the age and service requirements for an annuity under section 8336(e), whichever occurs later. The Secretary, under such regulations as he may prescribe, may exempt a controller having exceptional skills and experience as a controller

from the automatic separation provisions of this subsection until that controller becomes 61 years of age. The Secretary shall notify the controller in writing of the date of separation at least 60 days before that date. Action to separate the controller is not effective, without the consent of the controller, until the last day of the month in which the 60-day notice expires. For purposes of this subsection, the term “air traffic controller” or “controller” has the meaning given to it under section 8331(29)(A).¹

(b)(1) A law enforcement officer, firefighter, nuclear materials courier, or customs and border protection officer who is otherwise eligible for immediate retirement under section 8336(c) shall be separated from the service on the last day of the month in which that officer, firefighter, or courier, as the case may be, becomes 57 years of age or completes 20 years of service if then over that age. The head of the agency, when in his judgment the public interest so requires, may exempt such an employee from automatic separation under this subsection until that employee becomes 60 years of age. The employing office shall notify the employee in writing of the date of separation at least 60 days in advance thereof. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.

(2) In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting “65 years of age” for “60 years of age”. The authority to grant exemptions in accordance with the preceding sentence shall cease to be available after December 31, 2011.

(c) A member of the Capitol Police who is otherwise eligible for immediate retirement under section 8336(m) shall be separated from the service on the last day of the month in which such member becomes 57 years of age or completes 20 years of service if then over that age. The Capitol Police Board, when in its judgment the public interest so requires, may exempt such a member from automatic separation under this subsection until that member becomes 60 years of age. The Board shall notify the member in writing of the date of separation at least 60 days in advance thereof. Action to separate the member is not effective, without the consent of the member, until the last day of the month in which the 60-day notice expires.

(d) A member of the Supreme Court Police who is otherwise eligible for immediate retirement under section 8336(n) shall be separated from the service on the last day of the month in which such member becomes 57 years of age or completes 20 years of service if then over that age. The Marshal of the Supreme Court of the United States, when in his judgment the public interest so requires, may exempt such a member from automatic separation under this subsection until that member becomes 60 years of age. The Marshal shall notify the member in writing of the date of separation at least 60 days in advance thereof. Action to separate the member is not effective, without the consent of the member, until the last day of the month in which the 60-day notice expires.

¹ See References in Text note below.

(f)² The President, by Executive order, may exempt an employee (other than a member of the Capitol Police or the Supreme Court Police) from automatic separation under this section when he determines the public interest so requires.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 571; Pub. L. 92-297, § 4, May 16, 1972, 86 Stat. 144; Pub. L. 93-350, § 4, July 12, 1974, 88 Stat. 356; Pub. L. 95-256, § 5(c), Apr. 6, 1978, 92 Stat. 191; Pub. L. 96-70, title III, § 3302(e)(3), Sept. 27, 1979, 93 Stat. 498; Pub. L. 96-347, § 1(b), Sept. 12, 1980, 94 Stat. 1150; Pub. L. 101-428, § 2(b)(1)(A), (2), Oct. 15, 1990, 104 Stat. 928; Pub. L. 101-509, title V, § 529 [title IV, § 409(a)], Nov. 5, 1990, 104 Stat. 1427, 1468; Pub. L. 102-378, § 2(60), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 103-283, title III, § 307(a), July 22, 1994, 108 Stat. 1441; Pub. L. 105-261, div. C, title XXXI, § 3154(d), Oct. 17, 1998, 112 Stat. 2255; Pub. L. 106-553, § 1(a)(2) [title III, § 308(b)(2)], Dec. 21, 2000, 114 Stat. 2762, 2762A-87; Pub. L. 106-554, § 1(a)(4) [div. B, title I, § 141(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-235; Pub. L. 107-27, § 2(a), Aug. 20, 2001, 115 Stat. 207; Pub. L. 107-67, title VI, § 640(a), Nov. 12, 2001, 115 Stat. 554; Pub. L. 108-7, div. J, title VI, § 648(a), Feb. 20, 2003, 117 Stat. 474; Pub. L. 108-176, title II, § 226(a)(3)(A), Dec. 12, 2003, 117 Stat. 2529; Pub. L. 108-447, div. B, title I, § 112(a), Dec. 8, 2004, 118 Stat. 2868; Pub. L. 108-458, title II, § 2005(a), Dec. 17, 2004, 118 Stat. 3704; Pub. L. 110-161, div. E, title V, § 535(a)(3), Dec. 26, 2007, 121 Stat. 2075; Pub. L. 111-259, title IV, § 444(a), Oct. 7, 2010, 124 Stat. 2733.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2255.	July 31, 1956, ch. 804, § 401 "Sec. 5", 70 Stat. 748. Feb. 7, 1964, Pub. L. 88-267, § 1 (less (a)-(c)), 78 Stat. 9.

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

REFERENCES IN TEXT

For definition of Secretary, referred to in subsec. (a), see section 2109 of this title.

Section 8331(29)(A), referred to in subsec. (a), was redesignated as section 8331(30)(A) by Pub. L. 110-161, div. E, title V, § 535(a)(1)(A), Dec. 26, 2007, 121 Stat. 2075.

AMENDMENTS

2010—Subsec. (b)(2). Pub. L. 111-259, § 444(a)(2), struck out par. (2) added by section 2005(a)(2) of Pub. L. 108-458 which read as follows: "In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting '65 years of age' for '60 years of age'. The Federal Bureau of Investigation may not grant more than 50 exemptions in any fiscal year in accordance with the preceding sentence, and the authority to grant such exemptions shall cease to be available after September 30, 2007."

Pub. L. 111-259, § 444(a)(1), amended par. (2) relating to employees of the Federal Bureau of Investigation and providing that authority to grant exemptions shall cease to be available after Dec. 31, 2009, by substituting "2011" for "2009".

2007—Subsec. (b)(1). Pub. L. 110-161 substituted "nuclear materials courier, or customs and border protection officer" for "or nuclear materials courier" in first sentence.

2004—Subsec. (b). Pub. L. 108-447, § 112(a)(1), and Pub. L. 108-458, § 2005(a)(1), amended subsec. (b) identically, designating existing provisions as par. (1).

Subsec. (b)(2). Pub. L. 108-458, § 2005(a)(2), added par. (2) relating to employees of the Federal Bureau of Investigation, limiting number of exemptions to 50 per fiscal year, and providing that authority to grant such exemptions shall cease to be available after Sept. 30, 2007.

Pub. L. 108-447, § 112(a)(2), added par. (2) relating to employees of the Federal Bureau of Investigation and providing that authority to grant exemptions shall cease to be available after Dec. 31, 2009.

2003—Subsec. (a). Pub. L. 108-176 inserted at end "For purposes of this subsection, the term 'air traffic controller' or 'controller' has the meaning given to it under section 8331(29)(A)."

Pub. L. 108-7 substituted "8336(e)" for "8336".

2001—Subsec. (a). Pub. L. 107-67 inserted before period at end of first sentence "or completes the age and service requirements for an annuity under section 8336, whichever occurs later".

Subsec. (b). Pub. L. 107-27 struck out first sentence which read "A firefighter who is otherwise eligible for immediate retirement under section 8336(c) shall be separated from the service on the last day of the month in which such firefighter becomes 55 years of age or completes 20 years of service if then over that age." and, in second sentence, inserted "firefighter," after "law enforcement officer" and "that officer".

2000—Subsec. (c). Pub. L. 106-554 redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: "An employee of the Alaska Railroad in Alaska and an employee who is a citizen of the United States employed on the Isthmus of Panama by the Panama Canal Commission, who becomes 62 years of age and completes 15 years of service in Alaska or on the Isthmus of Panama shall be automatically separated from the service. The separation is effective on the last day of the month in which the employee becomes age 62 or completes 15 years of service in Alaska or on the Isthmus of Panama if then over that age. The employing office shall notify the employee in writing of the date of separation at least 60 days in advance thereof. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires."

Subsec. (d). Pub. L. 106-554, § 1(a)(4) [div. B, title I, § 141(a)(2)], redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 106-554, § 1(a)(4) [div. B, title I, § 141(a)(2)], redesignated subsec. (e) as (d).

Pub. L. 106-553, § 1(a)(2) [title III, § 308(b)(2)(A)], added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 106-553 redesignated subsec. (e) as (f) and substituted "Police or the Supreme Court Police" for "Police".

1998—Subsec. (b). Pub. L. 105-261, in second sentence, inserted "or nuclear materials courier" after "law enforcement officer" and "or courier, as the case may be," after "that officer".

1994—Subsec. (d). Pub. L. 103-283 substituted "57" for "55" in first sentence.

1992—Subsec. (b). Pub. L. 102-378 amended first sentence generally. Prior to amendment, first sentence read as follows: "A firefighter who is otherwise eligible for immediate retirement under section 8336(c) of this title shall be separated from the service on the last day of the month in which he becomes 55 years of age or completes 20 years of service if then over that age."

1990—Subsec. (b). Pub. L. 101-509, § 529 [title IV, § 409(a)(1)], which directed that "law enforcement officer of a" be struck out before "firefighter who is", was executed by striking out "law enforcement officer or a" as the probable intent of Congress.

Pub. L. 101-509, § 529 [title IV, § 409(a)(2)], inserted after first sentence "A law enforcement officer who is otherwise eligible for immediate retirement under section 8336(c) shall be separated from the service on the last day of the month in which that officer becomes 57

² So in original. Probably should be "(e)".

years of age or completes 20 years of service if then over that age.”

Subsec. (d). Pub. L. 101-428, §2(b)(1)(A), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 101-428, §2(b)(2), inserted “(other than a member of the Capitol Police)” after “employee”.

Pub. L. 101-428, §2(b)(1)(A), redesignated subsec. (d) as (e).

1980—Subsec. (a). Pub. L. 96-347 substituted “Secretary” for “Secretary of Transportation” in two places.

1979—Subsec. (c). Pub. L. 96-70, which directed substitution of “Panama Canal Commission” for “Panama Canal Company or the Canal Zone Government” in subsec. (e), was executed to subsec. (c) to reflect the probable intent of Congress and Pub. L. 95-256 which struck out subsec. (e) and restated provisions thereof in subsec. (c).

1978—Subsec. (a). Pub. L. 95-256, §5(c)(1), (2), redesignated subsec. (f) as (a). Former subsec. (a), relating to mandatory separation when an employee became 70 years of age and completed 15 years of service, was struck out.

Subsec. (b). Pub. L. 95-256, §5(c)(1), (2), redesignated subsec. (g) as (b). Former subsec. (b), relating to notice by employing office of date of separation, was struck out.

Subsec. (c). Pub. L. 95-256, §5(c)(1), (3), added subsec. (c) relating to provisions covered by former subsec. (e). Former subsec. (c), relating to exemption of an employee from automatic separation by President, was struck out. See subsec. (d).

Subsec. (d). Pub. L. 95-256, §5(c)(1), (3), added subsec. (d). Former subsec. (d), relating to inapplicability of automatic separation provisions of this section, was struck out.

Subsec. (e). Pub. L. 95-256, §5(c)(1), struck out subsec. (e) which related to applicability of provisions to employees of Alaskan Railroad, Panama Canal Company, and Canal Zone Government. See subsec. (c).

Subsecs. (f), (g). Pub. L. 95-256, §5(c)(2), redesignated subsecs. (f) and (g) as (a) and (b), respectively.

1974—Subsec. (g). Pub. L. 93-350 added subsec. (g).

1972—Subsec. (f). Pub. L. 92-297 added subsec. (f).

EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110-161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110-161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2003 AMENDMENTS

Amendment by Pub. L. 108-176 effective on 60th day after Dec. 12, 2003, and applicable with respect to any annuity entitlement based on an individual's separation from service occurring on or after such effective date, and any service performed by any such individual before, on, or after such effective date, subject to special rule relating to deposit requirement, see section 226(c) of Pub. L. 108-176, set out as a note under section 8401 of this title.

Pub. L. 108-7, div. J, title VI, §648(b), Feb. 20, 2003, 117 Stat. 474, provided that: “The amendment made by subsection (a) [amending this section] shall be effective as of January 1, 2003.”

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-67, title VI, §640(b), Nov. 12, 2001, 115 Stat. 554, provided that: “The amendment made by subsection (a) [amending this section] takes effect on the date of enactment [Nov. 12, 2001] with regard to any individual subject to chapter 83 of title 5, United States Code, who is employed as an air traffic controller on that date.”

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-553 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 1(a)(2) [title III, §308(i), (j)] of Pub. L. 106-553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-261 effective 1 year after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105-261, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 2(60) of Pub. L. 102-378 effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102-378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENTS

Section 529 [title IV, §409(c)] of Pub. L. 101-509 provided that: “For the purposes of this section [amending this section and section 8425 of this title], the effective date shall be the date of enactment of this Act [Nov. 5, 1990].”

Section 2(b)(1)(B) of Pub. L. 101-428 provided that: “The amendment made by subparagraph (A) [amending this section] shall take effect 2 years after the date of enactment of this Act [Oct. 15, 1990].”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96-347, set out as a note under section 2109 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96-70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-256 effective Sept. 30, 1978, see section 5(f) of Pub. L. 95-256, set out as a note under section 633a of Title 29, Labor.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-350 effective Jan. 1, 1978, see section 7 of Pub. L. 93-350, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92-297, set out as an Effective Date note under section 3381 of this title.

EXEMPTION PROCESS TO DELAY MANDATORY RETIREMENT FOR AIR TRAFFIC CONTROLLERS

Pub. L. 108-199, div. F, title I, Jan. 23, 2004, 118 Stat. 282, provided in part: “That not later than March 1, 2004, the Secretary of Transportation, in consultation with the Administrator of the Federal Aviation Administration, shall issue final regulations, pursuant to 5 U.S.C. 8335, establishing an exemption process allowing individual air traffic controllers to delay mandatory retirement until the employee reaches no later than 61 years of age”.

NONAPPLICABILITY OF SUBSECTION (a) TO AIR TRAFFIC CONTROLLERS APPOINTED BEFORE JANUARY 1, 1987

Pub. L. 99-556, title V, §504, Oct. 27, 1986, 100 Stat. 3141, provided that:

“(a) IN GENERAL.—Section 8335(a) of title 5, United States Code, shall not apply to any air traffic controller appointed before January 1, 1987.

“(b) DEFINITION.—For purposes of this section, the term ‘air traffic controller’ means any individual who—

“(1) is an air traffic controller within the meaning of section 2109(1) of title 5, United States Code, as in effect on January 1, 1987; but

“(2) is not an air traffic controller within the meaning of section 2109(1) of title 5, United States Code, as in effect on December 31, 1986.”

NONAPPLICABILITY OF SUBSECTION (a) TO DEPARTMENT OF DEFENSE AIR TRAFFIC CONTROLLERS APPOINTED BEFORE SEPTEMBER 12, 1980

Section 2 of Pub. L. 96-347 provided that: “Section 8335(a) of title 5, United States Code shall not apply to an individual appointed as an air traffic controller in the Department of Defense before the date of the enactment of this Act [Sept. 12, 1980].”

NONAPPLICABILITY OF SUBSECTION (f) TO AIR TRAFFIC CONTROLLERS APPOINTED BEFORE MAY 16, 1972

Section 8 of Pub. L. 92-297 provided that: “Section 8335(f) of title 5, United States Code, as added by this Act, does not apply to a person appointed as an air traffic controller by the Department of Transportation before the date of enactment of this Act [May 16, 1972].”

§ 8336. Immediate retirement

(a) An employee who is separated from the service after becoming 55 years of age and completing 30 years of service is entitled to an annuity.

(b) An employee who is separated from the service after becoming 60 years of age and completing 20 years of service is entitled to an annuity.

(c)(1) An employee who is separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer, firefighter, nuclear materials courier, or customs and border protection officer, or any combination of such service totaling at least 20 years, is entitled to an annuity.

(2) An employee is entitled to an annuity if the employee—

(A) was a law enforcement officer or firefighter employed by the Panama Canal Company or the Canal Zone Government at any time during the period beginning March 31, 1979, and ending September 30, 1979; and

(B) is separated from the service before January 1, 2000, after becoming 48 years of age and completing 18 years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least 18 years.

(d) An employee who—

(1) is separated from the service involuntarily, except by removal for cause on charges of misconduct or delinquency; or

(2)(A) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in subparagraph (D);

(B) is serving under an appointment that is not time limited;

(C) has not been duly notified that such employee is to be involuntarily separated from misconduct or unacceptable performance;

(D) is separated from the service voluntarily during a period in which, as determined by the office¹ of Personnel Management (upon re-

quest of the agency) under regulations prescribed by the Office—

(i) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

(ii) a significant percentage of employees servicing² in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

(iii) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

(E) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

(i) 1 or more organizational units;

(ii) 1 or more occupational series or levels;

(iii) 1 or more geographical locations;

(iv) specific periods;

(v) skills, knowledge, or other factors related to a position; or

(vi) any appropriate combination of such factors;

after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity. For purposes of paragraph (1) of this subsection, separation for failure to accept a directed reassignment to a position outside the commuting area of the employee concerned or to accompany a position outside of such area pursuant to a transfer of function shall not be considered to be a removal for cause on charges of misconduct or delinquency. Notwithstanding the first sentence of this subsection, an employee described in paragraph (1) of this subsection is not entitled to an annuity under this subsection if the employee has declined a reasonable offer of another position in the employee's agency for which the employee is qualified, which is not lower than 2 grades (or pay levels) below the employee's grade (or pay level), and which is within the employee's commuting area.

(e) An employee who is voluntarily or involuntarily separated from the service, except by removal for cause on charges of misconduct or delinquency, after completing 25 years of service as an air traffic controller or after becoming 50 years of age and completing 20 years of service as an air traffic controller, is entitled to an annuity.

(f) An employee who is separated from the service after becoming 62 years of age and completing 5 years of service is entitled to an annuity.

(g) A Member who is separated from the service after becoming 62 years of age and completing 5 years of civilian service or after becoming 60 years of age and completing 10 years of Member service is entitled to an annuity. A Member

¹ So in original. Probably should be capitalized.

² So in original. Probably should be “serving”.

who is separated from the service after becoming 55 years of age (but before becoming 60 years of age) and completing 30 years of service is entitled to a reduced annuity. A Member who is separated from the service, except by resignation or expulsion, after completing 25 years of service or after becoming 50 years of age and (1) completing 20 years of service or (2) serving in 9 Congresses is entitled to an annuity.

(h)(1) A member of the Senior Executive Service who is removed from the Senior Executive Service for less than fully successful executive performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.

(2) A member of the Defense Intelligence Senior Executive Service or the Senior Cryptologic Executive Service who is removed from such service for failure to be recertified as a senior executive or for less than fully successful executive performance after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.

(3) A member of the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service who is removed from such service for failure to be recertified as a senior executive or for less than fully successful executive performance after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.

(i)(1) An employee of the Panama Canal Commission or of an Executive agency conducting operations in the Canal Zone or Republic of Panama who is separated from the service before January 1, 2000, who was employed by the Canal Zone Government or the Panama Canal Company at any time during the period beginning March 31, 1979, and ending September 30, 1979, and who has had continuous Panama Canal service, without a break in service of more than 3 days, from that time until separation, is entitled to an annuity if the employee is separated—

(A) involuntarily, after completing 20 years of service or after becoming 48 years of age and completing 18 years of service, if the separation is a result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements; or

(B) voluntarily, after completing 23 years of service or after becoming 48 years of age and completing 18 years of service.

(2) An employee of the Panama Canal Commission or of an Executive agency conducting operations in the Canal Zone or Republic of Panama who is separated from the service before January 1, 2000, who was employed, at a permanent duty station in the Canal Zone, by any Executive agency other than the Canal Zone Government or the Panama Canal Company at any time during the period beginning March 31, 1979, and ending September 30, 1979, and who has had continuous Panama Canal service, without a break in service of more than 3 days, from that time until separation, is entitled to an annuity if—

(A) the employee is separated involuntarily, after completing 20 years of service or after

becoming 48 years of age and completing 18 years of service; and

(B) the separation is the result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements.

(3) An employee of the Panama Canal Commission employed by that body after September 30, 1979, who is separated from the Panama Canal Commission before January 1, 2000, and who at the time of separation has a minimum of 11 years of continuous employment with the Commission (disregarding any break in service of 3 days or less) is entitled to an annuity if the employee is separated—

(A) involuntarily, after completing 20 years of service or after becoming 48 years of age and completing 18 years of service, if the separation is a result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements; or

(B) voluntarily, after completing 23 years of service or after becoming 48 years of age and completing 18 years of service.

(4) For the purpose of this subsection—

(A) “Panama Canal service” means—

(i) service as an employee of the Canal Zone Government, the Panama Canal Company, or the Panama Canal Commission; or

(ii) service at a permanent duty station in the Canal Zone or Republic of Panama as an employee of an Executive agency conducting operations in the Canal Zone or the Republic of Panama; and

(B) “Executive agency” includes the United States District Court for the District of the Canal Zone and the Smithsonian Institution.

(j)(1) Except as provided in paragraph (3), an employee is entitled to an annuity if he—

(A)(i) is separated from the service after completing 25 years of service or after becoming 50 years of age and completing 20 years of service, or

(ii) is involuntarily separated, except by removal for cause on charges of misconduct or delinquency, during the 2-year period before the date on which he would meet the years of service and age requirements under clause (i),

(B) was employed in the Bureau of Indian Affairs, the Indian Health Service, a tribal organization (to the extent provided in paragraph (2)), or any combination thereof, continuously from December 21, 1972, to the date of his separation, and

(C) is not entitled to preference under the Indian preference laws.

(2) Employment in a tribal organization may be considered for purposes of paragraph (1)(B) of this subsection only if—

(A) the employee was employed by the tribal organization after January 4, 1975, and immediately before such employment he was an employee of the Bureau of Indian Affairs or the Indian Health Service, and

(B) at the time of such employment such employee and the tribal organization were eligible to elect, and elected, to have the employee retain the coverage, rights, and benefits of this chapter under section 105(e)(2) of

the Indian Self-Determination Act (25 U.S.C. 450i(a)(2);³ 88 Stat. 2209).

(3)(A) The provisions of paragraph (1) of this subsection shall not apply with respect to any separation of any employee which occurs after the date 10 years after—

(i) the date the employee first meets the years of service and age requirements of paragraph (1)(A)(i), or

(ii) the date of the enactment of this paragraph, if the employee met those requirements before that date.

(B) For purposes of applying this paragraph with respect to any employee of the Bureau of Indian Affairs in the Department of the Interior or of the Indian Health Service in the Department of Health, Education, and Welfare, the Secretary of the department involved may postpone the date otherwise applicable under subparagraph (A) if—

(i) such employee consents to such postponement, and

(ii) the Secretary finds that such postponement is necessary for the continued effective operation of the agency.

The period of any postponement under this subparagraph shall not exceed 12 months and the total period of all postponements with respect to any employee shall not exceed 5 years.

(4) For the purpose of this subsection—

(A) “Bureau of Indian Affairs” means (i) the Bureau of Indian Affairs and (ii) all other organizational units in the Department of the Interior directly and primarily related to providing services to Indians and in which positions are filled in accordance with the Indian preference laws.

(B) “Indian preference laws” means section 12 of the Act of June 18, 1934 (25 U.S.C. 472; 48 Stat. 986), or any other provision of law granting a preference to Indians in promotions or other Federal personnel actions.

(k) A bankruptcy judge, United States magistrate judge, or Court of Federal Claims judge who is separated from service, except by removal, after becoming 62 years of age and completing 5 years of civilian service, or after becoming 60 years of age and completing 10 years of service as a bankruptcy judge, United States magistrate judge, or Court of Federal Claims judge, is entitled to an annuity.

(l) A judge of the United States Court of Appeals for the Armed Forces who is separated from the service after becoming 62 years of age and completing 5 years of civilian service or after completing the term of service for which he was appointed as a judge of such court is entitled to an annuity. A judge who is separated from the service before becoming 60 years of age is entitled to a reduced annuity.

(m) A member of the Capitol Police who is separated from the service after becoming 50 years of age and completing 20 years of service as a member of the Capitol Police as a law enforcement officer, or as a customs and border protection officer, or any combination of such service totaling at least 20 years, is entitled to an annuity.

(n) A member of the Supreme Court Police who is separated from the service after becoming 50 years of age and completing 20 years of service as a member of the Supreme Court Police as a law enforcement officer, or as a customs and border protection officer, or any combination of such service totaling at least 20 years, is entitled to an annuity.

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

(p)(1) The Secretary of Defense may, during fiscal years 2002 and 2003, carry out a program under which an employee of the Department of Defense may be separated from the service entitled to an immediate annuity under this subchapter if the employee—

(A) has—

(i) completed 25 years of service; or

(ii) become 50 years of age and completed 20 years of service; and

(B) is eligible for the annuity under paragraph (2) or (3).

(2)(A) For the purposes of paragraph (1), an employee referred to in that paragraph is eligible for an immediate annuity under this paragraph if the employee—

(i) is separated from the service involuntarily other than for cause; and

(ii) has not declined a reasonable offer of another position in the Department of Defense for which the employee is qualified, which is not lower than 2 grades (or pay levels) below the employee’s grade (or pay level), and which is within the employee’s commuting area.

(B) For the purposes of paragraph (2)(A)(i), a separation for failure to accept a directed reassignment to a position outside the commuting area of the employee concerned or to accompany a position outside of such area pursuant to a transfer of function may not be considered to be a removal for cause.

(3) For the purposes of paragraph (1), an employee referred to in that paragraph is eligible for an immediate annuity under this paragraph if the employee satisfies all of the following conditions:

(A) The employee is separated from the service voluntarily during a period in which the organization within the Department of Defense in which the employee is serving is undergoing a major organizational adjustment.

(B) The employee has been employed continuously by the Department of Defense for more than 30 days before the date on which the head of the employee’s organization requests the determinations required under subparagraph (A).

(C) The employee is serving under an appointment that is not limited by time.

(D) The employee is not in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance.

(E) The employee is within the scope of an offer of voluntary early retirement, as defined on the basis of one or more of the following objective criteria:

(i) One or more organizational units.

(ii) One or more occupational groups, series, or levels.

³ See References in Text note below.

- (iii) One or more geographical locations.
- (iv) Any other similar objective and non-personal criteria that the Office of Personnel Management determines appropriate.

(4) Under regulations prescribed by the Office of Personnel Management, the determinations of whether an employee meets—

- (A) the requirements of subparagraph (A) of paragraph (3) shall be made by the Office, upon the request of the Secretary of Defense; and
- (B) the requirements of subparagraph (E) of such paragraph shall be made by the Secretary of Defense.

(5) A determination of which employees are within the scope of an offer of early retirement shall be made only on the basis of consistent and well-documented application of the relevant criteria.

(6) In this subsection, the term “major organizational adjustment” means any of the following:

- (A) A major reorganization.
- (B) A major reduction in force.
- (C) A major transfer of function.
- (D) A workforce restructuring—
 - (i) to meet mission needs;
 - (ii) to achieve one or more reductions in strength;
 - (iii) to correct skill imbalances; or
 - (iv) to reduce the number of high-grade, managerial, supervisory, or similar positions.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 571; Pub. L. 90-83, §1(75), Sept. 11, 1967, 81 Stat. 214; Pub. L. 92-297, §5, May 16, 1972, 86 Stat. 144; Pub. L. 92-382, Aug. 14, 1972, 86 Stat. 539; Pub. L. 93-39, June 12, 1973, 87 Stat. 73; Pub. L. 93-350, §5, July 12, 1974, 88 Stat. 356; Pub. L. 94-183, §2(40), (41), Dec. 31, 1975, 89 Stat. 1059; Pub. L. 95-454, title III, §306, title IV, §412(a), Oct. 13, 1978, 92 Stat. 1147, 1175; Pub. L. 96-70, title I, §1241(a), Sept. 27, 1979, 93 Stat. 471; Pub. L. 96-135, §1(a), Dec. 5, 1979, 93 Stat. 1056; Pub. L. 97-89, title VIII, §803, Dec. 4, 1981, 95 Stat. 1161; Pub. L. 97-253, title III, §308(a), Sept. 8, 1982, 96 Stat. 798; Pub. L. 98-94, title XII, §1256(b), Sept. 24, 1983, 97 Stat. 701; Pub. L. 98-353, title I, §116(c), July 10, 1984, 98 Stat. 344; Pub. L. 98-531, §2(b), Oct. 19, 1984, 98 Stat. 2704; Pub. L. 98-615, title III, §304(d), Nov. 8, 1984, 98 Stat. 3219; Pub. L. 99-190, §101(d) [title III, §315], Dec. 19, 1985, 99 Stat. 1224, 1266; Pub. L. 100-53, §2(c), June 18, 1987, 101 Stat. 368; Pub. L. 100-325, §2(l), May 30, 1988, 102 Stat. 582; Pub. L. 101-194, title V, §506(b)(7), Nov. 30, 1989, 103 Stat. 1758; Pub. L. 101-428, §2(a), Oct. 15, 1990, 104 Stat. 928; Pub. L. 101-510, div. C, title XXXV, §3506(a), Nov. 5, 1990, 104 Stat. 1846; Pub. L. 101-650, title III, §§306(c)(3), 321, Dec. 1, 1990, 104 Stat. 5110, 5117; Pub. L. 102-572, title IX, §902(b)(2), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103-337, div. A, title IX, §924(d)(1)(A), Oct. 5, 1994, 108 Stat. 2832; Pub. L. 105-261, div. A, title XI, §1109(a), div. C, title XXXI, §3154(e), Oct. 17, 1998, 112 Stat. 2143, 2255; Pub. L. 106-58, title VI, §651(b), Sept. 29, 1999, 113 Stat. 480; Pub. L. 106-398, §1 [[div. A], title XI, §1152(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-320; Pub. L. 106-553, §1(a)(2) [title III, §308(b)(3)], Dec. 21, 2000, 114 Stat. 2762, 2762A-87; Pub. L. 107-107, div. A, title X, §1048(i)(5), Dec. 28, 2001, 115 Stat. 1229; Pub. L. 107-296, title XIII, §§1313(b)(1),

1321(a)(4)(A), Nov. 25, 2002, 116 Stat. 2294, 2297; Pub. L. 110-161, div. E, title V, §535(a)(4), Dec. 26, 2007, 121 Stat. 2075.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2256 (less last sentence in (f)).	July 31, 1956, ch. 804, §401 “Sec. 6 (less last sentence in (f))”, 70 Stat. 749. July 7, 1960, Pub. L. 86-604, §1(b), 74 Stat. 358. July 12, 1960, Pub. L. 86-622, §3(b), 74 Stat. 410.

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

1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8336(a)	5 App.: 2256(a).	July 18, 1966, Pub. L. 89-504, §504, 80 Stat. 301.
8336(b)	5 App.: 2256(b).	

In subsections (a) and (b), the words “is entitled to” are substituted for “shall * * * be paid”. The words “computed as provided in section 9” are omitted as unnecessary in view of 5 U.S.C. 8339.

REFERENCES IN TEXT

Section 105(e)(2) of the Indian Self-Determination Act (25 U.S.C. 450i(a)(2); 88 Stat. 2209), referred to in subsec. (j)(2)(B), was renumbered section 104(e)(2) of that Act by Pub. L. 100-472, title II, §203(a), Oct. 5, 1988, 102 Stat. 2290, without corresponding amendment to this section. Section 104(e)(2) of the Indian Self-Determination Act is classified to section 450i(e)(2) of Title 25, Indians. Section 105 of that Act is classified to section 450j of Title 25.

The date of the enactment of this paragraph, referred to in subsec. (j)(3)(A)(ii), is Dec. 5, 1979, the date of the enactment of Pub. L. 96-135, which was approved Dec. 5, 1979.

AMENDMENTS

2007—Subsec. (c)(1). Pub. L. 110-161, §535(a)(4)(A), substituted “nuclear materials courier, or customs and border protection officer” for “or nuclear materials courier”.

Subsecs. (m), (n). Pub. L. 110-161, §535(a)(4)(B), substituted “as a law enforcement officer, or as a customs and border protection officer,” for “or as a law enforcement officer.”

2002—Subsec. (d)(2). Pub. L. 107-296, §1313(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “except in the case of an employee who is separated from the service under a program carried out under subsection (p), while serving in a geographic area designated by the Office of Personnel Management, is separated from the service voluntarily during a period in which the Office determines that—

“(A) the agency in which the employee is serving is undergoing a major reorganization, a major reduction in force, or a major transfer of function; and

“(B) a significant percent of the employees serving in such agency will be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53 of this title or comparable provisions);”.

Subsec. (h)(1). Pub. L. 107-296, §1321(a)(4)(A), struck out “for failure to be recertified as a senior executive under section 3393a or” before “for less than”.

2001—Subsec. (d)(2). Pub. L. 107-107, §1048(i)(5)(A), substituted “subsection (p)” for “subsection (o)” in introductory provisions.

Subsecs. (o), (p). Pub. L. 107-107, §1048(i)(5)(B), redesignated subsec. (o), relating to Department of Defense employees, as (p).

2000—Subsec. (d)(2). Pub. L. 106-398, §1 [[div. A], title XI, §1152(a)(1)], inserted “except in the case of an employee who is separated from the service under a program carried out under subsection (o),” before “while serving” in introductory provisions.

Subsec. (n). Pub. L. 106-553 added subsec. (n). Former subsec. (n), relating to computation of annuity under section 8339 of this title, redesignated (o).

Subsec. (o). Pub. L. 106-553 redesignated subsec. (n), relating to computation of annuity under section 8339 of this title, as (o).

Pub. L. 106-398, §1 [[div. A], title XI, §1152(a)(2)], added subsec. (o) relating to Department of Defense employees.

1999—Subsecs. (d)(2), (o). Pub. L. 106-58 repealed Pub. L. 105-261, §1109(a). See 1998 Amendment notes below.

1998—Subsec. (c)(1). Pub. L. 105-261, §3154(e), substituted “, firefighter, or nuclear materials courier” for “or firefighter”.

Subsec. (d)(2). Pub. L. 105-261, §1109(a)(1), which directed insertion of “except in the case of an employee described in subsection (o)(1),” after “(2),” was repealed by Pub. L. 106-58.

Subsec. (o). Pub. L. 105-261, §1109(a)(2), which directed addition of subsec. (o), relating to authority of Department of Defense to offer employees voluntary early retirement, was repealed by Pub. L. 106-58.

1994—Subsec. (l). Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

1992—Subsec. (k). Pub. L. 102-572 substituted “Court of Federal Claims” for “Claims Court” in two places.

1990—Subsec. (i)(3), (4). Pub. L. 101-510 added par. (3) and redesignated former par. (3) as (4).

Subsec. (k). Pub. L. 101-650 amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: “A bankruptcy judge or United States magistrate who is separated from service, except by removal, after becoming 62 years of age and completing 5 years of civilian service, or after becoming 60 years of age and completing 10 years of service as a bankruptcy judge or United States magistrate, is entitled to an annuity.”

Subsecs. (m), (n). Pub. L. 101-428 added subsec. (m) and redesignated former subsec. (m) as (n).

1989—Subsec. (h)(1). Pub. L. 101-194, §506(b)(7)(A), substituted “for failure to be recertified as a senior executive under section 3393a or for” for “for”.

Subsec. (h)(2), (3). Pub. L. 101-194, §506(b)(7)(B), (C), substituted “for failure to be recertified as a senior executive or for” for “for”.

1988—Subsec. (h)(3). Pub. L. 100-325 added par. (3).

1987—Subsec. (k). Pub. L. 100-53 amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: “A bankruptcy judge who is separated from service, except by removal, after becoming sixty-two years of age and completing ten years of service as a bankruptcy judge is entitled to an annuity.”

1985—Subsec. (j)(3)(A). Pub. L. 99-190 substituted “10 years” for “5 years”.

1984—Subsec. (d). Pub. L. 98-615 inserted provision that for purposes of par. (1), separation for failure to accept a directed reassignment to a position outside the commuting area of the employee concerned or to accompany a position outside of such area pursuant to a transfer of function shall not be considered to be a removal for cause on charges of misconduct or delinquency.

Subsec. (k). Pub. L. 98-353, §116(c), added subsec. (k). Former subsec. (k) redesignated (l).

Subsec. (l). Pub. L. 98-531 redesignated the subsec. (l), which was redesignated by Pub. L. 98-94, as (m).

Pub. L. 98-353, §116(c)(1), redesignated subsec. (k) as (l).

Subsec. (m). Pub. L. 98-531 redesignated the subsec. (l), which was redesignated by Pub. L. 98-94, as (m).

1983—Subsecs. (k), (l). Pub. L. 98-94 added subsec. (k) and redesignated former subsec. (k) as (l).

1982—Subsec. (d). Pub. L. 97-253, §308(a), inserted provision that the agency which is undergoing a major reorganization, a major reduction in force, or a major

transfer of function must have a significant percent of its employees who will be separated or subject to an immediate reduction in the rate of basic pay and inserted provision that notwithstanding the first sentence of this subsection, an employee described in paragraph (1) of this subsection is not entitled to an annuity under this subsection if the employee has declined a reasonable offer of another position in the employee’s agency for which the employee is qualified, which is not lower than 2 grades (or pay levels) below the employee’s grade (or pay level), and which is within the employee’s commuting area.

1981—Subsec. (h). Pub. L. 97-89 designated existing provisions as par. (1) and added par. (2).

1979—Subsec. (c). Pub. L. 96-70 §1241(a)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (i). Pub. L. 96-70, §1241(a)(2), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 96-135 added subsec. (j). Former subsec. (j) redesignated (k).

Pub. L. 96-70, §1241(a)(2), redesignated former subsec. (i) as (j).

Subsec. (k). Pub. L. 96-135 redesignated former subsec. (j) as (k).

1978—Subsec. (d)(2). Pub. L. 95-454, §306, substituted provisions relating to the employee’s agency undergoing a major reorganization, reduction in force, or transfer of function, as determined by the Office of Personnel Management, for provisions relating to the employee’s agency undergoing a major reduction in force, as determined by the Commission.

Subsecs. (h), (i). Pub. L. 95-454, §412(a), added subsec. (h) and redesignated former subsec. (h) as (i).

1975—Subsecs. (d), (g). Pub. L. 94-183 substituted “an” for “a reduced” after “is entitled to”.

1974—Subsec. (c). Pub. L. 93-350 substituted provisions granting annuity entitlement to employees separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer or firefighter or any combination of such service totaling at least 20 years for provisions requiring the head of the employing agency to recommend, and the Civil Service Commission to approve, the retirement of an otherwise eligible employee requiring the agency and the Commission to consider the degree of hazard the employee was subjected to in the performance of his duties, and defining “detention” to include the duties of specified employees.

1973—Subsec. (d). Pub. L. 93-39 reenacted existing provisions, designated part of such provisions as item (1) and added item (2).

1972—Subsec. (c). Pub. L. 92-382 inserted reference to employees performing work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment for the purpose of retirement benefits.

Subsecs. (e) to (h). Pub. L. 92-297 added subsec. (e) and redesignated former subsecs. (e) to (g) as (f) to (h), respectively.

CHANGE OF NAME

“United States magistrate judge” substituted for “United States magistrate” wherever appearing in subsec. (k) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110-161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110-161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-553 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 1(a)(2) [title III, §308(i), (j)] of Pub. L. 106-553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-261, div. A, title XI, §1109(d), Oct. 17, 1998, 112 Stat. 2145, as amended by Pub. L. 106-65, div. A, title XI, §1101, Oct. 5, 1999, 113 Stat. 775, which provided that the amendments made by section 1109 of Pub. L. 105-261 (amending this section and sections 8339, 8414, and 8464 of this title) were to be effective Oct. 1, 2000, and applicable with respect to an approval for voluntary early retirement made on or after that date, was repealed by Pub. L. 106-58, title VI, §651(b), Sept. 29, 1999, 113 Stat. 480.

Amendment by section 3154(e) of Pub. L. 105-261 effective at the beginning of the first pay period that begins after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105-261, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-650 applicable to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after Dec. 1, 1990, see section 306(f) of Pub. L. 101-650, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101-194, set out as a note under section 3151 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-53 effective Oct. 1, 1987, and applicable to bankruptcy judges and United States magistrate judges in office on that date and to individuals subsequently appointed to such positions to whom this chapter otherwise applies, see section 3 of Pub. L. 100-53, as amended, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-615 effective Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3393 of this title.

Amendment by Pub. L. 98-531 effective Mar. 31, 1984, see section 3(b) of Pub. L. 98-531, set out as a note under section 8331 of this title.

Amendment by Pub. L. 98-353 effective July 10, 1984, and applicable to bankruptcy judges who retire on or after such date, see section 116(e) of Pub. L. 98-353, set out as a note under section 8331 of this title. See, also, section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 308(b) of Pub. L. 97-253 provided that: "The amendment made by subsection (a) [amending this section] shall take effect October 1, 1982."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-89 effective Oct. 1, 1981, see section 806 of Pub. L. 97-89, set out as an Effective Date note under section 1621 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1979 AMENDMENTS

Section 1(d) of Pub. L. 96-135 provided that: "The amendments made by this section [amending this section and section 8339 of this title] shall take effect on the date of the enactment of this Act [Dec. 5, 1979]."

Section 1241(b)(1) of Pub. L. 96-70 provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Sept. 27, 1979], but no amount of annuity under chapter 83 of title 5, United States Code, accruing by reason of those amendments shall be payable for any period before October 1, 1979."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 306 of Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

Amendment by section 412 of Pub. L. 95-454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-350 effective July 12, 1974, see section 7 of Pub. L. 93-350, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92-297, set out as an Effective Date note under section 3381 of this title.

REGULATIONS

Pub. L. 107-296, title XIII, §1313(b)(5), Nov. 25, 2002, 116 Stat. 2296, provided that: "The Office of Personnel Management may prescribe regulations to carry out this subsection [amending this section and section 8414 of this title, enacting provisions set out as notes under this section, and repealing provisions set out as notes under this section and section 8414 of this title]."

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the "transition period", being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203(a) of Pub. L. 96-70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

GOVERNMENT ACCOUNTABILITY OFFICE: VOLUNTARY EARLY RETIREMENT

Pub. L. 107-296, title XIII, §1313(b)(3), Nov. 25, 2002, 116 Stat. 2296, provided that: "The amendments made by this subsection [amending this section and section 8414 of this title and repealing provisions set out as notes under this section and section 8414 of this title] shall not be construed to affect the authority under section 1 of Public Law 106-303 (5 U.S.C. 8336 note; 114 Stat. 1063)."

Pub. L. 106-303, §1, Oct. 13, 2000, 114 Stat. 1063, as amended by Pub. L. 108-271, §§2(a), (b)(1), 8(b), July 7, 2004, 118 Stat. 811, 814, provided that:

"(a) CIVIL SERVICE RETIREMENT SYSTEM.—Effective October 13, 2000, paragraph (2) of section 8336(d) of title 5, United States Code, shall, with respect to officers and employees of the Government Accountability Office, be applied as if it had been amended to read as follows:

“(2)(A) has been employed continuously by the Government Accountability Office for at least the 31-day period immediately preceding the start of the period referred to in subparagraph (D);

“(B) is serving under an appointment that is not time limited;

“(C) has not received a notice of involuntary separation, for misconduct or unacceptable performance, with respect to which final action remains pending; and

“(D) is separated from the service voluntarily during a period with respect to which the Comptroller General determines that the application of this subsection is necessary and appropriate for the purpose of—

“(i) realigning the Government Accountability Office's workforce in order to meet budgetary constraints or mission needs;

“(ii) correcting skill imbalances; or

“(iii) reducing high-grade, managerial, or supervisory positions;”.

“(b) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Effective October 13, 2000, subparagraph (B) of section 8414(b)(1) of title 5, United States Code, shall, with respect to officers and employees of the Government Accountability Office, be applied as if it had been amended to read as follows:

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

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

“(iii) has not received a notice of involuntary separation, for misconduct or unacceptable performance, with respect to which final action remains pending; and

“(iv) is separated from the service voluntarily during a period with respect to which the Comptroller General determines that the application of this subsection is necessary and appropriate for the purpose of—

“(I) realigning the Government Accountability Office's workforce in order to meet budgetary constraints or mission needs;

“(II) correcting skill imbalances; or

“(III) reducing high-grade, managerial, or supervisory positions;”.

“(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 retirement offer may be made to any employee or group of employees based on—

“(1) geographic area, organizational unit, or occupational 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 workforce and not downsize the Government Accountability Office workforce.”

APPLICATION OF SUBSECTION (d)(2)

Pub. L. 105-174, title III, §7001(a), May 1, 1998, 112 Stat. 91, as amended by Pub. L. 106-58, title VI, §651(a), Sept. 29, 1999, 113 Stat. 480, which provided that, effective May 1, 1998, subsec. (d)(2) of this section was to be applied as if it read as specified in Pub. L. 105-174,

§7001(a), was repealed by Pub. L. 107-296, title XIII, §1313(b)(4), Nov. 25, 2002, 116 Stat. 2296.

INDIAN PREFERENCE LAWS APPLICABLE TO BUREAU OF INDIAN AFFAIRS AND INDIAN HEALTH SERVICE POSITIONS

Nonapplicability of annuity provisions of subsec. (j) of this section to individuals accepting waiver of Indian preference laws with respect to personnel actions, see section 472a(c)(2) of Title 25, Indians.

INDIVIDUALS ENTITLED TO ANNUITY PAYMENTS FOR PERIOD PRIOR TO OCTOBER 1, 1979

Section 1241(b)(2) of Pub. L. 96-70 provided that: “Effective October 1, 1979, any individual who, but for paragraph (1) of this subsection [set out as an Effective Date of 1979 Amendment note above], would have been entitled to one or more annuity payments pursuant to the amendments made by this section [amending this section] for periods before October 1, 1979, shall be entitled, to such extent or in such amounts as are provided in advance in appropriation Acts, to a lump sum payment equal to the total amount of all such annuity payments.”

§ 8337. Disability retirement

(a) An employee who completes 5 years of civilian service and has become disabled shall be retired on the employee's own application or on application by the employee's agency. Any employee shall be considered to be disabled only if the employee is found by the Office of Personnel Management to be unable, because of disease or injury, to render useful and efficient service in the employee's position and is not qualified for reassignment, under procedures prescribed by the Office, to a vacant position which is in the agency at the same grade or level and in which the employee would be able to render useful and efficient service. For the purpose of the preceding sentence, an employee of the United States Postal Service shall be considered not qualified for a reassignment described in that sentence if the reassignment is to a position in a different craft or is inconsistent with the terms of a collective bargaining agreement covering the employee. A judge of the United States Court of Appeals for the Armed Forces who completes 5 years of civilian service and who is found by the Office to be disabled for useful and efficient service as a judge of such court or who is removed for mental or physical disability under section 942(c) of title 10 shall be retired on the judge's own application or upon such removal. A Member who completes 5 years of Member service and is found by the Office to be disabled for useful and efficient service as a Member because of disease or injury shall be retired on the Member's own application. An annuity authorized by this section is computed under section 8339(g) of this title, unless the employee or Member is eligible for a higher annuity computed under section 8339(a) through (e), (n), (q), (r), or (s).

(b) A claim may be allowed under this section only if the application is filed with the Office before the employee or Member is separated from the service or within 1 year thereafter. This time limitation may be waived by the Office for an employee or Member who at the date of separation from service or within 1 year thereafter is mentally incompetent, if the application is filed with the Office within 1 year from the date of restoration of the employee or Mem-

ber to competency or the appointment of a fiduciary, whichever is earlier.

(c) An annuitant receiving disability retirement annuity from the Fund shall be examined under the direction of the Office—

(1) 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 subsection 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.

(h)(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 section 10216 of 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 572; Pub. L. 90-83, §1(76), Sept. 11, 1967, 81 Stat. 214; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-499, title IV, §403(a), Dec. 5, 1980, 94 Stat. 2605; Pub. L. 97-253, title III, §302(a), Sept. 8, 1982, 96 Stat. 792; Pub. L. 98-94, title XII, §1256(c), Sept. 24, 1983, 97 Stat. 701; Pub. L. 100-238, title I, §124(a)(1)(A), Jan. 8, 1988, 101 Stat. 1755; Pub. L. 101-189, div. A, title XIII, §1304(b)(2), Nov. 29, 1989, 103 Stat. 1577; Pub. L. 101-428, §2(d)(1), Oct. 15, 1990, 104 Stat. 929; Pub. L. 102-378, §2(61), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 103-337, div. A, title IX, §924(d)(1)(A), Oct. 5, 1994, 108 Stat. 2832; Pub. L. 105-61, title V, §516(a)(2), Oct. 10, 1997, 111 Stat. 1306; Pub. L. 106-65, div. A, title V, §522(d), Oct. 5, 1999, 113 Stat. 597; Pub. L. 106-553, §1(a)(2) [title III, §308(h)(1)], Dec. 21, 2000, 114 Stat. 2762, 2762A-88.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2257.	July 31, 1956, ch. 804, §401 "Sec. 7", 70 Stat. 750. Oct. 4, 1961, Pub. L. 87-350, §4(a), 75 Stat. 771.

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. 8337(e) for consistency within the subchapter and to reflect that it is the individual, rather than the position, that is subject to the subchapter.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-553 substituted "8339(a) through (e), (n), (q), (r), or (s)" for "8339(a)-(e), (n), (q), or (r)" in last sentence.

1999—Subsec. (h)(1). Pub. L. 106-65, §522(d)(1), inserted "or section 10216 of title 10" after "title 32" and substituted "title 32 or section 10216 of title 10, respectively, to be a member of the Selected Reserve." for "such title to be a member of the National Guard and to hold a specified military grade."

Subsec. (h)(2)(A)(i). Pub. L. 106-65, §522(d)(2), inserted "or section 10216 of title 10" after "title 32" and substituted "Selected Reserve" for "National Guard or from holding the military grade required for such employment".

Subsec. (h)(3)(C). Pub. L. 106-65, §522(d)(3), inserted "or section 10216 of title 10" after "title 32".

1997—Subsec. (a). Pub. L. 105-61 substituted "(q), or (r)" for "(q)".

1994—Subsec. (a). Pub. L. 103-337 substituted "Court of Appeals for the Armed Forces" for "Court of Military Appeals".

1992—Subsec. (a). Pub. L. 102-378 substituted "if" for "is" after "employee" in second sentence.

1990—Subsec. (a). Pub. L. 101-428 substituted "8339(a)-(e), (n), or (q)" for "8339(a)-(e) or (n)".

1989—Subsec. (a). Pub. L. 101-189 substituted "section 942(c) of title 10" for "section 867(a)(2) of title 10".

1988—Subsec. (f). Pub. L. 100-238 added subsec. (f) and struck out former subsec. (f) which read as follows: "An individual is not entitled to receive an annuity under this subchapter and compensation for injury or disability to himself under subchapter I of chapter 81 of this title covering the same period of time. This provision does not bar the right of a claimant to the greater benefit conferred by either subchapter for any part of the same period of time. Neither this provision nor any provision of subchapter I of chapter 81 of this title denies to an individual an annuity accruing to him under this subchapter on account of service performed by him, or denies any concurrent benefit to him under subchapter I of chapter 81 of this title on account of the death of another individual."

Subsec. (g). Pub. L. 100-238 added subsec. (g) and struck out former subsec. (g) which read as follows: "The right of an individual entitled to an annuity under this subchapter is not affected because he has received a lump-sum payment for compensation under section 8135 of this title. However, if the annuity is payable on account of the same disability for which compensation under section 8135 of this title has been paid, so much of the compensation as has been paid for a period extended beyond the date the annuity becomes effective, as determined by the Department of Labor, shall be refunded to that Department to be covered into the Employees' Compensation Fund. Before the individual may receive the annuity he 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 that amount from the annuity payable to him under this subchapter, which amount shall be transmitted to the Department of Labor for reimbursement to the Employees' Compensation Fund.

Deductions from the annuity may be made from accrued and accruing payments. When the Department of Labor finds that the financial circumstances of the annuitant warrant deferred refunding, deductions from the annuity may be prorated against and paid from accruing payments in such manner as that Department determines."

1983—Subsec. (a). Pub. L. 98-94 inserted provision that a judge of the United States Court of Military Appeals who completes 5 years of civilian service and who is found by the Office to be disabled for useful and efficient service as a judge of such court or who is removed for mental or physical disability under section 867(a)(2) of title 10 shall be retired on the judge's own application or upon such removal.

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 “any calendar year” for “each of 2 succeeding calendar years”.

Subsec. (h). Pub. L. 97-253, §302(a)(3), added subsec. (h).

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.

1978—Subsecs. (a) to (c). Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively, wherever appearing.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-553 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 1(a)(2) [title III, §308(i), (j)] of Pub. L. 106-553, 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 8334 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(i), 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 8347 of this title] shall take 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 (h)) 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

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 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. A Member who is separated from the service after completing 10 or more years of Member service is entitled to an annuity beginning at the age of 60 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.

(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 judge of such court who is separated from the service after completing the term of service for which he was appointed is entitled to an annuity. If an annuity is elected before the judge becomes 60 years of age, it shall be a reduced annuity.

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

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 574; Pub. L. 90-83, §1(77), Sept. 11, 1967, 81 Stat. 214; Pub. L. 98-94, title XII, §1256(d), Sept. 24, 1983, 97 Stat. 702; Pub. L. 103-337, div. A, title IX, §924(d)(1)(A), Oct. 5, 1994, 108 Stat. 2832.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2258.	July 31, 1956, ch. 804, §401 “Sec. 8”, 70 Stat. 751. July 7, 1960, Pub. L. 86-604, §1(c), 74 Stat. 358. July 12, 1960, Pub. L. 86-622, §2(a), 74 Stat. 410.

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-

vidual, rather than the position, that is subject to the subchapter.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

1983—Subsecs. (c), (d). Pub. L. 98-94 added subsec. (c), and redesignated former subsec. (c) as (d).

SAVINGS PROVISIONS DEFERRED ANNUITIES UNDER LAWS REPEALED BY PUB. L. 90-83

Pub. L. 90-83, §10(a), Sept. 11, 1967, 81 Stat. 222, provided that: “The right to a deferred annuity on satisfaction of the conditions attached thereto is continued notwithstanding the repeal by this Act of the law conferring the right.”

§ 8339. Computation of annuity

(a) Except as otherwise provided by this section, the annuity of an employee retiring under this subchapter is—

(1) 1½ percent of his average pay multiplied by so much of his total service as does not exceed 5 years; plus

(2) 1¾ percent of his average pay multiplied by so much of his total service as exceeds 5 years but does not exceed 10 years; plus

(3) 2 percent of his average pay multiplied by so much of his total service as exceeds 10 years.

However, when it results in a larger annuity, 1 percent of his average pay plus \$25 is substituted for the percentage specified by paragraph (1), (2), or (3) of this subsection, or any combination thereof.

(b) The annuity of a Congressional employee, or former Congressional employee, retiring under this subchapter is computed under subsection (a) of this section, except, if he has had—

(1) at least 5 years’ service as a Congressional employee or Member or any combination thereof; and

(2) deductions withheld from his pay or has made deposit covering his last 5 years of civilian service;

his annuity is computed with respect to his service as a Congressional employee, his military service not exceeding 5 years, and any Member service, by multiplying 2½ percent of his average pay by the years of that service.

(c) The annuity of a Member, or former Member with title to Member annuity, retiring under this subchapter is computed under subsection (a) of this section, except, if he has had at least 5 years’ service as a Member or Congressional employee or any combination thereof, his annuity is computed with respect to—

(1) his service as a Member and so much of his military service as is creditable for the purpose of this paragraph; and

(2) his Congressional employee service;

by multiplying 2½ percent of his average pay by the years of that service.

(d)(1) The annuity of an employee retiring under section 8335(b) or 8336(c) of this title is—

(A) 2½ percent of his average pay multiplied by so much of his total service as does not exceed 20 years; plus

(B) 2 percent of his average pay multiplied by so much of his total service as exceeds 20 years.

(2) The annuity of an employee retiring under this subchapter who was employed by the Panama Canal Company or Canal Zone Government on September 30, 1979, is computed with respect to the period of continuous Panama Canal service from that date, disregarding any break in service of not more than 3 days, by adding—

(A) 2½ percent of the employee’s average pay multiplied by so much of that service as does not exceed 20 years; plus

(B) 2 percent of the employee’s average pay multiplied by so much of that service as exceeds 20 years.

(3) The annuity of an employee retiring under this subchapter who is employed by the Panama Canal Commission at any time during the period beginning October 1, 1990, and ending December 31, 1999, is computed, with respect to any period of service with the Panama Canal Commission, by adding—

(A) 2½ percent of the employee’s average pay multiplied by so much of that service as does not exceed 20 years; plus

(B) 2 percent of the employee’s average pay multiplied by so much of that service as exceeds 20 years.

(4)(A) In the case of an employee who has service as a law enforcement officer or firefighter to which paragraph (2) of this subsection applies, the annuity of that employee is increased by \$8 for each full month of that service which is performed in the Republic of Panama.

(B) In the case of an employee retiring under this subchapter who—

(i) was employed as a law enforcement officer or firefighter by the Panama Canal Company or Canal Zone Government at any time during the period beginning March 31, 1979, and ending September 30, 1979; and

(ii) does not meet the age and service requirements of section 8336(c) of this title;

the annuity of that employee is increased by \$12 for each full month of that service which occurred before October 1, 1979.

(C) An annuity increase under this paragraph does not apply with respect to service performed after completion of 20 years of service (or any combination of service) as a law enforcement officer or firefighter.

(5) For the purpose of this subsection—

(A) “Panama Canal service” means—

(i) service as an employee of the Panama Canal Commission; or

(ii) service at a permanent duty station in the Canal Zone or Republic of Panama as an employee of an Executive agency conducting operations in the Canal Zone or Republic of Panama; and

(B) “Executive agency” includes the Smithsonian Institution.

(6) The annuity of an employee retiring under section 8336(j) of this title is computed under subsection (a) of this section, except that with respect to service on or after December 21, 1972, the employee’s annuity is—

(A) 2½ percent of the employee’s average pay multiplied by so much of the employee’s service on or after that date as does not exceed 20 years; plus

(B) 2 percent of the employee's average pay multiplied by so much of the employee's service on or after that date as exceeds 20 years.

(7) The annuity of an employee who is a judge of the United States Court of Appeals for the Armed Forces, or a former judge of such court, retiring under this subchapter is computed under subsection (a) of this section, except, with respect to his service as a judge of such court, his service as a Member, his congressional employee service, and his military service (not exceeding 5 years) creditable under section 8332 of this title, his annuity is computed by multiplying 2½ percent of his average pay by the years of that service.

(e) The annuity of an employee retiring under section 8336(e) of this title is computed under subsection (a) of this section. That annuity may not be less than 50 percent of the average pay of the employee unless such employee has received, pursuant to section 8342 of this title, payment of the lump-sum credit attributable to deductions under section 8334(a) of this title during any period of employment as an air traffic controller and such employee has not deposited in the Fund the amount received, with interest, pursuant to section 8334(d)(1) of this title.

(f) The annuity computed under subsections (a) through (e), (n), (q), (r), and (s) may not exceed 80 percent of—

- (1) the average pay of the employee; or
- (2) the greatest of—
 - (A) the final basic pay of the Member;
 - (B) the average pay of the Member; or
 - (C) the final basic pay of the appointive position of a former Member who elects to have his annuity computed or recomputed under section 8344(d)(1) of this title.

(g) The annuity of an employee or Member retiring under section 8337 of this title is at least the smaller of—

- (1) 40 percent of his average pay; or
- (2) the sum obtained under subsections (a) through (c), (n), (q), (r), or (s) after increasing his service of the type last performed by the period elapsing between the date of separation and the date he becomes 60 years of age.

However, if an employee or Member retiring under section 8337 of this title is receiving retired pay or retainer pay for military service (except that specified in section 8332(c)(1) or (2) of this title) or pension or compensation from the Department of Veterans Affairs in lieu of such retired or retainer pay, the annuity of that employee or Member shall be computed under subsection (a), (b), (c), (n), (q), (r), or (s), as appropriate, excluding credit for military service from that computation. If the amount of the annuity so computed, plus the retired or retainer pay which is received, or which would be received but for the pension or compensation from the Department of Veterans Affairs in lieu of such retired or retainer pay, is less than the smaller of the annuity otherwise payable under paragraph (1) or (2) of this subsection, an amount equal to the difference shall be added to the annuity payable under subsection (a), (b), (c), (n), (q), (r), or (s), as appropriate.

(h) The annuity computed under subsections (a), (b), (d)(5), and (f) of this section for an em-

ployee retiring under section 8336(d), (h), (j), or (o) of this title is reduced by ¼ of 1 percent for each full month the employee is under 55 years of age at the date of separation. The annuity computed under subsections (c) and (f) of this section for a Member retiring under the second or third sentence of section 8336(g) of this title or the third sentence of section 8338(b) of this title is reduced by ½ of 1 percent for each full month not in excess of 60 months, and ¼ of 1 percent for each full month in excess of 60 months, the Member is under 60 years of age at the date of separation. The annuity computed under subsections (a), (d)(6), and (f) of this section for a judge of the United States Court of Appeals for the Armed Forces retiring under the second sentence of section 8336(k) of this title or the third sentence of section 8338(c) of this title is reduced by ½ of 1 percent for each full month not in excess of 60 months, and ¼ of 1 percent for each full month in excess of 60 months, the judge is under 60 years of age at the date of separation.

(i) For the purposes of subsections (a)–(h), (n), (q), (r), or (s), the total service of any employee or Member shall not include any period of civilian service after July 31, 1920, for which retirement deductions or deposits have not been made under section 8334(a) of this title unless—

(1) the employee or Member makes a deposit for such period as provided in section 8334(c) or (d)(1) of this title; or

(2) no deposit is required for such service, as provided under section 8334(g) of this title or under any statute.

(j)(1) The annuity computed under subsections (a)–(i), (n), (q), (r), and (s) (or a portion of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management) for an employee or Member who is married at the time of retiring under this subchapter is reduced as provided in paragraph (4) of this subsection in order to provide a survivor annuity for the spouse under section 8341(b) of this title, unless the employee or Member and the spouse jointly waive the spouse's right to a survivor annuity in a written election filed with the Office at the time that the employee or Member retires. Each such election shall be made in accordance with such requirements as the Office shall, by regulation, prescribe, and shall be irrevocable. The Office shall provide, by regulation, that an employee or Member may waive the survivor annuity without the spouse's consent if the employee or Member establishes to the satisfaction of the Office—

(A) that the spouse's whereabouts cannot be determined, or

(B) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's consent would otherwise be inappropriate.

(2) If an employee or Member has a former spouse who is entitled to a survivor annuity as provided in section 8341(h) of this title, the annuity of the employee or Member computed under subsections (a)–(i), (n), (q), (r), and (s) (or any designated portion of the annuity, in the

event that the former spouse is entitled to less than 55 percent of the employee or Member's annuity) is reduced as provided in paragraph (4) of this subsection.

(3) An employee or Member who has a former spouse may elect, under procedures prescribed by the Office, to have the annuity computed under subsections (a)-(i), (n), (q), (r), and (s) or a portion thereof reduced as provided in paragraph (4) of this subsection in order to provide a survivor annuity for such former spouse under section 8341(h) of this title, unless all rights to survivor benefits for such former spouse under this subchapter based on marriage to such employee or Member were waived under paragraph (1) of this subsection. An election under this paragraph shall be made at the time of retirement or, if later, within 2 years after the date on which the marriage of the former spouse to the employee or Member is dissolved, subject to a deposit in the Fund by the retired employee or Member of an amount determined by the Office, as nearly as may be administratively feasible, to reflect the amount by which the annuity of such employee or Member would have been reduced if the election had been continuously in effect since the date the annuity commenced, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which the annuity would have been reduced if the election had been in effect since the date the annuity commenced shall be 6 percent. The Office shall, by regulation, provide for payment of the deposit required under this paragraph by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under this paragraph, except that the total reductions in the annuity of an employee or Member to pay deposits required by the provisions of this paragraph, paragraph (5), or subsection (k)(2) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), (q), and (r), including adjustments under section 8340. The reduction, which shall be effective on the same date as the election under this paragraph, shall be permanent and unaffected by any future termination of the entitlement of the former spouse. Such reduction shall be independent of and in addition to the reduction required under the first sentence of this paragraph. An election under this paragraph—

(A) shall not be effective to the extent that it—

(i) conflicts with—

(I) any court order or decree referred to in subsection (h)(1) of section 8341 of this title, which was issued before the date of such election; or

(II) any agreement referred to in such subsection which was entered into before such date; or

(ii) would cause the total of survivor annuities payable under subsections (b), (d), (f), and (h) of section 8341 of this title based on the service of the employee or Member to exceed 55 percent of the annuity to which the employee or Member is entitled under subsections (a)-(i), (n), (q), (r), and (s); and

(B) shall not be effective, in the case of an employee or Member who is then married, unless it is made with the spouse's written consent.

The Office shall provide by regulation that subparagraph (B) of this paragraph may be waived for either of the reasons set forth in the last sentence of paragraph (1) of this subsection. In the case of a retired employee or Member whose annuity is being reduced in order to provide a survivor annuity for a former spouse, an election to provide or increase a survivor annuity for any other former spouse (and to continue an appropriate reduction) may be made within the same period that, and subject to the same conditions under which, an election could be made under paragraph (5)(B) of this subsection for a current spouse (subject to the provisions of this paragraph relating to consent of a current spouse, if the retired employee or Member is then married). The opportunity to make an election under the preceding sentence is in addition to any opportunity otherwise afforded under this paragraph.

(4) In order to provide a survivor annuity or combination of survivor annuities under subsections (b), (d), (f), and (h) of section 8341 of this title, the annuity of an employee or Member (or any designated portion or portions thereof) is reduced by 2½ percent of the first \$3,600 thereof plus 10 percent of so much thereof as exceeds \$3,600.

(5)(A) Any reduction in an annuity for the purpose of providing a survivor annuity for the current spouse of a retired employee or Member shall be terminated for each full month—

(i) after the death of the spouse, or

(ii) after the dissolution of the spouse's marriage to the employee or Member, except that an appropriate reduction shall be made thereafter if the spouse is entitled, as a former spouse, to a survivor annuity under section 8341(h) of this title.

(B) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse of a retired employee or Member shall be terminated for each full month after the former spouse remarries before reaching age 55 or dies. This reduction shall be replaced by an appropriate reduction or reductions under paragraph (4) of this subsection if the retired employee or Member has (i) another former spouse who is entitled to a survivor annuity under section 8341(h) of this title, (ii) a current spouse to whom the employee or Member was married at the time of retirement and with respect to whom a survivor annuity was not jointly waived under paragraph (1) of this subsection, or (iii) a current spouse whom the employee or Member married after retirement and with respect to whom an election has been made under subparagraph (C) of this paragraph or subsection (k)(2) of this section.

(C)(i) Upon remarriage, a retired employee or Member who was married at the time of retirement (including an employee or Member whose annuity was not reduced to provide a survivor annuity for the employee or Member's spouse or former spouse as of the time of retirement) may irrevocably elect during such marriage, in a

signed writing received by the Office within 2 years after such remarriage or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8341(h) of this title (or of the last such surviving former spouse, if there was more than one), a reduction in the employee or Member's annuity under paragraph (4) of this subsection for the purpose of providing an annuity for such employee or Member's spouse in the event such spouse survives the employee or Member.

(ii) Such election and reduction shall be effective the first day of the second month after the election is received by the Office, but not less than 9 months after the date of the remarriage, and the retired employee or Member shall deposit in the Fund an amount determined by the Office of Personnel Management, as nearly as may be administratively feasible, to reflect the amount by which the annuity of such retired employee or Member would have been reduced if the election had been in effect since the date of retirement or, if later, the date the previous reduction in such retired employee or Member's annuity was terminated under subparagraph (A) or (B) of this paragraph, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which an annuity would have been reduced if the election had been in effect on and after the applicable date referred to in such sentence shall be 6 percent.

(iii) The Office shall, by regulation, provide for payment of the deposit required under clause (ii) by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under clause (ii), except that total reductions in the annuity of an employee or Member to pay deposits required by the provisions of this paragraph or paragraph (3) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), (q), and (r), including adjustments under section 8340. The reduction required by this clause, which shall be effective on the same date as the election under clause (i), shall be permanent and unaffected by any future termination of the marriage. Such reduction shall be independent of and in addition to the reduction required under clause (i).

(iv) Notwithstanding any other provision of this subparagraph, an election under this subparagraph may not be made for the purpose of providing an annuity in the case of a spouse by remarriage if such spouse was married to the employee or Member at the time of such employee or Member's retirement, and all rights to survivor benefits for such spouse under this chapter based on marriage to such employee or Member were then waived under paragraph (1) of this subsection or a similar prior provision of law.

(v) An election to provide a survivor annuity to a person under this subparagraph—

(I) shall prospectively void any election made by the employee or Member under subsection (k)(1) of this section with respect to such person; or

(II) shall, if an election was made by the employee or Member under such subsection (k)(1) with respect to a different person, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subparagraph.

(vi) The deposit provisions of clauses (ii) and (iii) of this subparagraph shall not apply if—

(I) the employee or Member makes an election under this subparagraph after having made an election under subsection (k)(1) of this section; and

(II) the election under such subsection (k)(1) becomes void under clause (v) of this subparagraph.

(k)(1) At the time of retiring under section 8336 or 8338 of this title, an employee or Member who is found to be in good health by the Office may elect a reduced annuity instead of an annuity computed under subsections (a)–(i), (n), (q), (r), and (s) and name in writing an individual having an insurable interest in the employee or Member to receive an annuity under section 8341(c) of this title after the death of the retired employee or Member. The annuity of the employee or Member making the election is reduced by 10 percent, and by 5 percent for each full 5 years the individual named is younger than the retiring employee or Member. However, the total reduction may not exceed 40 percent. An annuity which is reduced under this paragraph or any similar prior provision of law shall, effective the first day of the month following the death of the individual named under this paragraph, be recomputed and paid as if the annuity had not been so reduced. In the case of a married employee or Member, an election under this paragraph on behalf of the spouse may be made only if any right of such spouse to a survivor annuity based on the service of such employee or Member is waived in accordance with subsection (j)(1) of this section.

(2)(A) An employee or Member, who is unmarried at the time of retiring under a provision of law which permits election of a reduced annuity with a survivor annuity payable to such employee or Member's spouse and who later marries, may irrevocably elect, in a signed writing received in the Office within 2 years after such employee or Member marries or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8341(h) of this title (or of the last such surviving former spouse, if there was more than one), a reduction in the retired employee or Member's current annuity as provided in subsection (j) of this section.

(B)(i) The election and reduction shall take effect on the first day of the first month beginning after the expiration of the 9-month period beginning on the date of marriage. Any such election to provide a survivor annuity for a person—

(I) shall prospectively void any election made by the employee or Member under paragraph (1) of this subsection with respect to such person; or

(II) shall, if an election was made by the employee or Member under such paragraph with

respect to a different person, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this paragraph.

(ii) The retired employee or Member shall deposit in the Fund an amount determined by the Office of Personnel Management, as nearly as may be administratively feasible, to reflect the amount by which the retired employee or Member's annuity would have been reduced under subsection (j)(4) of this section since the commencing date of the annuity, if the employee or Member had been married at the time of retirement and had elected to provide a survivor annuity at that time, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which the annuity would have been reduced if the election had been in effect since the date of the annuity commenced shall be 6 percent.

(C) The Office shall, by regulation, provide for payment of the deposit required under subparagraph (B)(ii) by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under subparagraph (B)(ii), except that total reductions in the annuity of an employee or Member to pay deposits required by this subsection or subsection (j)(3) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), (q), and (r), including adjustments under section 8340. The reduction required by this subparagraph, which shall be effective on the same date as the election under subparagraph (A), shall be permanent and unaffected by any future termination of the marriage. Such reduction shall be independent of and in addition to the reduction required under subparagraph (A).

(D) Subparagraphs (B)(ii) and (C) of this paragraph shall not apply if—

(i) the employee or Member makes an election under this paragraph after having made an election under paragraph (1) of this subsection; and

(ii) the election under such paragraph (1) becomes void under subparagraph (B)(i) of this paragraph.

(l) The annuity computed under subsections (a)–(k), (n), (q), (r), and (s) for an employee who is a citizen of the United States is increased by \$36 for each year of service in the employ of—

(1) the Alaska Engineering Commission, or The Alaska Railroad, in Alaska between March 12, 1914, and July 1, 1923; or

(2) the Isthmian Canal Commission, or the Panama Railroad Company, on the Isthmus of Panama between May 4, 1904, and April 1, 1914.

(m) In computing any annuity under subsections (a) through (e), (n), (q), (r), and (s), the total service of an employee who retires on an immediate annuity or dies leaving a survivor or survivors entitled to annuity includes, without regard to the limitations imposed by subsection (f) of this section, the days of unused sick leave to his credit under a formal leave system, except that these days will not be counted in determin-

ing average pay or annuity eligibility under this subchapter. For the purpose of this subsection, in the case of any such employee who is excepted from subchapter I of chapter 63 of this title under section 6301(2)(x)–(xiii) of this title, the days of unused sick leave to his credit include any unused sick leave standing to his credit when he was excepted from such subchapter.

(n) The annuity of an employee who is a Court of Federal Claims judge, bankruptcy judge, or United States magistrate judge is computed, with respect to service as a Court of Federal Claims judge, as a commissioner of the Court of Claims, as a referee in bankruptcy, as a bankruptcy judge, as a United States magistrate judge, and as a United States commissioner, and with respect to the military service of any such individual (not exceeding 5 years) creditable under section 8332 of this title, by multiplying 2½ percent of the individual's average pay by the years of that service.

(o)(1)(A) An employee or Member—

(i) who, at the time of retirement, is married, and

(ii) who notifies the Office at such time (in accordance with subsection (j)) that a survivor annuity under section 8341(b) of this title is not desired,

may, during the 18-month period beginning on the date of the retirement of such employee or Member, elect to have a reduction under subsection (j) made in the annuity of the employee or Member (or in such portion thereof as the employee or Member may designate) in order to provide a survivor annuity for the spouse of such employee or Member.

(B) An employee or Member—

(i) who, at the time of retirement, is married, and

(ii) who at such time designates (in accordance with subsection (j)) that a limited portion of the annuity of such employee or Member is to be used as the base for a survivor annuity under section 8341(b) of this title,

may, during the 18-month period beginning on the date of the retirement of such employee or Member, elect to have a greater portion of the annuity of such employee or Member so used.

(2)(A) An election under subparagraph (A) or (B) of paragraph (1) of this subsection shall not be considered effective unless the amount specified in subparagraph (B) of this paragraph is deposited into the Fund before the expiration of the applicable 18-month period under paragraph (1).

(B) The amount to be deposited with respect to an election under this subsection is an amount equal to the sum of—

(i) the additional cost to the System which is associated with providing a survivor annuity under subsection (b)(2) of this section and results from such election taking into account (I) the difference (for the period between the date on which the annuity of the participant or former participant commences and the date of the election) between the amount paid to such participant or former participant under this subchapter and the amount which would have been paid if such election had been made

at the time the participant or former participant applied for the annuity, and (II) the costs associated with providing for the later election; and

(ii) interest on the additional cost determined under clause (i) of this subparagraph computed using the interest rate specified or determined under section 8334(e) of this title for the calendar year in which the amount to be deposited is determined.

(3) An election by an employee or Member under this subsection voids prospectively any election previously made in the case of such employee or Member under subsection (j).

(4) An annuity which is reduced in connection with an election under this subsection shall be reduced by the same percentage reductions as were in effect at the time of the retirement of the employee or Member whose annuity is so reduced.

(5) Rights and obligations resulting from the election of a reduced annuity under this subsection shall be the same as the rights and obligations which would have resulted had the employee or Member involved elected such annuity at the time of retiring.

(6) The Office shall, on an annual basis, inform each employee or Member who is eligible to make an election under this subsection of the right to make such election and the procedures and deadlines applicable to such election.

(p)(1) In computing an annuity under this subchapter for an employee whose service includes service that was performed on a part-time basis—

(A) the average pay of the employee, to the extent that it includes pay for service performed in any position on a part-time basis, shall be determined by using the annual rate of basic pay that would be payable for full-time service in the position; and

(B) the benefit so computed shall then be multiplied by a fraction equal to the ratio which the employee's actual service, as determined by prorating an employee's total service to reflect the service that was performed on a part-time basis, bears to the total service that would be creditable for the employee if all of the service had been performed on a full-time basis.

(2) For the purpose of this subsection, employment on a part-time basis shall not be considered to include employment on a temporary or intermittent basis.

(3) In the administration of paragraph (1)—

(A) subparagraph (A) of such paragraph shall apply with respect to service performed before, on, or after April 7, 1986; and

(B) subparagraph (B) of such paragraph—

(i) shall apply with respect to that portion of any annuity which is attributable to service performed on or after April 7, 1986; and

(ii) shall not apply with respect to that portion of any annuity which is attributable to service performed before April 7, 1986.

(q) The annuity of a member of the Capitol Police, or former member of the Capitol Police, retiring under this subchapter is computed in accordance with subsection (b), except that, in the case of a member who retires under section

8335(c) or 8336(m), and who meets the requirements of subsection (b)(2), the annuity of such member is—

(1) 2½ percent of the member's average pay multiplied by so much of such member's total service as does not exceed 20 years; plus

(2) 2 percent of the member's average pay multiplied by so much of such member's total service as exceeds 20 years.

(r) The annuity of a member of the Supreme Court Police, or former member of the Supreme Court Police, retiring under this subchapter is computed in accordance with subsection (d).

(s)¹ The annuity of a Member who has served in a position in the executive branch for which the rate of basic pay was reduced for the duration of the service of the Member in that position to remove the impediment to the appointment of the Member imposed by article I, section 6, clause 2 of the Constitution, shall, subject to a deposit in the Fund as provided under section 8334(m), be computed as though the rate of basic pay which would otherwise have been in effect during that period of service had been in effect.

(s)(1)¹ For purposes of this subsection, the term "physicians comparability allowance" refers to an amount described in section 8331(3)(H).

(2) Except as otherwise provided in this subsection, no part of a physicians comparability allowance shall be treated as basic pay for purposes of any computation under this section unless, before the date of the separation on which entitlement to annuity is based, the separating individual has completed at least 15 years of service as a Government physician (whether performed before, on, or after the date of the enactment of this subsection).

(3) If the condition under paragraph (2) is met, then, any amounts received by the individual in the form of a physicians comparability allowance shall (for the purposes referred to in paragraph (2)) be treated as basic pay, but only to the extent that such amounts are attributable to service performed on or after the date of the enactment of this subsection, and only to the extent of the percentage allowable, which shall be determined as follows:

If the total amount of service

performed, on or after the date of the enactment of this subsection, Then, the percentage allowable is:

as a Government physician is:	
Less than 2 years	0
At least 2 but less than 4 years	25
At least 4 but less than 6 years	50
At least 6 but less than 8 years	75
At least 8 years	100.

(4) Notwithstanding any other provision of this subsection, 100 percent of all amounts received as a physicians comparability allowance shall, to the extent attributable to service performed on or after the date of the enactment of this subsection, be treated as basic pay (without regard to any of the preceding provisions of this subsection) for purposes of computing—

(A) an annuity under subsection (g); and

(B) a survivor annuity under section 8341, if based on the service of an individual who dies before separating from service.

¹ So in original. Two subsecs. (s) have been enacted.

(u)² The annuity of an employee retiring under this subchapter with service credited under section 8332(b)(17) shall be reduced by the amount necessary to ensure that the present value of the annuity payable to the employee is actuarially equivalent to the present value of the annuity that would be payable to the employee under this subchapter if it were computed—

(1) on the basis of service that does not include service credited under section 8332(b)(17); and

(2) assuming the employee separated from service on the actual date of the separation of the employee.

The amount of the reduction shall be computed under regulations prescribed by the Office of Personnel Management for the administration of this subsection.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 574; Pub. L. 90-83, §1(78), Sept. 11, 1967, 81 Stat. 214; Pub. L. 90-206, title II, §224(b), Dec. 16, 1967, 81 Stat. 642; Pub. L. 90-486, §5(c), Aug. 13, 1968, 82 Stat. 757; Pub. L. 91-93, title II, §203, Oct. 20, 1969, 83 Stat. 139; Pub. L. 91-658, §2, Jan. 8, 1971, 84 Stat. 1961; Pub. L. 92-297, §§6, 7(3), May 16, 1972, 86 Stat. 144; Pub. L. 93-260, §2(a), Apr. 9, 1974, 88 Stat. 76; Pub. L. 93-350, §6, July 12, 1974, 88 Stat. 356; Pub. L. 93-474, §1, Oct. 26, 1974, 88 Stat. 1438; Pub. L. 94-126, §1(b), Nov. 12, 1975, 89 Stat. 679; Pub. L. 94-397, §1(d), Sept. 3, 1976, 90 Stat. 1203; Pub. L. 95-256, §5(d), Apr. 6, 1978, 92 Stat. 191; Pub. L. 95-317, §§1(a), (c), 2, July 10, 1978, 92 Stat. 382; Pub. L. 95-454, title IV, §412(b), title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1175, 1224; Pub. L. 95-519, §3, Oct. 25, 1978, 92 Stat. 1819; Pub. L. 95-598, title III, §338(a), Nov. 6, 1978, 92 Stat. 2681; Pub. L. 96-54, §2(a)(49), Aug. 14, 1979, 93 Stat. 384; Pub. L. 96-70, title I, §1242(a), Sept. 27, 1979, 93 Stat. 472; Pub. L. 96-135, §1(b), (c), Dec. 5, 1979, 93 Stat. 1057; Pub. L. 96-391, §1, Oct. 7, 1980, 94 Stat. 1557; Pub. L. 96-499, title IV, §404(a), Dec. 5, 1980, 94 Stat. 2606; Pub. L. 97-253, title III, §303(b), Sept. 8, 1982, 96 Stat. 794; Pub. L. 97-276, §151(f), Oct. 2, 1982, 96 Stat. 1202; Pub. L. 98-94, title XII, §1256(e), Sept. 24, 1983, 97 Stat. 702; Pub. L. 98-249, §3(a), Mar. 31, 1984, 98 Stat. 117; Pub. L. 98-271, §3(a), Apr. 30, 1984, 98 Stat. 163; Pub. L. 98-299, §3(a), May 25, 1984, 98 Stat. 214; Pub. L. 98-325, §3(a), June 20, 1984, 98 Stat. 268; Pub. L. 98-353, title I, §§112, 116(d), 121(f), July 10, 1984, 98 Stat. 343, 344, 346; Pub. L. 98-531, §2(c), Oct. 19, 1984, 98 Stat. 2704; Pub. L. 98-615, §2(3), Nov. 8, 1984, 98 Stat. 3195; Pub. L. 99-251, title II, §203(a)-(c), title III, §307(a), Feb. 27, 1986, 100 Stat. 23, 24, 28; Pub. L. 99-272, title XV, §15204(a)(1), Apr. 7, 1986, 100 Stat. 334; Pub. L. 100-53, §2(d), June 18, 1987, 101 Stat. 368; Pub. L. 101-194, title V, §506(b)(8), Nov. 30, 1989, 103 Stat. 1759; Pub. L. 101-428, §2(c)(1), (d)(2)-(6), Oct. 15, 1990, 104 Stat. 928, 929; Pub. L. 101-508, title VII, §7001(b)(2)(B), (C), Nov. 5, 1990, 104 Stat. 1388-329; Pub. L. 101-510, div. C, title XXXV, §3506(b), Nov. 5, 1990, 104 Stat. 1847; Pub. L. 101-650, title III, §306(c)(4), 321, Dec. 1, 1990, 104 Stat. 5110, 5117; Pub. L. 102-54, §13(b)(4), June 13, 1991, 105 Stat. 274; Pub. L. 102-198, §7(b), Dec. 9, 1991, 105 Stat. 1624; Pub. L. 102-378, §2(62), Oct. 2, 1992, 106 Stat.

1354; Pub. L. 102-572, title IX, §902(b)(2), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103-66, title XI, §11004(a)(1), (2), Aug. 10, 1993, 107 Stat. 410, 411; Pub. L. 103-337, div. A, title IX, §924(d)(1)(A), Oct. 5, 1994, 108 Stat. 2832; Pub. L. 104-106, div. A, title XV, §1505(b)(3), Feb. 10, 1996, 110 Stat. 514; Pub. L. 105-61, title V, §516(a)(3), Oct. 10, 1997, 111 Stat. 1306; Pub. L. 105-261, div. A, title XI, §1109(c)(1), Oct. 17, 1998, 112 Stat. 2145; Pub. L. 106-58, title VI, §651(b), Sept. 29, 1999, 113 Stat. 480; Pub. L. 106-398, §1 [[div. A], title X, §1087(f)(4), title XI, §1152(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-293, 1654A-322; Pub. L. 106-553, §1(a)(2) [title III, §308(b)(4), (h)(2)-(6)], Dec. 21, 2000, 114 Stat. 2762, 2762A-87 to 2762A-89; Pub. L. 106-554, §1(a)(4) [div. B, title I, §141(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-235; Pub. L. 106-571, §3(b)(1), Dec. 28, 2000, 114 Stat. 3055; Pub. L. 107-107, div. A, title XI, §1132(a)(3), Dec. 28, 2001, 115 Stat. 1243; Pub. L. 107-296, title XIII, §1321(a)(4)(B), Nov. 25, 2002, 116 Stat. 2297; Pub. L. 111-84, div. A, title XIX, §1903(a), Oct. 28, 2009, 123 Stat. 2616.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 2259.	July 31, 1956, ch. 804, §401 "Sec. 9", 70 Stat. 752. July 7, 1960, Pub. L. 86-604, §1(d), (e), 74 Stat. 358. July 12, 1960, Pub. L. 86-622, §2(b), 74 Stat. 410. Oct. 4, 1961, Pub. L. 87-350, §6, 75 Stat. 772. Oct. 11, 1962, Pub. L. 87-793, §1103(a), 76 Stat. 870.

The section is reorganized to eliminate repetition. In subsection (f)(2), the words "service of the type last performed" are substituted for "total service" in former section 2259(a), "service as a Congressional employee" in former section 2259(b), and "Member service" in former section 2259(c).

In subsection (i), the words "by the employee or Member at the time of retirement" are added on authority of former section 2260(a)(1), which is carried into section 8341(b).

In subsection (j), the words "an annuity computed as provided in section 2259 of this title" and "an annuity so computed" are omitted as unnecessary as former sections 2256 and 2258, which are carried into this title as sections 8336 and 8338, respectively, expressly require that the annuities authorized thereby must be computed under former section 2259, which is carried into this section.

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

Section of title 5	Source (U.S. Code)	Source (Statutes at Large)
8339(g)	5 App.: 2259(d).	July 18, 1966, Pub. L. 89-504, §505, 80 Stat. 301.

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (s), is the date of enactment of Pub. L. 106-571, which was approved Dec. 28, 2000.

AMENDMENTS

2009—Subsec. (p)(3). Pub. L. 111-84 added par. (3).
2002—Subsec. (h). Pub. L. 107-296 struck out before period at end of first sentence " , except that such reduc-

² So in original. No subsec. (t) has been enacted.

tion shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive”.

2001—Subsec. (u). Pub. L. 107-107 added subsec. (u).

2000—Subsec. (f). Pub. L. 106-553, §1(a)(2) [title III, §308(h)(2)], substituted “subsections (a) through (e), (n), (q), (r), and (s)” for “subsections (a)–(e), (n), (q), and (r)” in introductory provisions.

Subsec. (g). Pub. L. 106-553, §1(a)(2) [title III, §308(h)(3)(B)], substituted “(q), (r), or (s)” for “(q), or (r)” in two places in concluding provisions.

Pub. L. 106-398, §1 [[div. A], title X, §1087(f)(4)], struck out “the application of the limitation in section 5532 of this title, or” after “received but for” in concluding provisions.

Subsec. (g)(2). Pub. L. 106-553, §1(a)(2) [title III, §308(h)(3)(A)], substituted “subsections (a) through (c), (n), (q), (r), or (s)” for “subsections (a)–(c), (n), (q), or (r)”.

Subsec. (h). Pub. L. 106-398, §1 [[div. A], title XI, §1152(c)(1)], substituted “(j), or (o)” for “or (j)” in first sentence.

Subsec. (i). Pub. L. 106-553, §1(a)(2) [title III, §308(h)(4)], substituted “(a)–(h), (n), (q), (r), or (s)” for “(a)–(h), (n), (q), and (r)” in introductory provisions.

Subsecs. (j), (k)(1). Pub. L. 106-553, §1(a)(2) [title III, §308(h)(5)], substituted “(a)–(i), (n), (q), (r), and (s)” for “(a)–(i), (n), (q), and (r)” wherever appearing.

Subsec. (l). Pub. L. 106-553, §1(a)(2) [title III, §308(h)(6)], substituted “(a)–(k), (n), (q), (r), and (s)” for “(a)–(k), (n), (q), and (r)” in introductory provisions.

Subsec. (m). Pub. L. 106-553, §1(a)(2) [title III, §308(h)(2)], substituted “subsections (a) through (e), (n), (q), (r), and (s)” for “subsections (a)–(e), (n), (q), and (r)”.

Subsec. (q). Pub. L. 106-554 substituted “8335(c)” for “8335(d)”.

Subsec. (r). Pub. L. 106-553, §1(a)(2) [title III, §308(b)(4)], added subsec. (r). Former subsec. (r), relating to the annuity of a Member who has served in a position in the executive branch, redesignated (s).

Subsec. (s). Pub. L. 106-571 added subsec. (s), relating to physicians comparability allowance.

Pub. L. 106-553, §1(a)(2) [title III, §308(b)(4)], redesignated subsec. (r), relating to computation of annuity of a Member who has served in a position in the executive branch, as (s).

1999—Subsec. (h). Pub. L. 106-58 repealed Pub. L. 105-261, §1109(c)(1). See 1998 Amendment note below.

1998—Subsec. (h). Pub. L. 105-261, §1109(c)(1), which directed substitution of “(j), or (o)” for “or (j)” in the first sentence, was repealed by Pub. L. 106-58.

1997—Subsec. (f). Pub. L. 105-61, §516(a)(3)(A), substituted “(q), and (r)” for “and (q) of this section”.

Subsec. (g). Pub. L. 105-61, §516(a)(3)(B), substituted “(q), or (r)” for “or (q) of this section” in par. (2) and in two places in concluding provisions.

Subsecs. (i) to (m). Pub. L. 105-61, §516(a)(3)(A), substituted “(q), and (r)” for “and (q)” and “and (q) of this section” wherever appearing.

Subsec. (r). Pub. L. 105-61, §516(a)(3)(C), added subsec. (r).

1996—Subsec. (d)(7). Pub. L. 104-106 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

1994—Subsec. (d)(6). Pub. L. 103-337, which directed amendment of par. (6) by substituting “Court of Appeals for the Armed Forces” for “Court of Military Appeals”, could not be executed because the words “Court of Military Appeals” did not appear in par. (6).

Subsec. (h). Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

1993—Subsec. (j)(3). Pub. L. 103-66, §11004(a)(1)(A)(i), struck out “, within such 2-year period,” after “retired employee or Member” in second sentence.

Pub. L. 103-66, §11004(a)(1)(A)(ii), substituted fourth through seventh sentences for former fourth sentence which read as follows: “If the employee or Member does not make such a deposit, the Office shall collect the

amount of the deposit by offset against the employee or Member’s annuity, up to a maximum of 25 percent of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset.”

Subsec. (j)(5)(C)(ii). Pub. L. 103-66, §11004(a)(1)(B)(i), struck out “, within 2 years after the date of the remarriage or, if later, the death or remarriage of the former spouse (or of the last such surviving former spouse),” after “employee or Member shall”.

Subsec. (j)(5)(C)(iii). Pub. L. 103-66, §11004(a)(1)(B)(ii), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “If the employee or Member does not make such deposit, the Office shall collect such amount by offset against the employee or Member’s annuity, up to a maximum of 25 percent of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset.”

Subsec. (k)(2)(B)(ii). Pub. L. 103-66, §11004(a)(2)(A), which directed amendment of cl. (ii) by substituting in first sentence “The retired employee” for “Within 2 years after the date of the marriage, the retired employee”, was executed by making the substitution for “Within 2 years after the date of marriage, the retired employee” to reflect the probable intent of Congress.

Subsec. (k)(2)(C). Pub. L. 103-66, §11004(a)(2)(B), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “If the employee or Member does not make such deposit, the Office shall collect such amount by offset against the employee or Member’s annuity, up to a maximum of 25 percent of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset.”

1992—Subsec. (n). Pub. L. 102-572 substituted “Court of Federal Claims” for “Claims Court” in two places.

Subsecs. (o), (p). Pub. L. 102-378, §2(62), redesignated subsec. (o), relating to employee whose service includes service performed on part-time basis, as (p).

1991—Subsec. (g). Pub. L. 102-54 substituted “pension or compensation from the Department of Veterans Affairs” for “Veterans’ Administration pension or compensation” in second and third sentences.

Subsec. (n). Pub. L. 102-198 inserted a comma after “United States commissioner”.

1990—Subsec. (d)(3) to (7). Pub. L. 101-510 added par. (3) and redesignated former pars. (3) to (6) as (4) to (7), respectively.

Subsec. (e). Pub. L. 101-508, §7001(b)(2)(C), substituted “8334(d)(1)” for “8334(d)”.

Subsec. (f). Pub. L. 101-428, §2(d)(2), substituted “(a)–(e), (n), and (q)” for “(a)–(e) and (n)”.

Subsec. (g). Pub. L. 101-428, §2(d)(3)(B), substituted “(c), (n), or (q)” for “(c), or (n)” wherever appearing in closing provisions.

Subsec. (g)(2). Pub. L. 101-428, §2(d)(3)(A), substituted “(a)–(c), (n), or (q)” for “(a)–(c) or (n)”.

Subsec. (i). Pub. L. 101-428, §2(d)(4), substituted “(a)–(h), (n), and (q)” for “(a)–(h) and (n)”.

Subsec. (i)(1). Pub. L. 101-508, §7001(b)(2)(B), substituted “(d)(1)” for “(d)”.

Subsec. (j). Pub. L. 101-428, §2(d)(5), substituted “(a)–(i), (n), and (q)” for “(a)–(i) and (n)” in pars. (1) and (2), and in introductory provisions and subpar. (A)(ii) of par. (3).

Subsec. (k)(1). Pub. L. 101-428, §2(d)(5), substituted “(a)–(i), (n), and (q)” for “(a)–(i) and (n)”.

Subsec. (l). Pub. L. 101-428, §2(d)(6), substituted “(a)–(k), (n), and (q)” for “(a)–(k) and (n)”.

Subsec. (m). Pub. L. 101-428, §2(d)(2), substituted “(a)–(e), (n), and (q)” for “(a)–(e) and (n)”.

Subsec. (n). Pub. L. 101-650 amended subsec. (n) generally. Prior to amendment, subsec. (n) read as follows: “The annuity of an employee who is a bankruptcy judge or United States magistrate is computed, with respect to service as a referee in bankruptcy, as a bankruptcy judge, as a United States magistrate, and as a United States commissioner and with respect to the military service of any such individual (not exceeding

5 years) creditable under section 8332 of this title, by multiplying 2½ percent of the individual's average pay by the years of that service."

Subsec. (q). Pub. L. 101-428, § 2(c)(1), added subsec. (q).
1989—Subsec. (h). Pub. L. 101-194 inserted ", except that such reduction shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive" before period at end of first sentence.

1987—Subsec. (n). Pub. L. 100-53 amended subsec. (n) generally. Prior to amendment, subsec. (n) read as follows: "The annuity of an employee who is a bankruptcy judge is computed with respect to service after as a referee in bankruptcy and as a bankruptcy judge and his military service (not exceeding five years) creditable under section 8332 of this title by multiplying 2½ percent of his average annual pay by the years of that service."

1986—Subsec. (j)(3). Pub. L. 99-251, § 203(a), inserted ", unless all rights to survivor benefits for such former spouse under this subchapter based on marriage to such employee or Member were waived under paragraph (1) of this subsection" at end of first sentence.

Subsec. (j)(5)(B). Pub. L. 99-251, § 203(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

"(B)(i) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse of a retired employee or Member shall be terminated for each full month after the former spouse remarries before reaching age 55 or dies, unless the employee or Member elects, within 2 years after the former spouse's death or remarriage, to continue the reduction in order to provide a survivor annuity or increase the survivor annuity for the current spouse of the retired employee or Member.

"(ii) Notwithstanding clause (i) of this subparagraph—

"(I) a reduction in an annuity shall not be terminated under such clause, and

"(II) an election made under such clause with respect to a current spouse after a remarriage before age 55 or the death of a former spouse shall not be effective,

if, and to the extent that, continuation of the reduction is necessary in order to provide for any survivor annuity, or any increase in a survivor annuity, which becomes payable under section 8341(h)(2) of this title to any other former spouse as a result of such remarriage or death."

Subsec. (j)(5)(C)(v), (vi). Pub. L. 99-251, § 203(c)(1), added cls. (v) and (vi).

Subsec. (k)(1). Pub. L. 99-251, § 203(c)(2), inserted at end "In the case of a married employee or Member, an election under this paragraph on behalf of the spouse may be made only if any right of such spouse to a survivor annuity based on the service of such employee or Member is waived in accordance with subsection (j)(1) of this section."

Subsec. (k)(2)(B)(i). Pub. L. 99-251, § 203(c)(3)(A), substituted provisions directing that the election and reduction shall take effect on the first day of the first month beginning after the expiration of the 9-month period beginning on the date of marriage and that any such election to provide a survivor annuity for a person shall prospectively void any election made by the employee or Member under paragraph (1) of this subsection with respect to such person, or shall, if an election was made by the employee or Member under such paragraph with respect to a different person, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this paragraph, for provisions which directed that the election and reduction had to take effect the first day of the first month beginning 9 months after the date of marriage and would prospectively void any election previously made under paragraph (1) of this subsection.

Subsec. (k)(2)(B)(ii). Pub. L. 99-251, § 203(c)(3)(B), struck out "(other than an employee or Member who

made a previous election under paragraph (1) of this subsection)" after "retired employee or Member".

Subsec. (k)(2)(D). Pub. L. 99-251, § 203(c)(3)(C), added subpar. (D).

Subsec. (o). Pub. L. 99-272 added subsec. (o), set out second, relating to computation of annuities for part-time service.

Pub. L. 99-251, § 307(a), added subsec. (o), set out first, relating to 18-month period for election of survivor annuities.

1984—Subsec. (f). Pub. L. 98-353, § 112, substituted "and (n)" for "and (o)".

Subsec. (g). Pub. L. 98-353, § 116(d)(1), (2), inserted "(n)" after "(c)" in par. (2), and substituted "(c), or (n)" for "(c)" in two places in provisions following par. (2).

Subsec. (j)(1). Pub. L. 98-615, § 2(3)(A), substituted provisions that at the time of retirement an employee's pension will be reduced to provide survivor benefits to the spouse unless the employee or Member and the spouse jointly waive the spouse's right to the survivor annuity in a written statement filed with the Office of Personnel Management which shall be made in accordance with such requirements as prescribed by the Office by regulation and which shall be irrevocable and that the Office, by regulation, must provide that an employee may waive the survivor annuity without the spouse's consent only when the spouse's whereabouts are unknown to the employee or, due to exceptional circumstances it would be inappropriate to require the employee to seek the spouse's consent for provisions that at the time of retirement an employee's pension would be reduced by 2½ percent of so much thereof as did not exceed \$3,600 and by 10 percent of so much thereof as exceeded that amount, unless the employee or member notified the Office of Personnel Management in writing at the time of retirement that he did not desire any surviving spouse to receive an annuity under section 8341(b) of this title, and struck out provisions for the restoration to the employee or Member of his full pension, as if such reduction had not taken place, for each full month in which such employee or Member was not married, and providing the employee or Member a right of irrevocable election of reduction for the benefit of a subsequent spouse, in the event of remarriage, in an amount equal to the prior reduction, to take effect 1 year after remarriage.

Pub. L. 98-353, § 112, substituted "and (n)" for "and (o)".

Subsec. (j)(2). Pub. L. 98-615, § 2(3)(A), substituted provision that if an employee or Member has a former spouse who is entitled to a survivor annuity as provided in section 8341(h) of this title, the annuity of the employee or Member computed under subsecs. (a)-(i) and (n) (or any designated portion of the annuity, in the event that the former spouse is entitled to less than 55 percent of the employee or Member's annuity) is reduced as provided in par. (4) for provision that any written notification (or designation) by any employee or Member under the first sentence of par. (1) would not be considered valid unless the employee or Member established to the satisfaction of the Office that the spouse had been notified of the loss of or reduction in survivor benefits or that the employee or Member had complied with such notification requirements as the Office would, by regulation, prescribe.

Subsec. (j)(3) to (5). Pub. L. 98-615, § 2(3)(A), added pars. (3) to (5).

Subsec. (k)(1). Pub. L. 98-615, § 2(3)(B), substituted "an employee or Member" for "an unmarried employee or Member".

Pub. L. 98-353, § 112, substituted "and (n)" for "and (o)".

Subsec. (k)(2). Pub. L. 98-615, § 2(3)(C), designated existing provisions as subpar. (A), substituted "such employee or Member's spouse" for "his spouse" and "within 2 years after such employee or Member marries or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8341(h)

of this title (or of the last such surviving former spouse, if there was more than one), a reduction in the retired employee or Member's current annuity as provided in subsection (j) of this section" for "within 1 year after he marries, a reduction in his current annuity as provided in subsection (j) of this section. The reduced annuity shall be effective the first day of the first month beginning 1 year after the date of marriage. The election voids prospectively any election previously made under paragraph (1) of this subsection", and added subpars. (B) and (C).

Subsec. (l). Pub. L. 98-353, §112, substituted "and (n)" for "and (o)" in provisions preceding par. (1).

Subsec. (m). Pub. L. 98-353, §112, substituted "and (n)" for "and (o)".

Subsec. (n). Pub. L. 98-531 substituted "as a referee in bankruptcy and" for "March 31, 1979, and before the date of the enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984".

Pub. L. 98-353, §121(f), substituted "the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984" for "June 28, 1984".

Pub. L. 98-353, §116(d)(3), substituted "as a referee in bankruptcy and" for "March 31, 1979, and before June 27, 1984".

Pub. L. 98-325 substituted "June 28, 1984" for "June 21, 1984".

Pub. L. 98-299 substituted "June 21, 1984" for "May 26, 1984".

Pub. L. 98-271 substituted "May 26, 1984" for "April 1, 1984".

Pub. L. 98-249 which purported to amend subsec. (o) by substituting "May 1, 1984" for "April 1, 1984" was probably intended as an amendment of subsec. (n). See amendment of subsec. (n) by Pub. L. 98-271.

1983—Subsec. (d)(6). Pub. L. 98-94, §1256(e)(1), added par. (6).

Subsec. (h). Pub. L. 98-94, §1256(e)(2), inserted provision that the annuity computed under subsections (a), (d)(6), and (f) of this section for a judge of the United States Court of Military Appeals retiring under the second sentence of section 8336(k) of this title or the third sentence of section 8338(c) of this title is reduced by $\frac{1}{2}$ of 1 percent for each full month not in excess of 60 months, and $\frac{1}{6}$ of 1 percent for each full month in excess of 60 months, the judge is under 60 years of age at the date of separation.

1982—Subsec. (e). Pub. L. 97-276 inserted "unless such employee has received, pursuant to section 8342 of this title, payment of the lump-sum credit attributable to deductions under section 8334(a) of this title during any period of employment as an air traffic controller and such employee has not deposited in the Fund the amount received, with interest, pursuant to section 8334(d) of this title".

Subsec. (i). Pub. L. 97-253 redesignated former unnumbered subsection into provisions preceding par. (1) and par. (1) and (2) and completely revised such provisions as so redesignated. Prior to amendment subsec. (i) read as follows: "The annuity computed under subsections (a)-(h) and (o) of this section is reduced by 10 percent of a deposit described by section 8334(c) of this title remaining unpaid, unless the employee or Member elects to eliminate the service involved for the purpose of annuity computation."

1980—Subsec. (g). Pub. L. 96-499 provided for a minimum disability retirement annuity where an employee or Member retiring under section 8337 of this title was receiving retired or retainer pay for military service or a Veterans' Administration pension or compensation.

Subsec. (j). Pub. L. 96-391 redesignated existing provisions as par. (1) and added par. (2).

1979—Subsec. (d). Pub. L. 96-70 designated existing provisions as par. (1) and added pars. (2) to (4).

Subsec. (d)(5). Pub. L. 96-135, §1(b), added par. (5).

Subsec. (h). Pub. L. 96-135, §1(c), inserted references to subsections (d)(5) and (j) of this section.

Subsecs. (n), (o). Pub. L. 96-54 redesignated subsec. (o) as (n). Former subsec. (n) redesignated (m) by Pub. L. 94-126.

1978—Subsec. (d). Pub. L. 95-256 substituted "(b)" for "(g)".

Subsec. (f). Pub. L. 95-598, §338(a)(1), inserted reference to subsec. (o) of this section.

Subsec. (h). Pub. L. 95-454, §412(b), substituted "section 8336(d) or (h)" for "section 8336(d)".

Subsec. (i). Pub. L. 95-598, §338(a)(2), inserted reference to subsec. (o) of this section.

Subsec. (j). Pub. L. 95-598, §338(a)(3), inserted reference to subsec. (o) of this section.

Pub. L. 95-454, §906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

Pub. L. 95-317, §1(a), inserted "(or is remarried if there is no election in effect under the following sentence)" after "or Member is not married", and substituted provisions authorizing, upon remarriage, an irrevocable election in a signed writing received by the Commission within 1 year after remarriage for a reduction and computation of such reduction, for provisions authorizing the annuity, upon remarriage, to be reduced by the same percentage reductions in effect at the time of retirement.

Subsec. (k). Pub. L. 95-454, §906(a)(3), substituted "Office" for "Commission" wherever appearing.

Subsec. (k)(1). Pub. L. 95-598, §338(a)(3), inserted reference to subsec. (o) of this section.

Pub. L. 95-317, §2, inserted provisions relating to recomputation and payment of an annuity reduced under this par. or any similar prior provision of law.

Subsec. (k)(2). Pub. L. 95-317, §1(c), substituted "The reduced annuity shall be effective the first day of the first month beginning 1 year after the date of marriage" for "His reduced annuity is effective the first day of the month after his election is received in the Commission".

Subsec. (l). Pub. L. 95-598, §338(a)(4), inserted reference to subsec. (o) of this section.

Subsec. (m). Pub. L. 95-598, §338(a)(5), inserted reference to subsec. (o) of this section.

Pub. L. 95-519 inserted provision relating to computation of days of unused sick leave for employees excepted from subchapter I of chapter 63 of this title.

Subsec. (o). Pub. L. 95-598, §338(a)(6), added subsec. (o).

1976—Subsec. (f)(2)(C). Pub. L. 94-397 substituted "8344(d)(1)" for "8344(b)(1)".

1975—Subsecs. (m), (n). Pub. L. 94-126 struck out subsec. (m) which required that 45 per centum of each year, or fraction thereof, of service referred to in section 8332(b)(6) which was performed prior to the effective date of the National Guard Technicians Act of 1968, be disregarded in determining service for the purpose of computing an annuity under each paragraph of this section, and redesignated subsec. (n) as (m).

1974—Subsec. (d). Pub. L. 93-350 inserted reference to employees retiring under section 8335(g) of this title and substituted a schedule of $2\frac{1}{2}$ percent of his average pay multiplied by so much of his total service as does not exceed 20 years plus 2 percent of his average pay multiplied by so much of his total service as exceeds 20 years for a schedule of 2 percent of his average pay multiplied by his total service.

Subsec. (f)(2). Pub. L. 93-260 substituted "greatest" for "greater", redesignated cl. (B) as cl. (C), and added cl. (B).

Subsec. (j). Pub. L. 93-474 inserted provision that an annuity reduced under this subsection or any similar provision of law shall be recomputed and paid as if the annuity had not been so reduced for each full month during which a retired employee or member is not married and that upon marriage the annuity shall be reduced by the same percentage reductions which were in effect at the time of retirement.

1972—Subsec. (e). Pub. L. 92-297, §6(1), (2), added subsec. (e) and redesignated former subsec. (e) as (f).

Subsec. (f). Pub. L. 92-297, §§6(1), 7(3)(A), redesignated former subsec. (e) as (f) and substituted references to subsecs. (a) to (e) for references to subsecs. (a) to (d). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 92-297, §6(1), redesignated former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 92-297, §§6(1), 7(3)(B), redesignated former subsec. (g) as (h) and substituted “subsections (a), (b), and (f)”, “subsections (c) and (f)”, and “section 8336(g)” for “subsections (a), (b), and (e)”, “subsections (c) and (e)”, and “section 8336(f)” respectively. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 92-297, §§6(1), 7(3)(C), redesignated former subsec. (h) as (i) and substituted reference to subsections (a)–(h) for reference to subsections (a)–(g). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 92-297, §§6(1), 7(3)(D), redesignated former subsec. (i) as (j) and substituted reference to subsections (a) to (i) for reference to subsections (a) to (h). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 92-297, §§6(1), 7(3)(E), redesignated former subsec. (j) as (k) and substituted “subsections (a)–(i)” and “subsection (j)” for “subsections (a)–(h)” and “subsection (i)”, respectively. Former subsec. (k) redesignated (l).

Subsec. (l). Pub. L. 92-297, §§6(1), 7(3)(F), redesignated former subsec. (k) as (l) and substituted “subsections (a)–(e)” for “subsections (a)–(j)”. Former subsec. (l) redesignated (m).

Subsec. (m). Pub. L. 92-297, §6(1) redesignated former subsec. (l) as (m). Former subsec. (m) redesignated (n).

Subsec. (n). Pub. L. 92-297, §§6(1), 7(3)(G), redesignated former subsec. (m) as (n) and substituted “subsections (a)–(e)” and “subsection (f)” for “subsections (a)–(d)” and “subsection (e)”, respectively.

1971—Subsec. (i). Pub. L. 91-658, §2(a), substituted “any spouse surviving him” for “his spouse”.

Subsec. (j). Pub. L. 91-658, §2(b), designated existing provisions as par. (1) and added par. (2).

1969—Subsec. (b). Pub. L. 91-93, §203(1), substituted “his service as a Congressional employee, his military service not exceeding 5 years.” for “so much of his service as a Congressional employee and his military service as does not exceed a total of 15 years”.

Subsec. (c)(2). Pub. L. 91-93, §203(2), struck out “so much of” and “as does not exceed 15 years” before and after “his Congressional employee service”.

Subsec. (f). Pub. L. 91-93, §203(3), struck out last sentence providing “However, this subsection does not increase the annuity of a survivor.”

Subsec. (i). Pub. L. 91-93, §203(4), struck out “(excluding any increase because of retirement under section 8337 of this title)” after “subsections (a)–(h) of this section”.

Subsec. (m). Pub. L. 91-93, §203(5), added subsec. (m). 1968—Subsec. (l). Pub. L. 90-486 added subsec. (l).

1967—Subsec. (e)(2). Pub. L. 90-206 inserted provision for the use of the final basic pay of the appointive position of a former Member who elects to have his annuity computed or recomputed under section 8344(b)(1) of this title inmaking the determination of the maximum allowable annuity.

CHANGE OF NAME

“United States magistrate judge” substituted for “United States magistrate” wherever appearing in subsec. (n) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-84, div. A, title XIX, §1903(b), Oct. 28, 2009, 123 Stat. 2616, provided that: “The amendment made by subsection (a) [amending this section] shall be effective with respect to any annuity, entitlement to which is based on a separation from service occurring on or after the date of enactment of this Act [Oct. 28, 2009].”

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-107 applicable only to separations from service as an employee of the United States on or after Dec. 28, 2001, see section 1132(c) of Pub. L. 107-107, set out as a note under section 8332 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-553 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 1(a)(2) [title III, §308(i), (j)] of Pub. L. 106-553, 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 8334 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 11004(c) of Pub. L. 103-66 provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 8334 and 8418 of this title] shall take effect on the first day of the first month beginning at least 30 days after the date of the enactment of this Act [Aug. 10, 1993] and shall apply to all deposits required under section 8339(j)(3) or (5), 8339(k)(2), or 8418 of title 5, United States Code, on which no payment has been made prior to such effective date.

“(2) PARTIAL DEPOSIT.—For any deposit required under section 8339(j)(3) or (5), 8339(k)(2), or 8418 of title 5, United States Code, or section 4(b) or (c) of the Civil Service Retirement Spouse Equity Act of 1984 [Pub. L. 98-615] (5 U.S.C. 8341 note) that has been partially, but not fully, paid before the effective date of this Act [probably should be “the effective date of the amendments made by this section”], the Office shall by regulation provide for determining the remaining portion of the deposit and for payment of the remaining portion of the deposit by a prospective reduction in the annuity of the employee or Member. The reduction shall be similar to the reductions provided pursuant to the amendments made under this section.”

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101-650 applicable to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after Dec. 1, 1990, see section 306(f) of Pub. L. 101-650, set out as a note under section 8331 of this title.

Amendment by Pub. L. 101-508 effective with respect to any annuity having a commencement date later than Dec. 1, 1990, see section 7001(b)(3) of Pub. L. 101-508, set out as a note under section 8334 of this title.

Section 2(c)(2) of Pub. L. 101-428 provided that:

“(A) The amendment made by paragraph (1) [amending this section] shall take effect 4 years after the date of enactment of this Act [Oct. 15, 1990], and shall apply with respect to any annuity, entitlement to which is based on a separation occurring on or after that effective date, subject to subparagraph (B).

“(B) Nothing in this subsection or in the amendment made by this subsection [amending this section] shall, with respect to any service performed before the effective date of such amendment, have the effect of reducing the percentage applicable in computing any portion

of an annuity based on such service below the percentage which would otherwise apply if this Act had not been enacted.”

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101-194, set out as a note under section 3151 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-53 effective Oct. 1, 1987, and applicable to bankruptcy judges and United States magistrate judges in office on that date and to individuals subsequently appointed to such positions to whom this chapter otherwise applies, see section 3 of Pub. L. 100-53, as amended, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 15204(b), formerly 15204(c), of Pub. L. 99-272, as redesignated by Pub. L. 99-509, title VII, §7003(b), Oct. 21, 1986, 100 Stat. 1949, provided that: “The amendments made by this section [amending this section, section 8341 of this title, and former section 4109 of Title 38, Veterans’ Benefits] shall be effective with respect to service performed on or after the date of the enactment of this Act [Apr. 7, 1986].”

Section 203(d) of Pub. L. 99-251 provided that: “The amendments made by this section [amending this section] shall take effect May 7, 1985.”

Section 307(b) of Pub. L. 99-251 provided that:

“(1) The amendment made by subsection (a) [amending this section] shall take effect 3 months after the date of the enactment of this Act [Feb. 27, 1986].

“(2)(A) Subject to subparagraph (B), the amendment made by subsection (a) shall apply with respect to employees and Members who retire before, on, or after such amendment first takes effect.

“(B) For the purpose of applying the provisions of paragraph (1) of section 8339(o) of title 5, United States Code (as added by subsection (a) of this section) to employees and Members who retire before the date on which the amendment made by subsection (a) first takes effect—

“(i) the period referred to in subparagraph (A) or (B) of such paragraph (as the case may be) shall be considered to begin on the date on which such amendment first becomes effective; and

“(ii) the amount referred to in paragraph (2) of such section 8339(o) shall be computed without regard to the provisions of subparagraph (B)(ii) of such paragraph (relating to interest).

“(3) For purposes of this subsection, the terms ‘employee’ and ‘Member’ each has the meaning given that term in sections 8331(1) and 8331(2) of title 5, United States Code, respectively.”

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions and specific applicability provisions, see section 4(a)(1), (4) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

Amendment by Pub. L. 98-531 effective Mar. 31, 1984, see section 3(b) of Pub. L. 98-531, set out as a note under section 8331 of this title.

Amendment by Pub. L. 98-353 effective July 10, 1984, and applicable to bankruptcy judges who retire on or after such date, see section 116(e) of Pub. L. 98-353, set out as a note under section 8331 of this title. See, also, section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENTS

Section 151(h)(3) of Pub. L. 97-276 provided that: “The amendment made by subsection 152(f) [151(f)] of this joint resolution [amending this section] shall take effect on the date of the enactment of this joint resolution [Oct. 2, 1982].”

Amendment by Pub. L. 97-253 effective with respect to deposits for service performed, on or after Oct. 1, 1982, and with respect to refunds for which application is received by Office of Personnel Management on or after Oct. 1, 1982, and provisions of section 8339(i) of title 5, as in effect the day before Sept. 7, 1982, to continue to apply with respect to periods of service and refunds occurring on or before Sept. 30, 1982, see section 303(d)(1) of Pub. L. 97-253, as amended by Pub. L. 97-346, §3(j)(1), Oct. 15, 1982, 96 Stat. 1649, set out as a note under section 8334 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 404(c) of Pub. L. 96-499 provided that: “The amendments made by this section [amending this section and section 8347 of this title] shall take effect on the date of the enactment of this Act [Dec. 5, 1980].”

Section 3 of Pub. L. 96-391 provided that: “The amendments made by the first section of this Act [amending this section] shall take effect with respect to notifications and designations made under the first sentence of section 8339(j) of title 5, United States Code, on or after the ninetieth day after the date of the enactment of this Act [Oct. 7, 1980].”

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96-135 effective Dec. 5, 1979, see section 1(d) of Pub. L. 96-135, set out as a note under section 8336 of this title.

Section 1242(b)(1) of Pub. L. 96-70 provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Sept. 27, 1979], but no amount of annuity under chapter 83 of title 5, United States Code, accruing by reason of those amendments shall be payable for any period before October 1, 1979.”

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Amendment by Pub. L. 95-519 applicable only with respect to employees who retire or die on or after Oct. 25, 1978, see section 4(b) of Pub. L. 95-519, set out as a note under section 5551 of this title.

Amendment by section 412(b) of Pub. L. 95-454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

Amendment by section 906(a)(2), (3) of Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

Amendment by Pub. L. 95-256 effective Sept. 30, 1978, see section 5(f) of Pub. L. 95-256, set out as a note under section 633a of Title 29, Labor.

EFFECTIVE DATE OF 1978 AMENDMENTS; SURVIVOR ANNUITIES SUBJECT TO REDUCTION, ETC.

Section 4 of Pub. L. 95-317 provided that:

“(a) This act [amending this section and section 8341 of this title and enacting provisions set out as notes under this section] shall take effect—

“(1) the first day of the first month which begins on or after the date of the enactment of this Act [July 10, 1978], or

“(2) October 1, 1978, whichever is later.

“(b) Except as provided under subsection (c) of this section, the amendments made by the first section and section 2 of this Act [amending this section and section 8341 of this title] shall apply with respect to annuities which commence before, on, or after the effective date of this Act, but no monetary benefit by reason of such

amendments shall accrue for any period before such effective date.

“(c) The amendments made by the first section of this Act [amending this section and section 8341 of this title] shall not affect the eligibility of any individual to a survivor annuity under section 8341(b) of title 5, United States Code, or the reduction therefor under section 8339(j) of such title, in the case of an annuitant who remarried before the effective date of this Act, unless the annuitant notifies the Civil Service Commission in a signed writing received in the Commission within one year after the effective date of this Act that such annuitant does not desire the spouse of the annuitant to receive a survivor annuity in the event of the annuitant's death. Such notification shall take effect the first day of the first month after it is received in the Commission.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-397 effective Oct. 1, 1976, and applicable to annuitants serving in appointive or elective positions on and after such date, see section 2 of Pub. L. 94-397, set out as a note under section 8344 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-126 effective Jan. 1, 1969, applicable to a person who, on Nov. 12, 1975, is receiving or is entitled to receive benefits under any Federal retirement system and requests in writing the application of the amendment to him by the office administering his retirement system, and additional benefits to commence Dec. 1, 1975, see section 3 of Pub. L. 94-126, set out as a note under section 8334 of this title.

EFFECTIVE DATE OF 1974 AMENDMENTS

Section 2 of Pub. L. 93-474 provided that: “The amendment made by this Act [amending this section] shall apply to annuities which commence before, on, or after the date of enactment of this Act [Oct. 26, 1974], but no increase in annuity shall be paid for any period prior to the first day of the first month which begins on or after the date of enactment of this Act.”

Amendment by Pub. L. 93-350 effective on July 12, 1974, see section 7 of Pub. L. 93-350, set out as a note under section 3307 of this title.

Section 2(b) of Pub. L. 93-260 provided that: “The amendments made by subsection (a) of this section [amending this section] shall apply to annuities paid for months beginning after the date of enactment of this Act [Apr. 9, 1974].”

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92-297, set out as an Effective Date note under section 3381 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 5(b) of Pub. L. 91-658 provided that: “The amendments made by section 2(a) and 3 of this Act [amending this section and section 8341 of this title] shall not apply in the cases of employees, Members, or annuitants who died before the date of enactment of this Act [Jan. 8, 1971]. The rights of such persons and their survivors shall continue in the same manner and to the same extent as if such amendments had not been enacted.”

Section 5(c) of Pub. L. 91-658 provided that: “The amendments made by section 2(b) of this Act [amending this section] shall apply to an annuitant who was unmarried at the time of retiring, but who later married, only if the election is made within 1 year after the date of enactment of this Act [Jan. 8, 1971].”

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-93 inapplicable in cases of persons retired or otherwise separated prior to Oct. 20,

1969, their rights and of their survivors continued as if such amendment had not been enacted, see section 207(a) of Pub. L. 91-93, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-486 effective Jan. 1, 1969, except that no deductions or withholding from salary which result therefrom shall commence before first day of first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90-486, set out as a note under section 709 of Title 32, National Guard.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-206 effective Dec. 16, 1967, see section 220(a)(1) of Pub. L. 90-206, set out as an Effective Date note under section 3110 of this title.

INDIVIDUALS ENTITLED TO ANNUITY PAYMENTS FOR PERIOD PRIOR TO OCTOBER 1, 1979

Section 1242(b)(2) of Pub. L. 96-70 provided that: “Effective October 1, 1979, any individual who, but for paragraph (1) of this subsection [set out as an Effective Date of 1979 Amendment note above], would have been entitled to one or more annuity payments pursuant to the amendments made by this section [amending this section] for periods before October 1, 1979, shall be entitled, to such extent or in such amounts as are provided in advance in appropriation Acts, to a lump sum payment equal to the total amount of all such annuity payments.”

ANNUAL NOTICE TO ANNUITANT OF RIGHTS OF ELECTION UNDER SUBSECS. (j) AND (k)(2) OF THIS SECTION

Section 3 of Pub. L. 95-317, as amended by 1978 Reorg. Plan No. 2, §102, 43 F.R. 36037, 92 Stat. 3783, provided that: “The Director of the Office of Personnel Management shall, on an annual basis, inform each annuitant of such annuitant's rights of election under sections 8339(j) and 8339(k)(2) of title 5, United States Code.”

INCREASE IN ANNUITY FOR EMPLOYEES OR MEMBERS SEPARATED FROM CIVIL SERVICE PRIOR TO OCT. 20, 1969

Section 2(a) of Pub. L. 93-273, Apr. 26, 1974, 88 Stat. 93, provided that: “An annuity payable from the Civil Service Retirement and Disability Fund to a former employee or Member, which is based on a separation occurring prior to October 20, 1969, is increased by \$240.”

Section 3 of Pub. L. 93-273 provided in part that annuity increases under this provision shall apply to annuities which commence before, on, or after Apr. 26, 1974, but that no increase in annuity shall be paid for any period prior to the first day of the first month which begins on or after the ninetieth day after Apr. 26, 1974, or the date on which the annuity commences, whichever is later. See section 3 of Pub. L. 93-273, set out as a note under section 8345 of this title.

1970 INCREASE IN PAY RATES OF CERTAIN EMPLOYEES OF THE LEGISLATIVE BRANCH

Adjustment by the President pro tempore of the Senate with respect to the United States Senate, by the Finance Clerk of the House of Representatives with respect to the United States House of Representatives, and by the Architect of the Capitol with respect to the Office of the Architect of the Capitol, effective on the first day of the first pay period which begins on or after Dec. 27, 1969, of the rates of pay of employees of the legislative branch subject to section 214 of Pub. L. 90-206 with certain exceptions, by the amounts of the adjustment for corresponding rates for employees subject to the General Schedule, set out in section 5332 of this title, which had been made by section 2 of Pub. L. 91-231 raising such rates by 6 percent, see Pub. L. 91-231, formerly set out as a note under section 5332 of this title.

1967 INCREASE IN COMPENSATION AS PART OF BASIC PAY RATE

Section 214(d) of Pub. L. 90-206, title II, Dec. 16, 1967, 81 Stat. 636, providing for the inclusion of the additional compensation pursuant to section 214 of Pub. L. 90-206 as part of basic pay for purposes of civil service retirement, was repealed by section 7(a)(4) of Pub. L. 90-623, Oct. 22, 1968, 82 Stat. 1315, except with respect to rights and duties which matured, penalties that were incurred, and proceedings that were begun before Oct. 22, 1968.

1962 INCREASE IN ANNUITIES

Section 1101 of Pub. L. 87-793, Oct. 11, 1962, 76 Stat. 668, provided that:

“(a) The annuity of each person who, on the effective date of this section [Jan. 1, 1963], is receiving or entitled to receive an annuity from the civil service retirement and disability fund shall be increased by 5 per centum of the amount of such annuity.

“(b) The annuity of each person who receives or is entitled to receive an annuity from the civil service retirement and disability fund commencing during the period which begins on the day following the effective date of this section [Jan. 1, 1963] and ends five years after such date, shall be increased in accordance with the following table:

<i>“If the annuity commences between—</i>	<i>The annuity shall be increased by—</i>
“January 2, 1963, and December 31, 1963	4 per centum
“January 1, 1964, and December 31, 1964	3 per centum
“January 1, 1965, and December 31, 1965	2 per centum
“January 1, 1966, and December 31, 1966	1 per centum

“(c) In lieu of any other increase provided by this section, the annuity of a survivor of a retired employee or Member of Congress who received an increase under this section shall be increased by a percentage equal to the percentage by which the annuity of such employee or Member was so increased.

“(d) No increase provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

“(e) The limitation reading ‘or (3) the sum necessary to increase such annuity, exclusive of annuity purchased by voluntary contributions under the second paragraph of section 10 of this Act, to \$2,160’ contained in section 8(c)(1) of the Civil Service Retirement Act of May 29, 1930, as amended by the Acts of July 16, 1952 (66 Stat. 722; Public Law 555, Eighty-second Congress), and August 31, 1954 (68 Stat. 1043; Public Law 747, Eighty-third Congress), shall not be effective on or after the effective date of this section [Jan. 1, 1963].

“(f) The limitation contained in the next to the last sentence of section 8(d)(1) of the Civil Service Retirement Act of May 29, 1930, as amended, as enacted by the Act of August 11, 1955 (69 Stat. 692; Public Law 369, Eighty-fourth Congress) shall not be effective on and after the effective date of this section [Jan. 1, 1963].

“(g) The increases provided by this section shall take effect on the effective date of this section [Jan. 1, 1963], except that any increase under subsection (b) or (c) shall take effect on the beginning date of the annuity.

“(h) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar”.

Section 1104 of Pub. L. 87-793 provided in part that section 1101 of Pub. L. 87-793 shall take effect on January 1, 1963.

1958 INCREASE IN ANNUITIES

Pub. L. 85-465, June 25, 1958, 72 Stat. 218, as amended by Pub. L. 86-604, §3(a), July 7, 1960, 74 Stat. 359; Pub. L. 87-114, July 31, 1961, 75 Stat. 241, provided:

“That (a) the annuity of each retired employee or Member of Congress who, on August 1, 1958, is receiving

or entitled to receive an annuity from the civil service retirement and disability fund based on service which terminated prior to October 1, 1956, shall be increased by 10 per centum, but no such increase shall exceed \$500 per annum.

“(b) The annuity otherwise payable from the civil service retirement and disability fund to—

“(1) each survivor who on August 1, 1958, is receiving or entitled to receive an annuity based on service which terminated prior to October 1, 1956, and

“(2) each survivor of a retired employee or Member of Congress described in subsection (a) of this section, shall be increased by 10 per centum. No increase provided by this subsection shall exceed \$250 per annum.

“(c) No increase provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

“SEC. 2. The unmarried widow or widower of an employee—

“(1) who had completed at least ten years of service creditable for civil service retirement purposes.

“(2) who (A) died February 29, 1948, or (B), if retired under the Alaska Railroad Retirement Act of June 29, 1936, as amended, or under sections 91 to 107, inclusive, of title 2 of the Canal Zone Code, approved June 19, 1934, as amended, died before April 1, 1948; and

“(3) who was at the time of his death

(A) subject to an Act under which annuities granted before February 20, 1948, were or are now payable from the civil service retirement and disability fund or (B) retired under such an Act,

(B) etc.

shall be entitled to receive an annuity. In order to qualify for such annuity, the widow or widower shall have been married to the employee for at least five years immediately prior to his death and must be not entitled to any other annuity from the civil service retirement and disability fund based on the service of such employee. Such annuity shall be equal to one-half of the annuity which the employee was receiving on the date of his death if retired, or would have been receiving if he had been retired for disability on the date of his death, but shall not exceed \$750 per annum and shall not be increased by the provisions of this or any other prior law. Any annuity granted under this section shall cease upon the death or remarriage of the widow or widower.

“SEC. 3. (a) An increase in annuity provided by subsection (a), or clause (1) of subsection (b), of the first section of this Act shall take effect on August 1, 1958. An increase in annuity provided by clause (2) of such subsection (b) shall take effect on the commencing date of the survivor annuity.

“(b) An annuity provided by section 2 of this Act shall commence on August 1, 1958, or on the first day of the month in which application for such annuity is received in the Civil Service Commission, whichever occurs later.

“SEC. 4. Notwithstanding any other provision of law, the annuities and increases in annuities provided by the preceding sections of this Act shall be paid from the civil service retirement and disability fund.

“(c) The monthly installment of each annuity increased or provided by this Act shall be fixed at the nearest dollar.

“SEC. 5. (a) The amendments made by section 401 of the Civil Service Retirement Act Amendments of 1956 (70 Stat. 743-760; 5 U.S.C. 2251-2267) [amending provisions covered by this subchapter] may apply at the option of any employee who, prior to July 31, 1956, was separated from the service under the automatic separation provisions of the Civil Service Retirement Act [this subchapter] but whose separation would not have taken effect until after July 30, 1965, if he had been permitted to remain in the service until the expiration of any accumulated or current accrued annual leave to his credit at the time of his separation from the service. Such option shall be exercised by a writing received in the Civil Service Commission before January 1, 1959.

“(b) No increase in annuity provided by this Act or any prior provision of law shall apply in the case of any

retired employee who exercises the option permitted by subsection (a) of this section.”

1962 AND 1958 INCREASES IN ANNUITIES; CLARIFICATION

Pub. L. 89-17, May 1, 1965, 79 Stat. 109, provided: “That for the purposes of section 1(a) of the Act of June 25, 1958 (Public Law 85-465) [1958 Increase in Annuities note set out above], and section 1101(a) of the Act of October 11, 1962 (Public Law 87-793) [1962 Increase in Annuities note set out under this section], the words ‘entitled to receive an annuity’ shall, from and after the respective effective dates (August 1, 1958, and January 1, 1963) of the annuity increases provided by such Acts, not include any person whose annuity commencing date occurs after the effective date of the annuity increase involved.”

PAYMENT OF ANNUITIES TO CERTAIN UNREMARIED WIDOWS OR WIDOWERS OF EMPLOYEES RETIRED UNDER RAILROAD RETIREMENT ACT OR CANAL ZONE CODE

Section 3(b), (c) of Pub. L. 86-604, July 7, 1960, 74 Stat. 359, made section 4 of act June 25, 1958, set out in the 1958 Increase in Annuities note under this section, applicable to annuities authorized by section 2(2)(B) of act June 25, 1958, and provided that such annuities should commence Aug. 1, 1958, or on the first day of the month in which application therefor was received in the Civil Service Commission, whichever occurred later.

ESTIMATES OF APPROPRIATIONS FOR REIMBURSING FUND FOR AMOUNTS PAID UNDER 1958 INCREASE IN ANNUITIES

Pub. L. 91-93, title I, §105, Oct. 20, 1969, 83 Stat. 138, repealed part of Pub. L. 87-141, title I, §101, Aug. 17, 1961, 75 Stat. 345, which required the Civil Service Commission to include annually in its estimates to the Bureau of the Budget, estimates of appropriations necessary to reimburse the civil service retirement and disability fund for amounts paid out of the fund by reason of enactment of Pub. L. 85-465, set out in the 1958 Increase in Annuities note under this section, and the Bureau of the Budget to submit such estimates annually to the Congress.

ANNUITY OF DIRECTOR OF FBI

Pub. L. 86-734, §5, Sept. 8, 1960, 74 Stat. 868, provided that: “Any person who shall retire for age after serving at least thirty years as Director of the Federal Bureau of Investigation shall receive an annuity during the remainder of his life equal to the salary payable to him at the time of his retirement.”

NATIONAL GUARD TECHNICIANS

Amendment by Pub. L. 90-486 not applicable to persons employed prior to Jan. 1, 1969, whose employment was covered by the civil service retirement provisions of section 8331 et seq. of this title, see section 5(d) of Pub. L. 90-486, set out as a note under section 709 of Title 32, National Guard.

§ 8340. Cost-of-living adjustment of annuities

(a) For the purpose of this section—

(1) the term “base quarter”, as used with respect to a year, means the calendar quarter ending on September 30, of such year; and

(2) the price index for a base quarter is the arithmetical mean of such index for the 3 months comprising such quarter.

(b) Except as provided in subsection (c) of this section, effective December 1 of each year, each annuity payable from the Fund having a commencing date not later than such December 1 shall be increased by the percent change in the price index for the base quarter of such year over the price index for the base quarter of the

preceding year in which an adjustment under this subsection was made, adjusted to the nearest $\frac{1}{10}$ of 1 percent.

(c) Eligibility for an annuity increase under this section is governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase, except as follows:

(1) The first increase (if any) made under subsection (b) of this section to an annuity which is payable from the Fund to an employee or Member who retires, to the widow, widower, or former spouse,¹ of a deceased employee or Member, or to the widow, widower, former spouse, or insurable interest designee of a deceased annuitant whose annuity has not been increased under this subsection or subsection (b) of this section, shall be equal to the product (adjusted to the nearest $\frac{1}{10}$ of 1 percent) of—

(A) $\frac{1}{12}$ of the applicable percent change computed under subsection (b) of this section, multiplied by

(B) the number of months (not to exceed 12 months, counting any portion of a month as a month)—

(i) for which the annuity was payable from the Fund before the effective date of the increase, or

(ii) in the case of a widow, widower, former spouse, or insurable interest designee of a deceased annuitant whose annuity has not been so increased, since the annuity was first payable to the deceased annuitant.

(2) Effective from its commencing date, an annuity payable from the Fund to an annuitant's survivor (except a child entitled under section 8341(e) of this title), which annuity commences the day after the death of the annuitant and after the effective date of the first increase under this section, shall be increased by the total percent increase the annuitant was receiving under this section at death. However, the increase in a survivor annuity authorized by section 8 of the Act of May 29, 1930, as amended to July 6, 1950, shall be computed as if the annuity commencing date had been the effective date of the first increase under this section.

(3) For the purpose of computing the annuity of a child under section 8341(e) of this title that commences after October 31, 1969, the items \$900, \$1,080, \$2,700, and \$3,240 appearing in section 8341(e) of this title shall be increased by the total percent increases allowed and in force under this section on or after such day and, in case of a deceased annuitant, the items 60 percent and 75 percent appearing in section 8341(e) of this title shall be increased by the total percent allowed and in force to the annuitant under this section on or after such day.

(d) This section does not authorize an increase in an additional annuity purchased at retirement by voluntary contributions.

(e) The monthly installment of annuity after adjustment under this section shall be rounded to the next lowest dollar. However, the monthly

¹ So in original. The comma probably should not appear.

installment shall after adjustment reflect an increase of at least \$1.

(f) Effective September 1, 1966, or on the commencing date of annuity, whichever is later, the annuity of each surviving spouse whose entitlement to annuity payable from the Fund resulted from the death of—

(1) an employee or Member before October 11, 1962; or

(2) a retired employee or Member whose retirement was based on a separation from service before October 11, 1962;

is increased by 10 percent.

(g)(1) An annuity shall not be increased by reason of any adjustment under this section to an amount which exceeds the greater of—

(A) the maximum pay payable for GS-15 30 days before the effective date of the adjustment under this section; or

(B) the final pay (or average pay, if higher) of the employee or Member with respect to whom the annuity is paid, increased by the overall annual average percentage adjustments (compounded) in rates of pay of the General Schedule under subchapter I of chapter 53 of this title during the period—

(i) beginning on the date the annuity commenced (or, in the case of a survivor of the retired employee or Member, the date the employee's or Member's annuity commenced), and

(ii) ending on the effective date of the adjustment under this section.

(2) For the purposes of paragraph (1) of this subsection, "pay" means the rate of salary or basic pay as payable under any provision of law, including any provision of law limiting the expenditure of appropriated funds.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 576; Pub. L. 90-83, §1(79), Sept. 11, 1967, 81 Stat. 215; Pub. L. 91-93, title II, §204, Oct. 20, 1969, 83 Stat. 139; Pub. L. 93-136, §1, Oct. 24, 1973, 87 Stat. 490; Pub. L. 94-126, §2(b), Nov. 12, 1975, 89 Stat. 679; Pub. L. 94-183, §2(35), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 94-440, title XIII, §1306(a), (c)(1), Oct. 1, 1976, 90 Stat. 1462; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-499, title IV, §401(a), Dec. 5, 1980, 94 Stat. 2605; Pub. L. 97-35, title XVII, §1702(a), (b), Aug. 13, 1981, 95 Stat. 754; Pub. L. 97-253, title III, §§304(a), 309(a), Sept. 8, 1982, 96 Stat. 795, 798; Pub. L. 98-270, title II, §201(a), Apr. 18, 1984, 98 Stat. 157; Pub. L. 98-369, div. B, title II, §2201(b), July 18, 1984, 98 Stat. 1058; Pub. L. 99-251, title II, §204, Feb. 27, 1986, 100 Stat. 25.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 2268.	July 31, 1956, ch. 804, §401 "Sec. 18"; added Oct. 11, 1962, Pub. L. 87-793, §1102(b) (less so much as redesignated §18 as 19), 76 Stat. 869.

In subsection (a), the words "After January 1, 1964" and "other than 1964" and subsection (a)(1) of former section 2268, are omitted as executed.

In subsection (b), the words "subsection (a) of this section" are substituted for "subsection (a)(1) or (a)(2)

of this section" since subsection (a)(1) has been omitted as executed.

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

Section of title 5	Source (U.S. Code)	Source (Statutes at Large)
8340(a)	5 App.: 2268(a), (f).	Sept. 27, 1965, Pub. L. 89-205, §1(c), 79 Stat. 840.
8340(b)	5 App.: 2268(b).	Nov. 1, 1965, Pub. L. 89-314, §1, 79 Stat. 1162.
8340(c)	5 App.: 2268(c).	July 18, 1966, Pub. L. 89-504, §507, 80 Stat. 302.
8340(d)	5 App.: 2268(d).	
8340(e)	5 App.: 2268(e).	
8340(f)	5 App.: 2268(g).	

In subsection (a), the words "Effective December 1, 1965 * * * before December 2, 1965," are substituted for "Effective the first day of the third month which begins after the date of enactment of this amendment * * * not later than such effective date." In clause (1), the words "month of July 1965" are substituted for "month latest published on date of enactment of this amendment" for clarity and since the July 1965 price index was the price index for the month latest published on September 27, 1965, the date of enactment of the amendment. The word "base" is inserted before "month of July 1965" for clarity and on authority of the second sentence of 5 U.S.C. App. 2268(a) which provided: "The month used in determining the increase based on the per centum rise in the price index under this subsection shall be the base month for determining the per centum change in the price index until the next succeeding increase occurs." In view of the foregoing and of the definition of "base month" in 5 U.S.C. 8331(16), the quoted sentence is omitted as executed and unnecessary. In clause (2), the words "before October 2, 1956," are substituted for "on or before October 1, 1956." In the second sentence, which is based on 5 App. U.S.C. 2268(f), the words "before January 1, 1966," are substituted for "not later than December 31, 1965." In clause (B), the words "Act of June 25, 1958 (72 Stat. 219)" are substituted for "Public Law 85-465" to conform to the style of title 5, United States Code.

In the first sentence of subsection (b), the words "after the first increase under this section," following "Each month," are omitted as executed and unnecessary.

In subsection (f), the words "September 1, 1966," are substituted for "the first day of the second month after the enactment of this subsection."

REFERENCES IN TEXT

Section 8 of the Act of May 29, 1930, as amended to July 6, 1950, referred to in subsec. (c)(2), is the predecessor of section 8338 of this title.

AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 99-251 substituted "widower, or former spouse," for first reference to "or widower", and "widower, former spouse, or insurable interest designee" for second and third references to "or widower".

1984—Subsec. (a). Pub. L. 98-270 substituted provisions defining term "base quarter" as meaning the calendar quarter ending Sept. 30 of a year and providing that the price index for a base quarter is the arithmetic mean of such index for the three months comprising such quarter for former provisions which had directed that, effective Dec. 1, 1965, each annuity payable from the Fund having a commencing date before Dec. 2, 1965, was increased by (1) the percent rise in the price index, adjusted to the nearest 1/10 of 1 percent, determined by the Office of Personnel Management on the basis of the annual average price index for calendar year 1962 and the price index for the base month of July 1965; plus (2) 6 1/2 percent if the commencing date (or in the case of the survivor of a deceased annuitant the commencing date of the annuity of the retired em-

ployee) occurred before Oct. 2, 1956, or 1½ percent if the commencing date (or in the case of the survivor of a deceased annuitant the commencing date of the annuity of the retired employee) occurred after Oct. 1, 1956, that each annuity payable from the Fund (other than the immediate annuity of an annuitant's survivor or of a child entitled under section 8341(e) of this title) having a commencing date after Dec. 1, 1965, but before Jan. 1, 1966, was increased from its commencing date as if the annuity commencing date were Dec. 1, 1965, and that each survivor annuity authorized by (A) section 8 of the Act of May 29, 1930, as amended to July 6, 1950, or (B) section 2 of the Act of June 25, 1958 (72 Stat. 219), was increased by any additional amount required to make the total increase under this subsection equal to the smaller of 15 percent or \$10 a month.

Subsec. (b). Pub. L. 98-270 substituted "Except as provided in subsection (c) of this section, effective December 1 of each year, each annuity payable from the Fund having a commencing date not later than such December 1 shall be increased by the percent change in the price index for the base quarter of such year over the price index for the base quarter of the preceding year in which an adjustment under this subsection was made, adjusted to the nearest ¼ of 1 percent" for "Except as provided in subsection (c) of this section, effective March 1 of each year each annuity payable from the Fund having a commencing date not later than such March 1 shall be increased by the percent change in the price index published for December of the preceding year over the price index published for December of the year prior to the preceding year, adjusted to the nearest ¼ of 1 percent".

Subsec. (c)(1)(A). Pub. L. 98-369, § 2201(b)(1), substituted "computed" for "computer".

Subsec. (c)(2)(B). Pub. L. 98-369, § 2201(b)(2), substituted "not to exceed 12 months, counting" for "counting".

1982—Subsec. (e). Pub. L. 97-253, § 304(a), substituted "rounded to the next lowest" for "fixed at the nearest".

Subsec. (g). Pub. L. 97-253, § 309(a), added subsec. (g).
1981—Subsec. (b). Pub. L. 97-35, § 1702(a), substituted provisions that except as provided in subsec. (c), the annuities payable from the Fund having a commencing date not later than March 1 of each year shall be increased by the percent change in the price index published for December of the preceding year over the price index published for December of the year prior to the preceding year, adjusted to the nearest ¼ of 1 percent, for provisions requiring the Office to determine on Jan. 1 and July 1 of each year the percent change in the price index based on the data for a six month period and to adjust the annuities in March and September of each year according to specified formula when there is a rise in the price index.

Subsec. (c)(1). Pub. L. 97-35, § 1702(b), in opening provision inserted reference to the widow or widower of a deceased annuitant whose annuity has not been increased under this subsection or subsection (b) of this section, in par. (A) substituted "½" for "¼", and in subpar. (B) designated existing provisions as item (i) and added item (ii).

1980—Subsec. (c)(1). Pub. L. 96-499, substituted formula for computing the first increase to be made under subsec. (b) of this section to an annuity which is payable from the Fund to an employee or Member who retires, to the widow or widower of a deceased employee or Member for provisions that an annuity, except a deferred annuity under section 8338 of this title or any other provision of law, payable from the Fund to an employee or Member who retires, or to the widow or widower of a deceased employee or Member and having a commencing date after the effective date of the then last preceding annuity increase under subsec. (b) of this section shall not be less than the annuity which would have been payable if the commencing date of such annuity had been the effective date of the then last preceding annuity increase under subsec. (b) of this section and that employees or deceased employees were to

be deemed, for purposes of section 8339(m) of this title to have to their credit, on the effective date of the last preceding increase under subsec. (b), unused sick leave equal to that unused sick leave to his credit on the date of separation from service.

1978—Subsecs. (a)(1), (b)(1). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission" and "Office" for "Commission".

1976—Subsec. (b). Pub. L. 94-440, § 1306(a), struck out "1 percent plus" after "shall be increased by".

Pub. L. 94-440, § 1306(c)(1), substituted provisions requiring that Commission shall determine percent change in price index on Jan. 1 and July 1 of each year and effective Mar. 1 or Sept. 1, each annuity payable from Fund shall be increased by the computed percent change in the price index adjusted to the nearest ¼ of 1 percent, for provisions requiring that Commission shall determine percent change in price index on a monthly basis and effective the first day of the third month that begins after the price index change equals a rise of 3 percent for 3 consecutive months over the prior price index, each annuity payable from Fund shall be increased by the highest rise in the price index over those months adjusted to the nearest ¼ of 1 percent.

1975—Subsec. (c)(1). Pub. L. 94-126 substituted reference to "section 8339(m) of this title" for "section 8339(n) of this title".

Subsec. (c)(3). Pub. L. 94-183 substituted "after October 31, 1969" for "on or after the first day of the first month that begins on or after the date of enactment of the Civil Service Retirement Amendments of 1969".

1973—Subsec. (c). Pub. L. 93-136 redesignated existing pars. (1) and (2) as pars. (2) and (3) and added par. (1).
1969—Subsec. (b). Pub. L. 91-93, § 204(a), increased the annuity payable from the Fund by 1 percent.

Subsec. (c)(2). Pub. L. 91-93, § 204(b), increased the minimum survivor annuity for children of a deceased Federal employee, substituting dollar and percentage references to \$900, \$1,080, \$2,700, \$3,240, and 60 and 75 percent for prior references to \$600, \$720, \$1,800, \$2,160 and 40 and 50 percent respectively, such new increases to commence on or after the first day of the first month that begins on or after Oct. 20, 1969, the date of enactment of the Civil Service Retirement Amendments of 1969, whereas prior provisions were for computation of a child's annuity commencing after effective date of first increase under this section based on employee annuity that commenced after Oct. 1, 1956, or was payable at death.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 201(b) of Pub. L. 98-270 provided that:

"(1) The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 18, 1984], except that no adjustment under section 8340(b) of title 5, United States Code (as amended by such subsection), shall be made during the period beginning on the date of the enactment of this Act and ending November 30, 1984.

"(2)(A) For purposes of the first adjustment under section 8340(b) of title 5, United States Code (as amended by subsection (a)), the base quarter ending September 30, 1983, shall be considered to have been a base quarter in which an adjustment under such section (as so amended) was made.

"(B) As used in subparagraph (A), the term 'base quarter' has the meaning given such term by section 8340(a)(1) of title 5, United States Code (as amended by subsection (a))."

EFFECTIVE DATE OF 1982 AMENDMENT

Section 304(c) of Pub. L. 97-253 provided that: "The amendments made by subsections (a) and (b) [amending this section and section 8345 of this title] shall apply with respect to any annuity commencing on or after October 1, 1982, and with respect to any adjustment or redetermination of any annuity made on or after such date".

Section 309(b) of Pub. L. 97-253 provided that: "The amendment made by subsection (a) of this section

[amending this section] shall not cause any annuity to be reduced below the rate that is payable on the date of the enactment of this Act [Sept. 8, 1982], but shall apply to any adjustment occurring on or after such date of enactment under section 8340 of title 5, United States Code, to any annuity payable from the Civil Service Retirement and Disability Fund, whether such annuity has a commencing date before, on, or after the date of enactment of this Act."

EFFECTIVE DATE OF 1981 AMENDMENT

Section 1702(c) of Pub. L. 97-35 provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 13, 1981] and shall apply to annuities which commence before, on, or after such date."

EFFECTIVE DATE OF 1980 AMENDMENT

Section 401(b) of Pub. L. 96-499 provided that: "(1) The amendment made by subsection (a)(1) [amending this section] shall apply with respect to annuities commencing after the 45th day after the date of the enactment of this Act [Dec. 5, 1980]."

"(2) The amendment made by subsection (a)(2) [amending this section] shall take effect with respect to any annuity increase which takes effect after the date of the enactment of this Act [Dec. 5, 1980]."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1306(b) of Pub. L. 94-440 provided that: "The amendment made by subsection (a) [amending this section] shall apply to any increase in annuities after the date of enactment of this Act [Oct. 1, 1976]."

Section 1306(c)(2) of Pub. L. 94-440 provided that: "The amendment made by subsection (1) [amending this section] shall apply to any increase in annuities after the date of enactment of this Act [Oct. 1, 1976], except that with respect to the first date after the date of enactment of this Act on which the Commission is to determine a percent change, such percent change shall be determined by computing the change in the price index published for the month immediately preceding such first date over the price index for the last month prior to the date of enactment of this Act for which the price index showed a percent rise forming the basis for a cost-of-living annuity increase under section 8340(b) of title 5, United States Code [subsec. (b) of this section], as in effect immediately prior to the date of the enactment of this Act [Oct. 1, 1976]."

EFFECTIVE DATE OF 1973 AMENDMENT

Section 2 of Pub. L. 93-136 provided that: "The amendments made by this Act [amending this section] shall apply only with respect to annuities which commence on or after July 2, 1973."

EFFECTIVE DATE OF 1969 AMENDMENT

Section 207(b) of Pub. L. 91-93 provided that: "The amendments made by section 204(a) of this Act to section 8340 of title 5, United States Code, shall apply only to annuity increases which become effective under such section 8340 after the date of enactment of this Act [Oct. 20, 1969]."

DELAY IN COST-OF-LIVING ADJUSTMENTS DURING FISCAL YEARS 1994, 1995, AND 1996

Pub. L. 103-66, title XI, §11001, Aug. 10, 1993, 107 Stat. 408, provided that:

"(a) APPLICABILITY.—This section shall apply with respect to any cost-of-living increase scheduled to take effect, during fiscal year 1994, 1995, or 1996, under—

"(1) section 8340(b) or 8462(b) of title 5, United States Code;

"(2) section 826 or 858 of the Foreign Service Act of 1980 [22 U.S.C. 4066, 4071g]; or

"(3) section 291 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2131), as set forth in section 802 of the CIARDS Technical Corrections Act of 1992 (Public Law 102-496; 106 Stat. 3196).

"(b) DELAY IN EFFECTIVE DATE OF ADJUSTMENTS.—A cost-of-living increase described in subsection (a) shall not take effect until the first day of the third calendar month after the date such increase would otherwise take effect.

"(c) RULE OF CONSTRUCTION.—Nothing in this section shall be considered to affect any determination relating to eligibility for an annuity increase or the amount of the first increase in an annuity under section 8340(b) or (c) or section 8462(b) or (c) of title 5, United States Code, or comparable provisions of law."

TIME OF PAYMENT OF ANNUITY OR RETIRED OR RETIREMENT PAY WHICH PRESIDENT ADJUSTS

Section 2201(a) of Pub. L. 98-369 provided that: "Notwithstanding any other provision of law, beginning with the monthly rate payable for December 1984, any annuity or retired or retirement pay payable under any retirement system for Government officers or employees which the President adjusts pursuant to section 8340(b) of title 5, United States Code, shall be paid no earlier than the first business day of the succeeding month."

COST-OF-LIVING ADJUSTMENTS DURING FISCAL YEARS 1983, 1984, AND 1985

Section 301(a)-(c) of Pub. L. 97-253, as amended by Pub. L. 98-270, title I, §201(c), Apr. 18, 1984, 98 Stat. 158; Pub. L. 98-396, title I, Aug. 22, 1984, 98 Stat. 1403, provided that:

"(a)(1) Except as provided in paragraph (3), the cost-of-living increase under any Government retirement system in annuity or retired or retainer pay of any early retiree taking effect in each of fiscal years 1983, 1984, and 1985, shall be equal to one-half of the assumed increase in the price index for that year.

"(2) For purposes of this subsection, an individual shall be considered to be an early retiree if—

"(A) the individual is under the age of 62 years as of the effective date of the cost-of-living increase involved (determined without regard to subsection (b));

"(B) the annuity or retired or retainer pay of the individual is not computed in whole or in part based on any disability of the individual; and

"(C) the annuity or retired or retainer pay of the individual is based upon the Government service of the individual.

"(3) If the percentage increase in the price index for fiscal year 1983, 1984, or 1985 (as determined by the Office of Personnel Management under section 8340(b) of title 5, United States Code) exceeds the assumed increase in the price index for that year, then the increase in the annuity or retired or retainer pay of an early retiree under paragraph (1) taking effect in that fiscal year shall be equal to—

"(A) one-half of the assumed increase in the price index for that year, plus

"(B) the amount by which the percentage increase in the price index exceeds the assumed price index increase.

If the percentage increase in the price index for fiscal year 1985 (as determined by the Office of Personnel Management under section 8340(b) of title 5, United States Code) is less than the assumed increase in the price index for that year, then the increase in the annuity or retired or retainer pay of an early retiree under paragraph (1) taking effect in that fiscal year shall be equal to the percentage increase in the price index for that year (as so determined).

"(4) As used in this subsection—

"(A) the term 'price index' has the meaning given such term in section 8331(15) of title 5, United States Code; and

“(B) the term ‘assumed increase in the price index’ means—

“(i) 6.6 percent, in the case of fiscal year 1983,

“(ii) 7.2 percent, in the case of fiscal year 1984, and

“(iii) 6.6 percent, in the case of fiscal year 1985.

“(5) The amount of any survivor annuity which is based on the service of any early retiree subject to this subsection shall be computed as if this subsection had not been enacted.

“(b) [Repealed. Pub. L. 98-270, title II, §201(c)(2), Apr. 18, 1984, 98 Stat. 158.]

“(c) For purposes of this section, the term ‘cost-of-living increase under a Government retirement system’ means any increase under—

“(1) section 8340(b) of title 5, United States Code;

“(2) section 826 of the Foreign Service Act of 1980 [22 U.S.C. 4066];

“(3) the Central Intelligence Agency Act of 1964 for Certain Employees (50 U.S.C. 403 note);

“(4) section 1401a(b) of title 10, United States Code;

or

“(5) any other adjustment of any annuity under a retirement system for Government officers or employees which the President determines, by Executive order, is based on adjustments under any of the provisions referred to in the preceding paragraph.”

COST-OF-LIVING ADJUSTMENT OF RETIRED PAY OR RETAINER PAY OF MEMBERS AND FORMER MEMBERS OF ARMED FORCES AND COMMISSIONED OFFICERS OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AND PUBLIC HEALTH SERVICE; EFFECTIVE DATE OF AMENDMENT

See provisions of section 801(c) of Pub. L. 94-361, title VIII, July 14, 1976, 90 Stat. 929, set out as a note under section 1401a of Title 10, Armed Forces.

§ 8341. Survivor annuities

(a) For the purpose of this section—

(1) “widow” means the surviving wife of an employee or Member who—

(A) was married to him for at least 9 months immediately before his death; or

(B) is the mother of issue by that marriage;

(2) “widower” means the surviving husband of an employee or Member who—

(A) was married to her for at least 9 months immediately before her death; or

(B) is the father of issue by that marriage;

(3) “dependent”, in the case of any child, means that the employee or Member involved was, at the time of the employee or Member’s death, either living with or contributing to the support of such child, as determined in accordance with such regulations as the Office of Personnel Management shall prescribe; and

(4) “child” means—

(A) an unmarried dependent child under 18 years of age, including (i) an adopted child, and (ii) a stepchild but only if the stepchild lived with the employee or Member in a regular parent-child relationship, and (iii) a recognized natural child, and (iv) a child who lived with and for whom a petition of adoption was filed by an employee or Member, and who is adopted by the surviving spouse of the employee or Member after his death;

(B) such unmarried dependent child regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18; or

(C) such unmarried dependent child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

For the purpose of this paragraph and subsection (e) of this section, a child whose 22nd birthday occurs before July 1 or after August 31 of a calendar year, and while he is regularly pursuing such a course of study or training, is deemed to have become 22 years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if he shows to the satisfaction of the Office of Personnel Management that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(b)(1) Except as provided in paragraph (2) of this subsection, if an employee or Member dies after having retired under this subchapter and is survived by a widow or widower, the widow or widower is entitled to an annuity equal to 55 percent (or 50 percent if retired before October 11, 1962) of an annuity computed under section 8339(a)–(i), (n), (p), (q), (r), and (s) as may apply with respect to the annuitant, or of such portion thereof as may have been designated for this purpose under section 8339(j)(1) of this title, unless the right to a survivor annuity was waived under such section 8339(j)(1) or, in the case of remarriage, the employee or Member did not file an election under section 8339(j)(5)(C) or section 8339(k)(2) of this title, as the case may be.

(2) If an annuitant—

(A) who retired before April 1, 1948; or

(B) who elected a reduced annuity provided in paragraph (2) of section 8339(k) of this title;

dies and is survived by a widow or widower, the widow or widower is entitled to an annuity in an amount which would have been paid had the annuitant been married to the widow or widower at the time of retirement.

(3) A spouse acquired after retirement is entitled to a survivor annuity under this subsection only upon electing this annuity instead of any other survivor benefit to which he may be entitled under this subchapter or another retirement system for Government employees. The annuity of the widow or widower under this subsection commences on the day after the annuitant dies. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(A) dies; or

(B) except as provided in subsection (k), remarries before becoming 55 years of age.

(4) Notwithstanding the preceding provisions of this subsection, the annuity payable under this subsection to the widow or widower of a retired employee or Member may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under this subsection (determined without regard to any waiver or designation under section 8339(j)(1) of this title or a prior similar provision of law), and

(B) the amount of the survivor annuity payable to any former spouse of such employee or Member under subsection (h) of this section.

(c) The annuity of a survivor named under section 8339(k)(1) of this title is 55 percent of the reduced annuity of the retired employee or Member. The annuity of the survivor commences on the day after the retired employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the survivor dies.

(d) If an employee or Member dies after completing at least 18 months of civilian service, his widow or widower is entitled to an annuity equal to 55 percent of an annuity computed under section 8339(a)–(f), (i), (n), (p), (q), (r), and (s) as may apply with respect to the employee or Member, except that, in the computation of the annuity under such section, the annuity of the employee or Member shall be at least the smaller of—

(1) 40 percent of his average pay; or

(2) the sum obtained under such section after increasing his service of the type last performed by the period elapsing between the date of death and the date he would have become 60 years of age.

Notwithstanding the preceding sentence, the annuity payable under this subsection to the widow or widower of an employee or Member may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under this subsection, and

(B) the amount of the survivor annuity payable to any former spouse of such employee or Member under subsection (h) of this section.

The annuity of the widow or widower commences on the day after the employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(i) dies; or

(ii) except as provided in subsection (k), remarries before becoming 55 years of age.

(e)(1) For the purposes of this subsection, “former spouse” includes a former spouse who was married to an employee or Member for less than 9 months and a former spouse of an employee or Member who completed less than 18 months of service covered by this subchapter.

(2) If an employee or Member dies after completing at least 18 months of civilian service, or an employee or Member dies after retiring under this subchapter, and is survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the employee or Member, that surviving child is entitled to an annuity equal to the smallest of—

(A) 60 percent of the average pay of the employee or Member divided by the number of children;

(B) \$900; or

(C) \$2,700 divided by the number of children; subject to section 8340 of this title. If the employee or Member is not survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the employee or Member, that surviving child is entitled to an annuity equal to the smallest of—

(i) 75 percent of the average pay of the employee or Member divided by the number of children;

(ii) \$1,080; or

(iii) \$3,240 divided by the number of children;

subject to section 8340 of this title.

(3) The annuity of a child under this subchapter or under the Act of May 29, 1930, as amended from and after February 28, 1948, commences on the day after the employee or Member dies, or commences or resumes on the first day of the month in which the child later becomes or again becomes a student as described by subsection (a)(3) of this section, if any lump sum paid is returned to the Fund. This annuity and the right thereto terminate on the last day of the month before the child—

(A) becomes 18 years of age unless he is then a student as described or incapable of self-support;

(B) becomes capable of self-support after becoming 18 years of age unless he is then such a student;

(C) becomes 22 years of age if he is then such a student and capable of self-support;

(D) ceases to be such a student after becoming 18 years of age unless he is then incapable of self-support; or

(E) dies or marries;

whichever first occurs. On the death of the surviving spouse or former spouse or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though the spouse, former spouse, or child had not survived the employee or Member.

(4) If the annuity of a child under this subchapter terminates under paragraph (3)(E) because of marriage, then, if such marriage ends, such annuity shall resume on the first day of the month in which it ends, but only if—

(A) any lump sum paid is returned to the Fund; and

(B) that individual is not otherwise ineligible for such annuity.

(f) If a Member heretofore or hereafter separated from the service with title to deferred annuity from the Fund hereafter dies before having established a valid claim for annuity and is survived by a spouse to whom married at the date of separation, the surviving spouse—

(1) is entitled to an annuity equal to 55 percent of the deferred annuity of the Member commencing on the day after the Member dies and terminating on the last day of the month before the surviving spouse dies or remarries; or

(2) may elect to receive the lump-sum credit instead of annuity if the spouse is the individual who would be entitled to the lump-sum credit and files application therefor with the Office before the award of the annuity.

Notwithstanding the preceding sentence, an annuity payable under this subsection to the sur-

viving spouse of a Member may not exceed the difference between—

(A) the annuity which would otherwise be payable to such surviving spouse under this subsection, and

(B) the amount of the survivor annuity payable to any former spouse of such Member under subsection (h) of this section.

(g) In the case of a surviving spouse whose annuity under this section is terminated because of remarriage before becoming 55 years of age, annuity at the same rate shall be restored commencing on the day the remarriage is dissolved by death, annulment, or divorce, if—

(1) the surviving spouse elects to receive this annuity instead of a survivor benefit to which he may be entitled, under this subchapter or another retirement system for Government employees, by reason of the remarriage; and

(2) any lump sum paid on termination of the annuity is returned to the Fund.

(h)(1) Subject to paragraphs (2) through (5) of this subsection, a former spouse of a deceased employee, Member, annuitant, or former Member who was separated from the service with title to a deferred annuity under section 8338(b) of this title is entitled to a survivor annuity under this subsection, if and to the extent expressly provided for in an election under section 8339(j)(3) of this title, or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(2)(A) The annuity payable to a former spouse under this subsection may not exceed the difference between—

(i) the amount applicable in the case of such former spouse, as determined under subparagraph (B) of this paragraph, and

(ii) the amount of any annuity payable under this subsection to any other former spouse of the employee, Member, or annuitant, based on an election previously made under section 8339(j)(3) of this title, or a court order previously issued.

(B) The applicable amount, for purposes of subparagraph (A)(i) of this paragraph in the case of a former spouse, is the amount which would be applicable—

(i) under subsection (b)(4)(A) of this section in the case of a widow or widower, if the deceased was an employee or Member who died after retirement;

(ii) under subparagraph (A) of subsection (d) of this section in the case of a widow or widower, if the deceased was an employee or Member described in the first sentence of such subsection; or

(iii) under subparagraph (A) of subsection (f) of this section in the case of a surviving spouse, if the deceased was a Member described in the first sentence of such subsection.

(3) The commencement and termination of an annuity payable under this subsection shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—

(A) shall not commence before—

(i) the day after the employee, Member, or annuitant dies, or

(ii) the first day of the second month beginning after the date on which the Office receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Office may prescribe,

whichever is later, and

(B) shall terminate—

(i) except as provided in subsection (k), in the case of an annuity computed by reference to clause (i) or (ii) of paragraph (2)(B) of this subsection, no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies; or

(ii) in the case of an annuity computed by reference to clause (iii) of such paragraph, no later than the last day of the month before the former spouse remarries or dies.

(4) For purposes of this subchapter, a modification in a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective—

(A) if such modification is made after the retirement or death of the employee or Member concerned, and

(B) to the extent that such modification involves an annuity under this subsection.

(5) For purposes of this subchapter, a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective, in the case of a former spouse, to the extent that it is inconsistent with any joint designation or waiver previously executed with respect to such former spouse under section 8339(j)(1) of this title or a similar prior provision of law.

(6) Any payment under this subsection to a person bars recovery by any other person.

(7) As used in this subsection, “court” means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.

(i) The requirement in subsections (a)(1)(A) and (a)(2)(A) of this section that the surviving spouse of an employee or Member have been married to such employee or Member for at least 9 months immediately before the employee or Member’s death in order to qualify as the widow or widower of such employee or Member shall be deemed satisfied in any case in which the employee or Member dies within the applicable 9-month period, if—

(1) the death of the employee or Member was accidental; or

(2) the surviving spouse of such individual had been previously married to the individual and subsequently divorced, and the aggregate time married is at least 9 months.

(k)(1)¹ Subsections (b)(3)(B), (d)(ii), and (h)(3)(B)(i) (to the extent that they provide for termination of a survivor annuity because of a remarriage before age 55) shall not apply if the

¹ So in original. No subsec. (j) has been enacted.

widow, widower, or former spouse was married for at least 30 years to the individual on whose service the survivor annuity is based.

(2) A remarriage described in paragraph (1) shall not be taken into account for purposes of section 8339(j)(5)(B) or (C) or any other provision of this chapter which the Office may by regulation identify in order to carry out the purposes of this subsection.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 577; Pub. L. 90-83, §1(80), Sept. 11, 1967, 81 Stat. 216; Pub. L. 91-93, title II, §206, Oct. 20, 1969, 83 Stat. 140; Pub. L. 91-658, §3, Jan. 8, 1971, 84 Stat. 1961; Pub. L. 92-243, §1, Mar. 9, 1972, 86 Stat. 56; Pub. L. 92-297, §7(4), May 16, 1972, 86 Stat. 145; Pub. L. 93-260, §1(a), Apr. 9, 1974, 88 Stat. 76; Pub. L. 94-183, §2(36), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95-317, §1(b), July 10, 1978, 92 Stat. 382; Pub. L. 95-318, §2, July 10, 1978, 92 Stat. 384; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-598, title III, §338(c), Nov. 6, 1978, 92 Stat. 2681; Pub. L. 96-179, §1, Jan. 2, 1980, 93 Stat. 1299; Pub. L. 98-353, title I, §112, July 10, 1984, 98 Stat. 343; Pub. L. 98-615, §2(4), Nov. 8, 1984, 98 Stat. 3199; Pub. L. 99-251, title II, §§205-207, Feb. 27, 1986, 100 Stat. 25; Pub. L. 99-272, title XV, §15204(a)(2), Apr. 7, 1986, 100 Stat. 335; Pub. L. 101-428, §2(d)(7), Oct. 15, 1990, 104 Stat. 929; Pub. L. 102-378, §2(63), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §633(a)(1)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-362; Pub. L. 105-61, title V, §§516(a)(4), 518(a), Oct. 10, 1997, 111 Stat. 1306, 1307; Pub. L. 106-553, §1(a)(2) [title III, §308(h)(7)], Dec. 21, 2000, 114 Stat. 2762, 2762A-89.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 2251(h)-(j).	July 31, 1956, ch. 804, § 401 "Sec. 1(h)-(j)", 70 Stat. 744. Oct. 11, 1962, Pub. L. 87-793, §1103(f)(A), 76 Stat. 871.
(b)-(f)	5 U.S.C. 2260.	July 31, 1956, ch. 804, § 401 "Sec. 10", 70 Stat. 754. Aug. 27, 1958, Pub. L. 85-772, §1(b), (c), 72 Stat. 930. Sept. 6, 1960, Pub. L. 86-713, §1(a), 74 Stat. 813. Oct. 11, 1962, Pub. L. 87-793, §1103 (less (a) and (f)(A)), 76 Stat. 870, 871.

In subsection (b), the words "designated for this purpose under section 8339(i) of this title" are substituted for "designated in writing for such purpose by the employee or Member at the time of retirement" in view of the provisions of section 8339(i).

In subsection (f), the words "heretofore or hereafter" are substituted "either prior to, on, or after the effective date of the Civil Service Retirement Act Amendments of 1956".

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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8341(a)(4) ...	5 App.: 2251(j) (less last sentence).	Apr. 25, 1966, Pub. L. 89-407, §1 (words before 1st comma), 80 Stat. 131. July 18, 1966, Pub. L. 89-504, §502, 80 Stat. 300.

1967 ACT—CONTINUED

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8341(b) (last sentence).	5 App.: 2260(a)(2).	July 18, 1966, Pub. L. 89-504, §506(a), 80 Stat. 301.
8341(d) (last sentence).	5 App.: 2260(c) (last sentence).	July 18, 1966, Pub. L. 89-504, §506(b), 80 Stat. 301.
8341(e)	5 App.: 2260(d).	July 18, 1966, Pub. L. 89-504, §506(c), 80 Stat. 301.
8341(g)	5 App.: 2260(f).	July 18, 1966, Pub. L. 89-504, §506(d), 80 Stat. 302.

In subsection (a)(4), the words "for the purposes of section 10(d)" are omitted as covered by the words "For the purpose of this section."

In clause (2) of the last sentence of subsection (b), the word "retired" is inserted before "Member" for clarity and to conform to the penultimate sentence and clause (1) of the last sentence.

In subsection (e), the words "any lump sum paid" are substituted for "the lump-sum credit, if paid" for clarity and consistency with subsection (g)(2).

In subsection (e)(2)(C), the words "capable of self-support" are substituted for "not incapable of self-support."

In subsection (g), the words "after July 18, 1966" are substituted for "hereafter." In clause (1), the word "he" is substituted for "he or she" on authority of 1 U.S.C. 1. The words "another retirement system for Government employees" are substituted for "any other retirement system established for employees of the Government" for consistency with section 8101(1)(ii).

REFERENCES IN TEXT

The Act of May 29, 1930, as amended from and after February 28, 1948, referred to in subsec. (e)(3), is the predecessor of section 8338 of this title.

AMENDMENTS

2000—Subsecs. (b)(1), (d). Pub. L. 106-553 substituted "(q), (r), and (s)" for "(q), and (r)".

1997—Subsec. (b)(1). Pub. L. 105-61, §516(a)(4), substituted "(q), and (r)" for "and (q) of this title".

Subsec. (b)(3)(B). Pub. L. 105-61, §518(a)(2)(A), substituted "except as provided in subsection (k), remarries" for "remarries".

Subsec. (d). Pub. L. 105-61, §§516(a)(4), 518(a)(2)(A), substituted "(q), and (r)" for "and (q) of this title" in introductory provisions and "except as provided in subsection (k), remarries" for "remarries" in cl. (ii).

Subsec. (h)(3)(B)(i). Pub. L. 105-61, §518(a)(2)(B), substituted "except as provided in subsection (k), in" for "in".

Subsec. (k). Pub. L. 105-61, §518(a)(1), added subsec. (k).

1996—Subsec. (e)(4). Pub. L. 104-208 added par. (4).

1992—Subsecs. (b)(1), (d). Pub. L. 102-378 substituted "(p)," for "(o)".

1990—Subsecs. (b)(1), (d). Pub. L. 101-428 substituted "(n), (o), and (q)" for "(n), and (o)".

1986—Subsecs. (b)(1), (d). Pub. L. 99-272 substituted "(, (n) and (o))" for "and (n)" in subsec. (b)(1), and "(n), and (o)" for "and (n)" in subsec. (d).

Subsec. (e). Pub. L. 99-251, §205, added par. (1), redesignated existing pars. (1) and (2) as (2) and (3), respectively, and in par. (2) as redesignated substituted "that surviving child" for "each surviving child" in two places.

Subsec. (h)(1). Pub. L. 99-251, §206, substituted "annuitant, or former Member who was separated from the service with title to a deferred annuity under section 8338(b) of this title" for "or annuitant".

Subsec. (h)(4)(A). Pub. L. 99-251, §207, inserted "or death" after "retirement".

1984—Subsec. (a)(1)(A), (2)(A). Pub. L. 98-615, §2(4)(A), substituted "9 months" for "1 year".

Subsec. (b)(1). Pub. L. 98-615, §2(4)(B)(i), substituted "by a widow or widower, the widow or widower is entitled to an annuity equal to 55 percent (or 50 percent if

retired before October 11, 1962)" for "by a spouse to whom he was married at the time of retirement, or by a widow or widower whom he married after retirement, the spouse, widow, or widower is entitled to an annuity equal to 55 percent, or 50 percent if retired before October 11, 1962" and "section 8339(j)(1) of this title, unless the right to a survivor annuity was waived under such section 8339(j)(1) or, in the case of remarriage, the employee or Member did not file an election under section 8339(j)(5)(C) or section 8339(k)(2) of this title, as the case may be" for "section 8339(j) of this title, unless the employee or Member has notified the Office in writing at the time of retirement that he does not desire any spouse surviving him to receive his annuity, or in the case of remarriage, he did not file an election under the third sentence of section 8339(j) of this title".

Pub. L. 98-353 substituted "and (n)" for "and (o)".

Subsec. (b)(3). Pub. L. 98-615, §2(4)(B)(i), substituted "widow or widower" for "spouse, widow, or widower" wherever appearing in provisions preceding subpar. (A).

Subsec. (b)(3)(B). Pub. L. 98-615, §2(4)(B)(ii), substituted "55 years of age" for "60 years of age".

Subsec. (b)(4). Pub. L. 98-615, §2(4)(B)(iv), added par. (4).

Subsec. (d). Pub. L. 98-615, §2(4)(C)(i), inserted provision that the annuity payable under this subsection to the widow or widower of an employee or Member may not exceed the difference between the amount which would otherwise be payable to such widow or widower under this subsection and the amount of the survivor annuity payable to any former spouse of such employee or Member under subsec. (h).

Pub. L. 98-353 substituted "and (n)" for "and (o)".

Subsec. (d)(i). Pub. L. 98-615, §2(4)(C)(ii), redesignated subpar. (A) as cl. (i).

Subsec. (d)(ii). Pub. L. 98-615, §2(4)(C)(ii), redesignated subpar. (B) as cl. (ii) and substituted "55 years of age" for "60 years of age".

Subsec. (e)(1). Pub. L. 98-615, §2(4)(D)(i), inserted "or a former spouse who is the natural or adoptive parent of a surviving child of the employee or Member" in provisions preceding subpar. (A) and following subpar. (C).

Subsec. (e)(2). Pub. L. 98-615, §2(4)(D)(ii), substituted "surviving spouse or former spouse" for "surviving spouse" and "spouse, former spouse, or child" for "spouse or child" in provisions following subpar. (E).

Subsec. (f). Pub. L. 98-615, §2(4)(E), inserted provision that an annuity payable under this subsection to the surviving spouse of a Member may not exceed the difference between the annuity which would otherwise be payable to such surviving spouse under this subsection and the amount of the survivor annuity payable to any former spouse of such Member under subsec. (h) of this section in provisions following par. (2).

Subsec. (g). Pub. L. 98-615, §2(4)(F), substituted "55 years of age" for "60 years of age" in provisions preceding par. (1).

Subsecs. (h), (i). Pub. L. 98-615, §2(4)(G), added subsecs. (h) and (i).

1980—Subsec. (a)(2)(B). Pub. L. 96-179, §1(1), struck out "and" after "marriage:".

Subsec. (a)(3). Pub. L. 96-179, §1(2), added par. (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 96-179, §1(3), redesignated former par. (3) as (4), substituted "unmarried dependent child" for "unmarried child" wherever appearing in subpars. (A), (B), and (C), substituted "but only if the stepchild" for "or recognized natural child who" in subpar. (A)(ii), and inserted "a recognized natural child, and (iv)" after "(iii)".

1978—Subsec. (a)(3). Pub. L. 95-454, §906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (b)(1). Pub. L. 95-598, §338(c)(1), inserted reference to subsec. (o) of section 8339 of this title.

Pub. L. 95-454, §906(a)(3), substituted "Office" for "Commission".

Pub. L. 95-317 inserted provisions relating to failure to file an election under section 8339(j) of this title in the case of remarriage.

Subsec. (d). Pub. L. 95-598, §338(c)(2), inserted reference to subsec. (o) of section 8339 of this title.

Subsec. (f)(2). Pub. L. 95-454, §906(a)(3), substituted "Office" for "Commission".

Subsec. (g). Pub. L. 95-318 struck out "after July 18, 1966," after "terminated".

1975—Subsec. (c). Pub. L. 94-183 substituted "8339(k)(1)" for "8339(k)".

1974—Subsec. (a)(1)(A), (2)(A). Pub. L. 93-260 substituted "1 year" for "2 years".

1972—Subsec. (a)(3)(A). Pub. L. 92-243 added cl. (iii).

Subsec. (c). Pub. L. 92-297, §7(4)(i), substituted "section 8339(a)-(i)", "section 8339(j)", and "section 8339(k)" for "section 8339(a)-(h)", "section 8339(i)", and "section 8339(j)", respectively.

Pub. L. 92-297, §7(4)(ii), substituted "section 8339(k)" for "section 8339(j)".

Subsec. (d). Pub. L. 92-297, §7(4)(iii), substituted "section 8339(a)-(f) and (i)" for "section 8339(a)-(e) and (h)".

1971—Subsec. (a)(3), (4). Pub. L. 91-658, §3(a), struck out par. (3) which defined "dependent widower", and redesignated par. (4) as (3).

Subsec. (b). Pub. L. 91-658, §3(b), designated existing first sentence as par. (1), and inserted exception phrase, provision for survival by widow or widower whom employee or Member marries after retirement, entitlement of widow or widower to 55 percent annuity (limited to 50 percent where retirement before Oct. 11, 1962), and substituted "any spouse surviving him" for "his spouse"; added par. (2); and added par. (3), first sentence, respecting entitlement to survivor annuity by a spouse acquired after retirement upon election from available survivor benefits, and designated as second and third sentences former second and third sentences, providing for widows and widowers and substituting "annuitant" for "retired employee or member".

Subsec. (d). Pub. L. 91-658, §3(c), substituted "his widow or widower" for "the widow or dependent widower of the employee or Member" in first sentence, struck out "or dependent" before "widower" in second sentence, and substituted in third sentence provision for termination of annuity where widow or widower dies or remarries before becoming 60 years of age for prior termination of annuity before widow or dependent widower dies, the dependent widower becomes capable of self-support, the widow or dependent widower of an employee remarries before becoming 60 years of age, or the widow or dependent widower of a member remarries.

Subsec. (e)(2). Pub. L. 91-658, §3(d), substituted reference to "subsection (a)(3)" for "subsection (a)(4)".

1969—Subsec. (d). Pub. L. 91-93, §206(a), provided for entitlement to a survivor annuity after an 18 month rather than a 5 year period of civilian service and prescribed as the annuity the smaller of two computations when computing the annuity under section 8399 (a) to (e) and (h) of this title.

Subsec. (e)(1). Pub. L. 91-93, §206(b), increased annuity of a surviving child, substituting "eighteen months" for "five years" of civilian service in par. (1), "60 percent", "\$900", and "\$2,700" for "40 percent", "\$600", and "\$1,800" in cls. (A), (B), and (C), respectively, and "75 percent", "\$1,080", and "\$3,240", for "50 percent", "\$720", and "\$2,160" in cls. (i), (ii), and (iii), respectively.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-553 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 1(a)(2) [title III, §308(i), (j)] of Pub. L. 106-553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 516(a) of 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 8334 of this title.

Section 518(c) of Pub. L. 105-61 provided that: “The amendments made by this section [amending this section and sections 8442 and 8445 of this title] shall apply with respect to remarriages occurring on or after January 1, 1995.”

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(f) [title VI, §633(b)] of Pub. L. 104-208 provided that: “The amendments made by subsection (a) [amending this section and sections 8443 and 8908 of this title] shall apply with respect to any termination of marriage taking effect before, on, or after the date of enactment of this Act [Sept. 30, 1996], except that benefits shall be payable only with respect to amounts accruing for periods beginning on the first day of the month beginning after the later of such termination of marriage or such date of enactment.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective with respect to service performed on or after Apr. 7, 1986, see section 15204(b) of Pub. L. 99-272, as amended, set out as a note under section 8339 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 4 of Pub. L. 98-615, as amended by Pub. L. 99-251, title II, §201(a)-(c), Feb. 27, 1986, 100 Stat. 20, 22; Pub. L. 99-549, §9(a), Oct. 27, 1986, 100 Stat. 3065; Pub. L. 99-556, title V, §501(a), Oct. 27, 1986, 100 Stat. 3139; Pub. L. 100-238, title I, §127, Jan. 8, 1988, 101 Stat. 1758, provided that:

“(a)(1) Except as provided in paragraphs (3), (4), (5), and (6) and subsections (b) and (c), the amendments made by section 2 of this Act [amending this section and sections 8331, 8334, 8339, 8342, 8345, and 8348 of this title] shall take effect May 7, 1985, and shall apply—

“(A) to any individual who, on or after such date, is married to an employee or Member who, on or after such date, retires, dies, or applies for a refund of contributions under subchapter III of chapter 83 of title 5, United States Code, and

“(B) to any individual who, as of such date, is married to a retired employee or Member, unless (i) such employee or Member has waived, under the first sentence of section 8339(j)(1) of such title (or a similar prior provision of law), the right of that individual's spouse to receive a survivor annuity, or (ii) in the case of a post-retirement marriage or remarriage, an election has not been made before such date by such employee or Member with respect to such individual under the applicable provisions of section 8339(j)(1) or 8339(k)(2) of such title, as the case may be (or a similar prior provision of law).

“(2) Except as provided in subsection (f), the amendments made by section 3 of this Act [amending sections 8901 to 8903, 8905, 8907, 8909, and 8913 of this title] shall take effect May 7, 1985, and shall apply to any individual who, on or after such date, is married to an employee or annuitant.

“(3) The amendments made by subparagraphs (B)(iii) and (C)(ii) of section 2(4) of this Act [amending section 8341 of this title] (relating to the termination of survivor benefits for a widow or widower who remarries before age 55) and the amendments made by subparagraph (F) of such section 2(4) [amending section 8341 of this title] (relating to the restoration of a survivor annuity upon the dissolution of such a remarriage) shall apply—

“(A) in the case of a remarriage occurring on or after the date of the enactment of this Act [Nov. 8, 1984]; and

“(B) with respect to periods beginning on or after such date.

“(4)(A) Except as provided in subparagraph (B), the amendment made by section 2(3)(A) of this Act [amending section 8339 of this title] (but only to the extent

that it amends title 5, United States Code, by adding a new section 8339(j)(5)(C)) and the amendment made by section 2(3)(C) of this Act [amending section 8339 of this title] (which relate to the election of a survivor annuity for a spouse in the case of a post-retirement marriage or remarriage) shall apply—

“(i) to an employee or Member who retires before, on, or after May 7, 1985; and

“(ii) in the case of a marriage occurring on or after May 7, 1985.

“(B) The amendments referred to in subparagraph (A) shall not apply in the case of a marriage of an employee or Member retiring before May 7, 1985, if the marriage occurred after May 6, 1985, and before the date of the enactment of the Federal Employees Benefits Improvement Act of 1986 [Feb. 27, 1986].

“(C) Any election by an employee or Member described in subparagraph (B) to provide a survivor annuity for that individual's spouse by a marriage described in such subparagraph shall be effective if made in accordance with the applicable provisions of section 8339(j)(1) or 8339(k)(2) of title 5, United States Code, as the case may be, as in effect on May 6, 1985.

“(5)(A) Paragraphs (3), (4), and (5)(B) of section 8339(j) of title 5, United States Code (as added by section 2(3)(A) of this Act), shall apply in the case of a former spouse of an employee or Member whose marriage to such employee or Member terminated before May 7, 1985, if such employee or Member retires on or after such date. The paragraphs referred to in the preceding sentence shall so apply only insofar as they relate to an election to provide a survivor annuity for a former spouse.

“(B)(i) The requirement described in clause (ii) shall not apply to an election made by an employee or Member under section 8339(j)(3) of title 5, United States Code (as amended by section 2(3)(A) of this Act), in order to provide a survivor annuity under section 8341(h) of such title (as amended by section 2(4)(G) of this Act) in the case of a former spouse referred to in subparagraph (A) if the election meets the requirements of clause (iii).

“(ii) The requirement referred to in clause (i) is the requirement prescribed in section 8339(j)(3) of title 5, United States Code, for an employee or Member to make an election in the case of a former spouse under such section 8339(j)(3) at the time of retirement or, if later, within 2 years after the date on which the marriage of the former spouse to the employee or Member is dissolved.

“(iii) Clause (i) applies to an election which is made by an employee or Member who retires on or after May 7, 1985, and before the date of the enactment of the Federal Employees Benefits Improvement Act of 1986 [Feb. 27, 1986], and is received by the Office of Personnel Management within the 2-year period beginning on the date of the enactment of such Act.

“(C) A survivor annuity shall be paid a former spouse as provided in section 8341(h) of title 5, United States Code (as amended by section 2(4)(G) of this Act), pursuant to an election made in the case of such former spouse under this paragraph.

“(D) The amendments made by paragraphs (6) and (7) of section 2 of this Act [amending sections 8345 and 8348 of this title] shall apply in the case of survivor annuities and elections authorized by this paragraph.

“(6) The amendment made by section 2(4)(A) of this Act [amending section 8341 of this title] (relating to the definition of a widow or widower) and the amendment made by section 2(4)(G) of this Act (but only to the extent that it amends title 5, United States Code, by adding a new section 8341(i)) shall apply with respect to any marriage occurring on or after the date of the enactment of this Act [Nov. 8, 1984].

“(b)(1) Notwithstanding subsection (a)(1) of this section, a former spouse of an employee or Member who retired before May 7, 1985, or who died after becoming eligible to retire and before such date, is entitled to a survivor annuity under section 8341(b) of title 5, United States Code, as amended by this Act, if—

“(A) the retired employee or Member elects, in writing, within eighteen months after the date of enactment of this Act, according to procedures prescribed by the Office of Personnel Management, to have the annuity of such employee or Member reduced under section 8339(j) of title 5, United States Code, as amended by this Act, and, except as provided in paragraph (3) of this subsection, to deposit in the Civil Service Retirement and Disability Fund an amount determined by the Office, as nearly as may be administratively feasible, to reflect the amount by which such employee or Member’s annuity would have been reduced had the reduction been in effect since such employee or Member’s annuity commenced, plus interest computed at the annual rate of six percent for each year during which the annuity would have been reduced if the election had been in effect on and after the date the annuity commenced; or

“(B) where the employee or Member dies or died on or before the one hundred and eightieth day after the date of enactment of this Act or does not make the election described in subparagraph (A)—

“(i) the former spouse’s marriage to the employee or Member was dissolved after September 14, 1978, and before May 8, 1987;

“(ii) the former spouse was married to the employee or Member for at least ten years during periods of creditable service under section 8332 of title 5, United States Code;

“(iii) the former spouse has not remarried before age fifty-five after September 14, 1978;

“(iv) the former spouse files an application for the survivor annuity with the Office on or before May 7, 1989; and

“(v) the former spouse is at least fifty years of age on May 7, 1987.

A survivor annuity under subparagraph (B) shall commence on the day after the employee or Member dies or the first day of the second month after the former spouse’s application is received by the Office, whichever occurs later.

“(2) Except as provided in paragraph (3), if a retired employee or Member who makes an election under subparagraph (A) of paragraph (1) does not make the deposit required by such subparagraph, the Office shall collect the amount of the deposit by offset against the employee or Member’s annuity, up to a maximum of 25 per centum of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset.

“(3) An election made by an individual under subparagraph (A) of paragraph (1) of this subsection to provide a survivor annuity for any person prospectively voids any election previously made by such individual with respect to such person under section 8339(k)(1) of title 5, United States Code, as amended by this Act, or any similar prior provision of law. Notwithstanding the provisions of such subparagraph (A), an individual who made such an election under such section 8339(k)(1) (or prior provision) shall not be required to make the deposit described in such subparagraph.

“(4)(A) A former spouse of an employee or Member referred to in the matter before subparagraph (A) in paragraph (1) of this section shall be entitled to a survivor annuity under subparagraph (B) of such paragraph if—

“(i) the former spouse satisfies the requirements of clauses (ii) through (v) of such subparagraph (B); and

“(ii) there is no surviving spouse of the employee or Member and no other former spouse of such employee or Member who is entitled to receive a survivor annuity under subchapter III of chapter 83 of title 5, United States Code, based on the service of such employee or Member which is creditable under such subchapter and there is no other person who has been designated to receive a survivor annuity under such subchapter by reason of an insurable interest in such employee or Member.

“(B) For the purposes of this paragraph, the term ‘surviving spouse’ means a widow or a widower as de-

defined in paragraphs (1) and (2), respectively, of section 8341(a) of title 5, United States Code.

“(5) A survivor annuity provided under this subsection shall be 55 per centum of the annuity of the retired employee or Member (or of that portion of the annuity which such employee or Member may have designated for this purpose under paragraph (1)(A) of this subsection), as determined under section 8339(a)-(i) and (n) of title 5, United States Code, increased by—

“(A) the total percent increase the retired employee or Member was receiving under section 8340 of such title at death, or

“(B) in the case of a retired employee or Member whose date of death precedes the one hundred and eightieth day after the date of enactment of this Act [Nov. 8, 1984], the total percent increase the retired employee or Member would have received under such section 8340 had such individual died on the one hundred and eightieth day after such date of enactment, and shall not be subject to reduction under section 8341(h)(2) of such title, as amended by this Act.

“(c) Notwithstanding subsection (a)(1) of this section, an employee or Member who retired before the one hundred and eightieth day after the date of enactment of this Act [Nov. 8, 1984] and who is married to a spouse acquired after retirement for whom such employee or Member was unable to provide a survivor annuity because—

“(1) the employee or Member was married at the time of retirement and elected not to provide a survivor annuity for the employee or Member’s spouse at the time of retirement, or

“(2) the employee or Member failed to notify the Office of the employee or Member’s post-retirement marriage within one year after the marriage,

may elect in writing, within one year after the date of enactment of this Act, in accordance with procedures prescribed by the Office, to provide for a survivor annuity for such spouse under section 8341(b) of title 5, United States Code, as amended by this Act, to have the retired employee or Member’s annuity reduced under section 8339(j) of such title, as so amended, and to deposit in the Civil Service Retirement and Disability Fund an amount determined by the Office, as nearly as may be administratively feasible, to reflect the amount by which such employee or Member’s annuity would have been reduced had the election been continuously in effect since the annuity commenced, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which the annuity would have been reduced if the election had been in effect on and after the date the annuity commenced shall be 6 percent. If the retired employee or Member does not make such deposit, the Office shall collect such amount by offset against such employee or Member’s annuity, up to a maximum of 25 percent of the net annuity otherwise payable to such employee or Member, and such employee or Member is deemed to consent to such offset. The Office shall provide for general public notice of the right to make an election under this subsection. In cases to which paragraph (2) of this subsection applies, the retired employee or Member shall provide the Office with such documentation as the Office shall decide is appropriate, that such employee or Member attempted to elect a reduced annuity with survivor benefit for such employee or Member’s current spouse and that such employee or Member’s election was rejected by the Office because it was untimely filed.

“(d) A deposit required by subsection (b)(1)(A) or (c) of this section may be made by the surviving former spouse or spouse, as applicable, of the retired employee or Member.

“(e) The Office shall determine at the end of each fiscal year—

“(1) the cost of survivor annuities provided under subsections (b) and (c) of this section, less an amount determined appropriate by the Office to reflect the value of any deposits made under subsection (b)(1)(A), (c), or (d), and

“(2) the cost of administering subsections (b) and (c).

The Office shall notify the Secretary of the Treasury of the amounts so determined. The Secretary of the Treasury, before closing the account for the fiscal year in question, shall credit to the Civil Service Retirement and Disability Fund, out of any money in the Treasury not otherwise appropriated, such amounts, which shall be available in the same manner as provided under subparagraphs (A) and (B) of section 8348(a)(1) of title 5, United States Code, as amended by this Act.

“(f) Any individual—

“(1) who is entitled to a survivor annuity under subsection (b) of this section or pursuant to an election authorized by reason of the application of subsection (a)(5) of this section,

“(2) as to whom a court order or decree referred to in section 8345(j) of title 5, United States Code (or similar provision of law under a retirement system for Government employees other than the Civil Service Retirement System) has been issued before May 7, 1985, or

“(3) who is entitled (other than as described in paragraph (2)) to an annuity or any portion of an annuity as a former spouse under a retirement system for Government employees as of May 7, 1985, shall be considered to have satisfied section 8901(10)(C) of title 5, United States Code, as amended by this Act. Notwithstanding subsection (a)(2) of this section, any such individual who otherwise meets the definition of a former spouse under section 8901 of title 5, United States Code, as so amended, may, within 12 months after the date of the enactment of the Federal Employees Benefits Improvement Act of 1986 [Feb. 27, 1986], enroll in an approved health benefits plan described by section 8903 of such title, under the conditions set forth in section 8905(c) of such title, as so amended (other than the conditions prescribed in subparagraphs (A) and (B) of paragraph (1) of such section 8905(c)).

“(g)(1) For purposes of subsections (a)(1), (b), (c), (d), and (e), ‘employee’, ‘Member’, and ‘former spouse’ each has the meaning given that term under section 8331 of title 5, United States Code, as amended by this Act.

“(2) For purposes of subsection (a)(2), ‘employee’ and ‘annuitant’ each has the meaning given that term under section 8901 of title 5, United States Code.

“(h) Section 827 of the Foreign Service Act of 1980 [22 U.S.C. 4067] and section 292 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees [50 U.S.C. 403 note] shall not apply with respect to either the amendments made by section 2 [amending sections 8331, 8334, 8339, 8341, 8342, 8345, and 8348 of this title] or the preceding provisions of this section.”

[Section 501(b) of Pub. L. 99-556 provided that: “The amendments made by this section [amending note above] shall be effective as of May 7, 1985.”]

[Section 9(b) of Pub. L. 99-549 provided that: “The amendments made by this section [amending note above] shall be effective as of May 7, 1985.”]

[The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in Pub. L. 98-615, set out above, is Pub. L. 88-643, Oct. 13, 1964, 78 Stat. 1043, which was revised generally by Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196, is known as the Central Intelligence Agency Retirement Act and is classified generally to chapter 38 (§2001 et seq.) of Title 50, War and National Defense.]

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 5(a) of Pub. L. 96-179 provided that: “The amendments made by the first section [amending this section] and section 2 of this Act [amending section 8901 of this title] shall take effect on the date of the enactment of this Act [Jan. 2, 1980], except that no benefits under chapter 89 of title 5, United States Code,

made available by reason of such amendments shall be payable for any period before October 1, 1979.”

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

Section 3 of Pub. L. 95-318 provided that: “The foregoing provisions of this Act [amending this section and enacting provisions set out as notes under this section] shall take effect on—

“(1) the first day of the month following the date of the enactment of this Act [July 10, 1978], or

“(2) October 1, 1978, whichever date is later.”

EFFECTIVE DATE OF 1978 AMENDMENT; SURVIVOR ANNUITIES SUBJECT TO REDUCTION, ETC.

For effective date of amendment by Pub. L. 95-317 as first day of first month which begins on or after date of enactment of Pub. L. 95-317, which was approved July 10, 1978, or Oct. 1, 1978, whichever is later, and provisions respecting eligibility of an individual to a survivor annuity, or the reduction therefor, see section 4 of Pub. L. 95-317, set out as a note under section 8339 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 1(b) of Pub. L. 93-260 provided that: “The amendments made by subsection (a) of this section [amending this section] shall not apply in the cases of employees, Members, or annuitants who died before the date of enactment of this Act [Apr. 9, 1974]. The rights of such individuals and their survivors shall continue in the same manner and to the same extent as if such amendments had not been enacted.”

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by Pub. L. 92-297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92-297, set out as an Effective Date note under section 3381 of this title.

Section 2 of Pub. L. 92-243 provided that: “The amendment made by the first section of this Act [amending this section] is effective upon enactment [Mar. 9, 1972]. Upon application to the Civil Service Commission, it also applies to a child of an employee or Member who died or retired before such date of enactment [Mar. 9, 1972] but no annuity shall be paid by reason of the amendment for any period prior to the date of enactment.”

EFFECTIVE DATE OF 1969 AMENDMENTS

Section 2 of Pub. L. 91-189 provided that: “The provisions of section 8341(e) of title 5, United States Code, as amended by section 206(b) of Public Law 91-93 (83 Stat. 140), shall be effective as of October 20, 1969.”

Amendment by Pub. L. 91-93 inapplicable in cases of persons retired or otherwise separated prior to Oct. 20, 1969, their rights and of their survivors continued as if such amendment had not been enacted, see section 207(a) of Pub. L. 91-93 set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT; RECOMPUTATION AND REDUCTION OF SURVIVOR ANNUITIES

Section 207(c) of Pub. L. 91-93 provided that:

“(1) The amendment made by section 206(b) of this Act [amending this section] shall become effective on the first day of the first month which begins on or after the date of enactment of this Act [Oct. 20, 1969].

“(2) The annuity of each surviving child who, immediately prior to the effective date of such amendment [amending this section] is receiving an annuity

under section 8341(e) of title 5, United States Code, or under a comparable provision of any prior law, or who hereafter becomes entitled to receive annuity under the Act of May 29, 1930, as amended from and after February 28, 1948, shall be recomputed effective on such date, or computed from commencing date if later, in accordance with such amendment. No increase allowed and in force prior to such date shall be included in the computation or recomputation of any such annuity. This paragraph shall not operate to reduce any annuity."

ADDITIONAL ELECTIONS UNDER CIVIL SERVICE
RETIREMENT SPOUSE EQUITY ACT OF 1984

Section 201(d) of Pub. L. 99-251 provided that:

"(1) Notwithstanding the time limitation prescribed in subparagraph (A) of section 4(b)(1) of the Civil Service Retirement Spouse Equity Act of 1984 [Pub. L. 98-615, §4(b)(1)(A), set out as a note above], an election may be made under such subparagraph before the expiration of the 12-month period beginning on the date on which the regulations under paragraph (3) of this subsection first take effect.

"(2) Any retired employee or Member who has made an election under section 4(b)(1)(A) of the Civil Service Retirement Spouse Equity Act of 1984 [set out as a note above] (as in effect at the time of such election) before the regulations under paragraph (3) of this subsection become effective may modify such election by designating, in writing, that only a portion of such employee or Member's annuity is to be used as the base for the survivor annuity for the former spouse for whom the election was made. A modification under this subparagraph shall be subject to the deadline under paragraph (1) of this subsection.

"(3) The Office of Personnel Management shall prescribe regulations to carry out this subsection, including regulations under which an appropriate refund shall be made in the case of a modification under paragraph (2) of this subsection."

RESTORATION OF SURVIVOR ANNUITIES FOR CERTAIN
WIDOWS AND WIDOWERS REMARRYING BEFORE JULY
18, 1966, AND WHERE MEMBER DIED BEFORE JANUARY
8, 1971

Section 1 of Pub. L. 95-318, eff. Oct. 1, 1978, provided that:

"(a) Upon application to the Civil Service Commission, the annuity of—

"(1) a surviving spouse of an employee which was terminated under the provisions of section 8341 (b) or (d) of title 5, United States Code, or of any prior applicable law, because of the remarriage of such spouse before July 18, 1966, and

"(2) a surviving spouse of a Member who died before January 8, 1971, which was terminated under any such provision, because of the remarriage of such spouse, shall be restored in accordance with the provisions of subsection (b) of this section.

"(b)(1) In the case of a remarriage occurring after the surviving spouse became sixty years of age, the annuity shall be restored to such spouse under subsection (a) of this section only if any lump sum paid on termination of the annuity is returned to the Civil Service Retirement and Disability Fund. If such amount is paid, the annuity shall be so restored commencing on the effective date of this section at the rate which would have been in effect if the annuity had not been terminated.

"(2) In the case of a remarriage occurring before the surviving spouse became sixty years of age, the annuity shall be restored to such spouse under subsection (a) of this section only if—

"(A) such spouse elects to receive this annuity instead of a survivor benefit to which the spouse may be entitled under subchapter III of chapter 83 of such title 5 or under another retirement system for Government employees by reason of the marriage; and

"(B) any lump sum paid on termination of the annuity is returned to such fund.

If the requirements of the preceding sentence are satisfied, such annuity shall be so restored commencing on the effective date of this section or on the first day of the month following the date the remarriage is dissolved by death, annulment, or divorce, whichever date is later, at the rate which was in effect when the annuity was terminated."

INCREASE IN ANNUITY PAYABLE TO SURVIVING SPOUSES
OF MEMBERS, EMPLOYEES, OF ANNUITIES BASED ON
SEPARATION OCCURRING PRIOR TO OCT. 20, 1969

Section 2(b) of Pub. L. 93-273, Apr. 26, 1974, 88 Stat. 93, provided that: "In lieu of any increase based on an increase under subsection (a) of this section, an annuity payable from the Civil Service Retirement and Disability Fund to the surviving spouse of an employee, Member, or annuitant, which is based on a separation occurring prior to October 20, 1969 shall be increased by \$132."

Section 3 of Pub. L. 93-273, Apr. 26, 1974, 88 Stat. 93 provided in part that annuity increases under this pension shall apply to annuities which commence before, on, or after Apr. 26, 1974, but that no increase in annuity shall be paid for any period prior to the first day of the first month which begins on or after the ninetieth day after Apr. 26, 1974, or the date on which the annuity commences, whichever is later. See section 3 of Pub. L. 93-273, set out as a note under section 8345 of this title.

REMARRIAGE PROVISIONS

Section 205 of Pub. L. 91-93 provided that: "The provisions of subsection (b)(1), (d)(3), and (g) of section 8341 of title 5, United States Code, also shall apply in the case of any widow or widower—

"(1) of an employee who died, retired, or was otherwise finally separated before July 18, 1966;

"(2) who shall have remarried on or after such date; and

"(3) who, immediately before such remarriage, was receiving annuity from the Civil Service Retirement and Disability Fund;

except that no annuity shall be paid by reason of this section for any period prior to the enactment of this section. No annuity shall be terminated solely by reason of the enactment of this section. Notwithstanding the prohibition contained in the first sentence of this section on the payment of annuity for any period prior to the enactment of this section, in any case in which the Civil Service Commission determines that—

"(1) the remarriage of any widow or widower described in such sentence was entered into by the widow or widower in good faith and in reliance on erroneous information provided by Government authority prior to that remarriage that the then existing survivor annuity of the widow or widower would not be terminated because of the remarriage; and

"(2) such annuity was terminated by law because of that remarriage;

then payment of annuity may be made by reason of this section in such case, beginning as of the effective date of the termination because of the remarriage."

§ 8342. Lump-sum benefits; designation of beneficiary; order of precedence

(a) Subject to subsection (j) of this section, an employee or Member who—

(1)(A) is separated from the service for at least thirty-one consecutive days; or

(B) is transferred to a position in which he is not subject to this subchapter, or chapter 84 of this title, and remains in such a position for at least thirty-one consecutive days;

(2) files an application with the Office of Personnel Management for payment of the lump-sum credit;

(3) is not reemployed in a position in which he is subject to this subchapter, or chapter 84

of this title, at the time he files the application; and

(4) will not become eligible to receive an annuity within thirty-one days after filing the application,

is entitled to be paid the lump-sum credit. Except as provided in section 8343a or 8334(d)(2) of this title, the receipt of the payment of the lump-sum credit by the employee or Member voids all annuity rights under this subchapter based on the service on which the lump-sum credit is based, until the employee or Member is reemployed in the service subject to this subchapter. In applying this subsection to an employee or Member who becomes subject to chapter 84 (other than by an election under title III of the Federal Employees' Retirement System Act of 1986) and who, while subject to such chapter, files an application with the Office for a payment under this subsection—

(i) entitlement to payment of the lump-sum credit shall be determined without regard to paragraph (1) or (3) if, or to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees' Retirement System Act of 1986; and

(ii) if, or to the extent that, the lump-sum credit so relates to service of a type referred to in clause (i), it shall (notwithstanding section 8331(8)) consist of—

(I) the amount by which any unrefunded amount described in section 8331(8)(A) or (B) relating to such service, exceeds 1.3 percent of basic pay for such service; and

(II) interest on the amount payable under subclause (I), computed in a manner consistent with applicable provisions of section 8331(8).

(b) Under regulations prescribed by the Office, a present or former employee or Member may designate a beneficiary or beneficiaries for the purpose of this subchapter.

(c) Lump-sum benefits authorized by subsections (d)–(f) of this section shall be paid to the person or persons surviving the employee or Member and alive at the date title to the payment arises in the following order of precedence, and the payment bars recovery by any other person:

First, to the beneficiary or beneficiaries designated by the employee or Member in a signed and witnessed writing received in the Office before his death. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee or Member.

Third, if none of the above, to the child or children of the employee or Member and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or Member or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee or Member.

Sixth, if none of the above, to such other next of kin of the employee or Member as the Office determines to be entitled under the laws of the domicile of the employee or Member at the date of his death.

For the purpose of this subsection, "child" includes a natural child and an adopted child, but does not include a stepchild.

(d) If an employee or Member dies—

(1) without a survivor; or

(2) with a survivor or survivors and the right of all survivors terminates before a claim for survivor annuity is filed;

or if a former employee or Member not retired dies, the lump-sum credit shall be paid.

(e) If all annuity rights under this subchapter based on the service of a deceased employee or Member terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

(f) If an annuitant dies, annuity accrued and unpaid shall be paid.

(g) Annuity accrued and unpaid on the termination, except by death, of the annuity of an annuitant or survivor annuitant shall be paid to that individual. Annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other person:

First, to the duly appointed executor or administrator of the estate of the survivor annuitant.

Second, if there is no executor or administrator, payment may be made, after 30 days from the date of death of the survivor annuitant, to such next of kin of the survivor annuitant as the Office determines to be entitled under the laws of the domicile of the survivor annuitant at the date of his death.

(h) Amounts deducted and withheld from the basic pay of an employee or Member from the first day of the first month which begins after he has performed sufficient service (excluding service which the employee or Member elects to eliminate for the purpose of annuity computation under section 8339 of this title) to entitle him to the maximum annuity provided by section 8339 of this title, together with interest on the amounts at the rate of 3 percent a year compounded annually from the date of the deductions to the date of retirement or death, shall be applied toward any deposit due under section 8334 of this title, and any balance not so required is deemed a voluntary contribution for the purpose of section 8343 of this title.

(i) An employee who—

(1) is separated from the service before July 12, 1960; and

(2) continues in the service after July 12, 1960, without break in service of 1 workday or more;

is entitled to the benefits of subsection (h) of this section.

(j)(1)(A) Payment of the lump-sum credit under subsection (a) may be made only if the spouse, if any, and any former spouse of the employee or Member are notified of the employee or Member's application.

(B) The Office shall prescribe regulations under which the lump-sum credit shall not be

paid without the consent of a spouse or former spouse of the employee or Member where the Office has received such additional information and documentation as the Office may require that—

(i) a court order bars payment of the lump-sum credit in order to preserve the court's ability to award an annuity under section 8341(h) or section 8345(j); or

(ii) payment of the lump-sum credit would extinguish the entitlement of the spouse or former spouse, under a court order on file with the Office, to a survivor annuity under section 8341(h) or to any portion of an annuity under section 8345(j).

(2)(A) Notification of a spouse or former spouse under this subsection shall be made in accordance with such requirements as the Office shall by regulation prescribe.

(B) Under the regulations, the Office may provide that paragraph (1)(A) of this subsection may be waived with respect to a spouse or former spouse if the employee or Member establishes to the satisfaction of the Office that the whereabouts of such spouse or former spouse cannot be determined.

(3) The Office shall prescribe regulations under which this subsection shall be applied in any case in which the Office receives two or more such orders or decrees.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 579; Pub. L. 90-83, §1(81), Sept. 11, 1967, 81 Stat. 217; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 97-253, title III, §303(c), Sept. 8, 1982, 96 Stat. 794; Pub. L. 97-346, §3(f), Oct. 15, 1982, 96 Stat. 1648; Pub. L. 98-615, §2(5), Nov. 8, 1984, 98 Stat. 3201; Pub. L. 99-251, title II, §208, Feb. 27, 1986, 100 Stat. 25; Pub. L. 99-335, title II, §204(b)(2), 207(h), June 6, 1986, 100 Stat. 592, 596; Pub. L. 100-238, title I, §105(b), Jan. 8, 1988, 101 Stat. 1746; Pub. L. 101-508, title VII, §7001(b)(2)(D), Nov. 5, 1990, 104 Stat. 1388-329; Pub. L. 106-361, §3(a), Oct. 27, 2000, 114 Stat. 1402.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2261.	July 31, 1956, ch. 804, §401 "Sec. 11" 70 Stat. 755. July 12, 1960, Pub. L. 86-622, §1(a), 74 Stat. 409. Oct. 4, 1961, Pub. L. 87-350, §3, 75 Stat. 771.

In subsection (a), the words "before October 1, 1956" are substituted for "prior to the effective date of the Civil Service Retirement Act Amendments of 1956" on authority of §406 of the Act of July 31, 1956, ch. 804, 70 Stat. 761.

In subsection (g), the words "the expiration of" are omitted as surplusage.

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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8342(a)	[No source].	[No source.]
8342(c)	5 App.: 2261(c).	Mar. 23, 1966, Pub. L. 89-373, §2, 80 Stat. 78.

1967 ACT—CONTINUED

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
	5 App.: 2251(j) (last sentence).	Apr. 25, 1966, Pub. L. 89-407, §1 (less words before 1st comma), 80 Stat. 131.

In subsection (a), the amendment is made for consistency within the subchapter and to reflect that it is the individual, rather than the position, that is subject to the subchapter.

In the last sentence of subsection (c), the words "this subsection" are substituted for "section 11" to reflect the codification of title 5, United States Code.

REFERENCES IN TEXT

The Federal Employees' Retirement System Act of 1986, referred to in subsec. (a), is Pub. L. 99-335, June 6, 1986, 100 Stat. 514, as amended. Title III of the Federal Employees' Retirement System Act of 1986 amended sections 3121 and 6103 of Title 26, Internal Revenue Code, section 1005 of Title 39, Postal Service, and section 410 of Title 42, The Public Health and Welfare, enacted provisions set out as notes under sections 8331, 8401, 8432, and 8472 of this title and section 6103 of Title 26, and amended provisions set out as a note under section 8331 of this title. Section 302 of that Act is set out as a note under section 8331 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8401 of this title and Tables.

AMENDMENTS

2000—Subsec. (j)(1). Pub. L. 106-361 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Payment of the lump-sum credit under subsection (a) of this section—

"(A) may be made only if any current spouse and any former spouse of the employee or Member are notified of the employee or Member's application; and

"(B) shall be subject to the terms of a court decree of divorce, annulment, or legal separation or any court order or court approved property settlement agreement incident to such decree if—

"(i) the decree, order, or agreement expressly relates to any portion of the lump-sum credit involved; and

"(ii) payment of the lump-sum credit would extinguish entitlement of the employee's or Member's spouse or former spouse to a survivor annuity under section 8341(h) of this title or to any portion of an annuity under section 8345(j) of this title."

1990—Subsec. (a). Pub. L. 101-508 inserted "or 8334(d)(2)" after "8343a" in second sentence.

1988—Subsec. (a). Pub. L. 100-238 amended last sentence of subsec. (a) generally. Prior to amendment, last sentence read as follows: "In applying this subsection with respect to an employee or Member who becomes subject to chapter 84 of this title, entitlement to payment of the lump-sum credit shall be determined without regard to paragraph (1) or (3) if, and to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees' Retirement System Act of 1986."

1986—Subsec. (a). Pub. L. 99-335 inserted " or chapter 84 of this title," in pars. (1)(B) and (3), substituted "Except as provided in section 8343a of this title, the" for "The" in second sentence, and inserted provisions regarding entitlement by an employee or Member who becomes subject to chapter 84 of this title to payment of a lump-sum credit.

Subsec. (j)(1)(B). Pub. L. 99-251 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "in any case in which there is a former spouse, shall be subject to the terms of a court order or decree issued with respect to such former spouse if—

"(i) the order or decree expressly relates to any portion of the lump-sum credit involved, and

“(ii) payment of the lump-sum credit would extinguish entitlement of the former spouse to a survivor annuity under section 8341(h) of this title or to any portion of an annuity under section 8345(j) of this title.”

1984—Subsec. (a). Pub. L. 98-615, §2(5)(A), substituted “Subject to subsection (j) of this section, an” for “An” in provisions preceding par. (1).

Subsec. (j). Pub. L. 98-615, §2(5)(B), added subsec. (j).

1982—Subsec. (a). Pub. L. 97-346 substituted “such a position” for “such position” in par. (1)(B).

Pub. L. 97-253, §303(c), substituted provisions that an employee or Member who is separated from the service for at least 31 consecutive days or is transferred to a position in which he is not subject to this subchapter for 31 days, and who files an application with the Office of Personnel Management for payment of a lump-sum credit, is not reemployed in a position subject to this subchapter at the time of filing, and will not be eligible for an annuity within 31 days of filing, is entitled to be paid the lump-sum credit and upon receipt of such payment, all annuity rights based on the service upon which the credit is based are voided until reemployment under this subchapter occurs for provisions that such employee or Member who was separated from the service, or was transferred to a position in which he did not continue subject to this subchapter, was entitled to be paid the lump-sum credit if his separation or transfer occurred and application for payment was filed with the Office of Personnel Management at least 31 days before the earliest commencing date of any annuity for which he was eligible, that the receipt of payment of the lump-sum credit by the individual voided all annuity rights under this subchapter until he was reemployed in the service subject to this subchapter, and that this subsection also applied to an employee or Member separated before October 1, 1956, after completing at least 20 years of civilian service.

1978—Subsecs. (a) to (c), (g). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission”.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective with respect to any annuity having a commencement date later than Dec. 1, 1990, see section 7001(b)(3) of Pub. L. 101-508, set out as a note under section 8334 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions and specific applicability provisions, see section 4(a)(1) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 303(d)(2) of Pub. L. 97-253 provided that: “The amendment made by subsection (c) [amending this section] shall take effect October 1, 1982.”

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

REESTABLISHMENT OF RIGHT TO RECEIVE ANNUITY BY JUDGES WHO RECEIVED LUMP-SUM CREDIT

Pub. L. 96-504, §2, Dec. 5, 1980, 94 Stat. 2741, provided that: “A present or former justice or judge of the United States, as defined by section 451 of title 28, United States Code, who, prior to the effective date of this section [Dec. 5, 1980], voided his right to receive an annuity under subchapter III of chapter 83 of title 5,

United States Code, by applying for and receiving a refund of his lump-sum credit while serving as such a justice or judge may, upon application filed with the Office of Personnel Management within one year following the effective date of this section, redeposit such refund with interest computed under section 8334(e) of such title 5 and thereby reestablish his right to receive an annuity under such subchapter effective on the date he otherwise was eligible to receive an annuity. The surviving spouse of any such justice or judge who dies before the effective date of this section may apply to make such redeposit within one year following the effective date of this section and receive both (1) the amount of the annuity which the justice or judge would have been entitled to receive before his death had application been made by him for the annuity and (2) any survivor annuity the justice or judge could have provided under the provisions of law in effect at the time of separation from the service on which title to the annuity is based.”

§ 8343. Additional annuities; voluntary contributions

(a) Under regulations prescribed by the Office of Personnel Management, an employee or Member may voluntarily contribute additional sums in multiples of \$25, but the total may not exceed 10 percent of his basic pay for creditable service after July 31, 1920. The voluntary contribution account in each case is the sum of unrefunded contributions, plus interest at 3 percent a year through December 31, 1984, and thereafter at the rate computed under section 8334(e) of this title, compounded annually to—

(1) the date of payment under subsection (d) of this section, separation, or transfer to a position in which he does not continue subject to this subchapter, whichever is earliest; or

(2) the commencing date fixed for a deferred annuity or date of death, whichever is earlier, in the case of an individual who is separated with title to deferred annuity and does not claim the voluntary contribution account.

(b) The voluntary contribution account is used to purchase at retirement an annuity in addition to the annuity otherwise provided. For each \$100 in the voluntary contribution account, the additional annuity consists of \$7, increased by 20 cents for each full year, if any, the employee or Member is over 55 years of age at the date of retirement.

(c) A retiring employee or Member may elect a reduced additional annuity instead of the additional annuity described by subsection (b) of this section and designate in writing an individual to receive after his death an annuity of 50 percent of his reduced additional annuity. The additional annuity of the employee or Member making the election is reduced by 10 percent, and by 5 percent for each full 5 years the individual designated is younger than the retiring employee or Member. However, the total reduction may not exceed 40 percent.

(d) A present or former employee or Member is entitled to be paid the voluntary contribution account if he files application for payment with the Office before receiving an additional annuity. An individual who has been paid the voluntary contribution account may not again deposit additional sums under this section until, after a separation from the service of more than 3 calendar days, he again becomes subject to this subchapter.

(e) If a present or former employee or Member not retired dies, the voluntary contribution account is paid under section 8342(c) of this title. If all additional annuities or any right thereto based on the voluntary contribution account of a deceased employee or Member terminate before the total additional annuity paid equals the account, the difference is paid under section 8342(c) of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 580; Pub. L. 90-83, §1(82), Sept. 11, 1967, 81 Stat. 217; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 97-253, title III, §303(a)(2), Sept. 8, 1982, 96 Stat. 794.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2262.	July 31, 1956, ch. 804, §401 "Sec. 12", 70 Stat. 756. Aug. 14, 1958, Pub. L. 85-661, §1, 72 Stat. 614.

In subsection (a), the words "after July 31, 1920" are substituted for "on or after August 1, 1920". In paragraph (1), the words "payment under subsection (d) of this section" are based on "but such account shall not in any case include interest beyond date of payment" in former section 2262(d); the latter, accordingly, are omitted from subsection (d).

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. 8343(a)(1) for consistency within the subchapter and to reflect that it is the individual, rather than the position, that is subject to the subchapter.

AMENDMENTS

1982—Subsec. (a). Pub. L. 97-253 inserted "through December 31, 1984, and thereafter at the rate computed under section 8334(e) of this title."

1978—Subsecs. (a), (d). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission" and "Office" for "Commission".

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-253 effective with respect to deposits for service performed, on or after Oct. 1, 1982, and with respect to refunds for which application is received by Office of Personnel Management on or after Oct. 1, 1982, see section 303(d)(1) of Pub. L. 97-253, as amended by Pub. L. 97-346, §3(j)(1), Oct. 15, 1982, 96 Stat. 1649, set out as a note under section 8334 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 8343a. Alternative forms of annuities

(a) The Office of Personnel Management shall prescribe regulations under which any employee or Member who has a life-threatening affliction or other critical medical condition may, at the time of retiring under this subchapter (other than under section 8337 of this title), elect annuity benefits under this section instead of any other benefits under this subchapter (including any benefits under section 8341 of this title) based on the service of the employee or Member.

(b) Subject to subsection (c), the Office shall by regulation provide for such alternative forms of annuities as the Office considers appropriate, except that among the alternatives offered shall be—

(1) an alternative which provides for—

(A) payment of the lump-sum credit to the employee or Member; and

(B) payment of an annuity to the employee or Member for life; and

(2) in the case of an employee or Member who is married at the time of retirement, an alternative which provides for—

(A) payment of the lump-sum credit to the employee or Member; and

(B) payment of an annuity to the employee or Member for life, with a survivor annuity payable for the life of a surviving spouse.

(c) Each alternative provided for under subsection (b) shall, to the extent practicable, be designed such that the present value of the benefits provided under such alternative (including any lump-sum credit) is actuarially equivalent to the present value of the annuity which would otherwise be provided the employee or Member under this subchapter, as computed under subsections (a)–(i), (n), (q), (r), and (s) of section 8339.

(d) An employee or Member who, at the time of retiring under this subchapter—

(1) is married, shall be ineligible to make an election under this section unless a waiver is made under section 8339(j)(1) of this title; or

(2) has a former spouse, shall be ineligible to make an election under this section if the former spouse is entitled to benefits under section 8341(h) or 8345(j) of this title (based on the service of the employee or Member) under the terms of a decree of divorce or annulment, or a court order or court-approved property settlement incident to any such decree, with respect to which the Office has been duly notified.

(e) An employee or Member who is married at the time of retiring under this subchapter and who makes an election under this section may, during the 18-month period beginning on the date of retirement, make the election provided for under section 8339(o) of this title, subject to the deposit requirement thereunder.

(Added Pub. L. 99-335, title II, §204(a), June 6, 1986, 100 Stat. 591; amended Pub. L. 101-428, §2(d)(5), Oct. 15, 1990, 104 Stat. 929; Pub. L. 101-508, title VII, §7001(a)(1), Nov. 5, 1990, 104 Stat. 1388-327; Pub. L. 103-66, title XI, §11002(a), Aug. 10, 1993, 107 Stat. 409; Pub. L. 105-61, title V, §516(a)(5), Oct. 10, 1997, 111 Stat. 1306; Pub. L. 106-553, §1(a)(2) [title III, §308(h)(5)], Dec. 21, 2000, 114 Stat. 2762, 2762A-89.)

AMENDMENTS

2000—Subsec. (c). Pub. L. 106-553 substituted "(a)–(i), (n), (q), (r), and (s)" for "(a)–(i), (n), (q), and (r)".

1997—Subsec. (c). Pub. L. 105-61, which directed the substitution of "(q), and (r) of section 8339" for "and (q) of section 8339 of this title" in section 8334a(c), was executed by making the substitution in subsec. (c) of this section to reflect the probable intent of Congress, because there is no section 8334a in this title.

1993—Subsec. (a). Pub. L. 103-66, §11002(a)(1), substituted "any employee or Member who has a life-

threatening affliction or other critical medical condition” for “an employee or Member”.

Subsec. (f). Pub. L. 103-66, § 11002(a)(2), struck out subsec. (f) which prohibited election of alternative form of annuity where commencement date would be after Dec. 1, 1990, with certain exceptions.

1990—Subsec. (c). Pub. L. 101-428 substituted “(a)-(i), (n), and (q)” for “(a)-(i) and (n)”.

Subsec. (f). Pub. L. 101-508 added subsec. (f).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-553 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 1(a)(2) [title III, § 308(i), (j)] of Pub. L. 106-553, 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 8334 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 11002(d) of Pub. L. 103-66 provided that: “The amendments made by this section [amending this section and section 8420a of this title, section 4047 of Title 22, Foreign Relations and Intercourse, and section 2143 of Title 50, War and National Defense] shall become effective on October 1, 1994, and shall apply with respect to any annuity commencing on or after that date.”

EFFECTIVE DATE

Section effective June 6, 1986, see section 702(b)(3) of Pub. L. 99-335, set out as a note under section 8401 of this title.

APPLICABILITY OF SECTIONS 8343a(f) AND 8420a(f) TO INDIVIDUALS CALLED TO OR PERFORMING DUTY IN CONNECTION WITH OPERATION DESERT SHIELD

Section 7001(a)(4) of Pub. L. 101-508 provided that:

“(A) In applying the provisions of section 8343a(f) or 8420a(f) of title 5, United States Code (as amended by paragraph (1)) to any individual described in subparagraph (B), the reference in such provisions to ‘December 1, 1990’ shall be deemed to read ‘December 1, 1991’.

“(B) This paragraph applies with respect to any individual who—

“(i)(I) is a member of the Armed Forces of the United States who, before December 1, 1990, was called or ordered to active duty (other than for training) pursuant to section 672 [now 12301], 673 [now 12302], 673b [now 12304], 674 [now 12306], 675 [now 12307], or 688 of title 10, United States Code, in connection with Operation Desert Shield; or

“(II) is an employee of the Department of Defense who is certified by the Secretary of Defense to have performed, after November 30, 1990, duties essential for the support of Operation Desert Shield; and

“(ii) would have been eligible to make an election under section 8343a or 8420a of title 5, United States Code (as amended by paragraph (1)) as of November 30, 1990.

“(C) The Office of Personnel Management may prescribe such regulations as may be necessary to carry out this paragraph.”

PARTIAL DEFERRED PAYMENT OF LUMP-SUM CREDIT FOR CERTAIN INDIVIDUALS ELECTING ALTERNATIVE FORMS OF ANNUITIES

Pub. L. 101-239, title IV, § 4005, Dec. 19, 1989, 103 Stat. 2135, as amended by Pub. L. 101-508, title VII, § 7001(a)(2)(A)-(C)(i), Nov. 5, 1990, 104 Stat. 1388-328, provided that:

“(a) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in subsection (c), any lump-sum credit payable to an employee or Member pursuant to the election of an alternative form of annuity by such employee or Member under section 8343a or section 8420a of title 5, United States Code, shall be paid in accordance with the schedule under subsection (b) (instead of the schedule which would otherwise apply), if the commencement date of the annuity payable to such employee or Member occurs after December 2, 1989, and before December 2, 1990.

“(b) SCHEDULE OF PAYMENTS.—The schedule of payment of any lump-sum credit subject to this section is as follows:

“(1) 50 percent of the lump-sum credit shall be payable on the date on which, but for the enactment of this section, the full amount of the lump-sum credit would otherwise be payable.

“(2) The remainder of the lump-sum credit shall be payable on the date which occurs 12 months after the date on which the payment described in paragraph (1) is paid.

An amount payable in accordance with paragraph (2) shall be payable with interest, computed using the rate under section 8334(e)(3) of title 5, United States Code.

“(c) EXCEPTIONS.—The Office of Personnel Management shall prescribe regulations to provide that, unless the individual involved indicates otherwise by written notice to the Office (submitted at such time and in such manner as the regulations may require), this section shall not apply—

“(1) in the case of any individual who is separated from Government service involuntarily, other than for cause on charges of misconduct or delinquency; and

“(2) in the case of any individual as to whom the application of this section would be against equity and good conscience, due to a life-threatening affliction or other critical medical condition affecting such individual.

“(d) ANNUITY BENEFITS NOT AFFECTED.—Nothing in this section shall affect the commencement date, the amount, or any other aspect of any annuity benefits payable under section 8343a or section 8420a of title 5, United States Code.

“(e) DEFINITIONS.—For purposes of this section, the terms ‘lump-sum credit’, ‘employee’, and ‘Member’ each has the meaning given such term by section 8331 or section 8401 of title 5, United States Code, as appropriate.

“(f) CONTINUED APPLICABILITY.—The preceding provisions of this section (disregarding the provision in subsection (a) limiting this section’s applicability to annuities commencing before the date specified in such provision) shall also apply in the case of any employee or Member whose election of an alternative form of annuity would not have been allowable under section 8343a(f) or 8420a(f) of title 5, United States Code (as the case may be), but for—

“(1) paragraph (2)(A) thereof; or

“(2) section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101-508, set out as a note above].”

[Section 7001(a)(2)(C)(ii) of Pub. L. 101-508 provided that: “The amendments made by clause (i) [amending section 4005 of Pub. L. 101-239 and section 6001 of Pub. L. 100-203, set out as notes above and below] shall not apply in any case in which the first half of the lump-sum payment involved was paid before the beginning of the 11-month period which ends on the date of the enactment of this Act [Nov. 5, 1990].”]

Similar provisions were contained in the following acts:

Pub. L. 101-227, § 2, Dec. 12, 1989, 103 Stat. 1943, which was repealed by Pub. L. 101-508, title VII, § 7001(a)(2)(D), Nov. 5, 1990, 104 Stat. 1388-328.

Pub. L. 100-203, title VI, § 6001, Dec. 22, 1987, 101 Stat. 1330-275, as amended by Pub. L. 101-103, § 6, Sept. 30, 1989, 103 Stat. 672; Pub. L. 101-508, title VII, § 7001(a)(2)(C)(i), Nov. 5, 1990, 104 Stat. 1388-328.

§ 8344. Annuities and pay on reemployment

(a) If an annuitant receiving annuity from the Fund, except—

(1) a disability annuitant whose annuity is terminated because of his recovery or restoration of earning capacity;

(2) an annuitant whose annuity, based on an involuntary separation (other than an automatic separation or an involuntary separation for cause on charges of misconduct or delinquency), is terminated under subsection (b) of this section;

(3) an annuitant whose annuity is terminated under subsection (c) of this section; or

(4) a Member receiving annuity from the Fund;

becomes employed in an appointive or elective position, his service on and after the date he is so employed is covered by this subchapter. Deductions for the Fund may not be withheld from his pay unless the individual elects to have such deductions withheld under subparagraph (A). An amount equal to the annuity allocable to the period of actual employment shall be deducted from his pay, except for lump-sum leave payment purposes under section 5551 of this title. The amounts so deducted shall be deposited in the Treasury of the United States to the credit of the Fund. If the annuitant serves on a full-time basis, except as President, for at least 1 year, or on a part-time basis for periods equivalent to at least 1 year of full-time service, in employment not excluding him from coverage under section 8331(1)(i) or (ii) of this title—

(A) deductions for the Fund may be withheld from his pay (if the employee so elects), and his annuity on termination of employment is increased by an annuity computed under section 8339(a), (b), (d), (e), (h), (i), (n), (q), (r), and (s) as may apply based on the period of employment and the basic pay, before deduction, averaged during that employment; and

(B) his lump-sum credit may not be reduced by annuity paid during that employment.

If the annuitant is receiving a reduced annuity as provided in section 8339(j) or section 8339(k)(2) of this title, the increase in annuity payable under subparagraph (A) of this subsection is reduced by 10 percent and the survivor annuity payable under section 8341(b) of this title is increased by 55 percent of the increase in annuity payable under such subparagraph (A), unless, at the time of claiming the increase payable under such subparagraph (A), the annuitant notifies the Office of Personnel Management in writing that he does not desire the survivor annuity to be increased. If the annuitant dies while still reemployed, the survivor annuity payable is increased as though the reemployment had otherwise terminated. If the described employment of the annuitant continues for at least 5 years, or the equivalent of 5 years in the case of part-time employment, he may elect, instead of the benefit provided by subparagraph (A) of this subsection, to deposit in the Fund (to the extent deposits or deductions have not otherwise been made) an amount computed under section 8334(c) of this title covering that employment and have his rights redetermined under this subchapter. If the annuitant dies while still reemployed and

the described employment had continued for at least 5 years, or the equivalent of 5 years in the case of part-time employment, the person entitled to survivor annuity under section 8341(b) of this title may elect to deposit in the Fund and have his rights redetermined under this subchapter.

(b) If an annuitant, other than a Member receiving an annuity from the Fund, whose annuity is based on an involuntary separation (other than an automatic separation or an involuntary separation for cause or charges on misconduct or delinquency) is reemployed in a position in which he is subject to this subchapter, payment of the annuity terminates on reemployment.

(c) If an annuitant, other than a Member receiving an annuity from the Fund, is appointed by the President to a position in which he is subject to this subchapter, or is elected as a Member, payment of the annuity terminates on reemployment. Upon separation from such position, an individual whose annuity is so terminated is entitled to have his rights redetermined under this subchapter, except that the amount of the annuity resulting from such redetermination shall be at least equal to the amount of the terminated annuity plus any increases under section 8340 of this title occurring after the termination and before the commencement of the redetermined annuity.

(d) If a Member receiving annuity from the Fund becomes employed in an appointive or elective position, annuity payments are discontinued during the employment and resumed on termination of the employment in the amount equal to the sum of the amount of the annuity the member was receiving immediately before the commencement of the employment and the amount of the increases which would have been made in the amount of the annuity under section 8340 of this title during the period of the employment if the annuity had been payable during that period, except that—

(1) the retired Member or Member separated with title to immediate or deferred annuity, who serves at any time after separation as a Member in an appointive position in which he is subject to this subchapter, is entitled, if he so elects, to have his Member annuity computed or recomputed as if the service had been performed before his separation as a Member and the annuity as so computed or recomputed is effective—

(A) the day Member annuity commences;

or

(B) the day after the date of separation from the appointive position;

whichever is later;

(2) if the retired Member becomes employed after December 31, 1958, in an appointive position on an intermittent-service basis—

(A) his annuity continues during the employment and is not increased as a result of service performed during that employment;

(B) retirement deductions may not be withheld from his pay;

(C) an amount equal to the annuity allocable to the period of actual employment shall be deducted from his pay, except for lump-sum leave payment purposes under section 5551 of this title; and

(D) the amounts so deducted shall be deposited in the Treasury of the United States to the credit of the Fund;

(3) if the retired Member becomes employed after December 31, 1958, in an appointive position without pay on a full-time or substantially full-time basis, his annuity continues during the employment and is not increased as a result of service performed during the employment; and

(4) if the retired Member takes office as Member and gives notice as provided by section 8331(2) of this title, his service as Member during that period shall be credited in determining his right to and the amount of later annuity.

(e) This section does not apply to an individual appointed to serve as a Governor of the Board of Governors of the United States Postal Service.

(f) Notwithstanding the provisions of subsection (a) of this section, if an annuitant receiving annuity from the Fund, except a Member receiving annuity from the Fund, becomes employed as a justice or judge of the United States, as defined by section 451 of title 28, annuity payments are discontinued during such employment and are resumed in the same amount upon resignation or retirement from regular active service as such a justice or judge.

(g) A former employee or a former Member who becomes employed as a justice or judge of the United States, as defined by section 451 of title 28, may, at any time prior to resignation or retirement from regular active service as such a justice or judge, apply for and be paid, in accordance with section 8342(a) of this title, the amount (if any) by which the lump-sum credit exceeds the total annuity paid, notwithstanding the time limitation contained in such section for filing an application for payment.

(h)(1) Subject to paragraph (2) of this subsection, subsections (a), (b), (c), and (d) of this section shall not apply to any annuitant receiving an annuity from the Fund while such annuitant is employed, during any period described in section 5532(f)(2) of this title (as in effect before the repeal of that section by section 651(a) of Public Law 106-65) or any portion thereof, under the administrative authority of the Administrator, Federal Aviation Administration, or the Secretary of Defense to perform duties in the operation of the air traffic control system or to train other individuals to perform such duties: *Provided, however,* That the amount such an annuitant may receive in pay, excluding premium pay, in any pay period when aggregated with the annuity payable during that same period shall not exceed the rate payable for level V of the Executive Schedule.

(2) Paragraph (1) of this subsection shall apply only in the case of any annuitant receiving an annuity from the Fund who, before December 31, 1987, applied for retirement or separated from the service while being entitled to an annuity under this chapter.

(i)(1) The Director of the Office of Personnel Management may, at the request of the head of an Executive agency—

(A) waive the application of the preceding provisions of this section on a case-by-case

basis for employees in positions for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

(B) grant authority to the head of such agency to waive the application of the preceding provisions of this section, on a case-by-case basis, for an employee serving on a temporary basis, but only if, and for so long as, the authority is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances.

(2) The Office shall prescribe regulations for the exercise of any authority under this subsection, including criteria for any exercise of authority and procedures for terminating a delegation of authority under paragraph (1)(B).

(j)(1) If warranted by circumstances described in subsection (i)(1)(A) or (B) (as applicable), the Director of the Administrative Office of the United States Courts shall, with respect to an employee in the judicial branch, have the same waiver authority as would be available to the Director of the Office of Personnel Management, or a duly authorized agency head, under subsection (i) with respect to an employee of an Executive agency.

(2) Authority under this subsection may not be exercised with respect to a justice or judge of the United States, as defined in section 451 of title 28.

(k)(1) If warranted by circumstances described in subsection (i)(1)(A) or (B) (as applicable), an official or committee designated in paragraph (2) shall, with respect to the employees specified in the applicable subparagraph of such paragraph, have the same waiver authority as would be available to the Director of the Office of Personnel Management, or a duly authorized agency head, under subsection (i) with respect to an employee of an Executive agency.

(2) Authority under this subsection may be exercised—

(A) with respect to an employee of an agency in the legislative branch, by the head of such agency;

(B) with respect to an employee of the House of Representatives, by the Committee on House Oversight of the House of Representatives; and

(C) with respect to an employee of the Senate, by the Committee on Rules and Administration of the Senate.

(3) Any exercise of authority under this subsection shall be in conformance with such written policies and procedures as the agency head, the Committee on House Oversight of the House of Representatives, or the Committee on Rules and Administration of the Senate (as applicable) shall prescribe, consistent with the provisions of this subsection.

(4) For the purpose of this subsection, “agency in the legislative branch”, “employee of the House of Representatives”, “employee of the Senate”, and “congressional employee” each has the meaning given to it in section 5531 of this title.

(l)(1) For purposes of this subsection—

(A) the term “head of an agency” means—

(i) the head of an Executive agency, other than the Department of Defense or the Government Accountability Office;

(ii) the head of the United States Postal Service;

(iii) the Director of the Administrative Office of the United States Courts, with respect to employees of the judicial branch; and

(iv) any employing authority described under subsection (k)(2), other than the Government Accountability Office; and

(B) the term “limited time appointee” means an annuitant appointed under a temporary appointment limited to 1 year or less.

(2) The head of an agency may waive the application of subsection (a) or (b) with respect to any annuitant who is employed in such agency as a limited time appointee, if the head of the agency determines that the employment of the annuitant is necessary to—

(A) fulfill functions critical to the mission of the agency, or any component of that agency;

(B) assist in the implementation or oversight of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) or the Troubled Asset Relief Program under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.);

(C) assist in the development, management, or oversight of agency procurement actions;

(D) assist the Inspector General for that agency in the performance of the mission of that Inspector General;

(E) promote appropriate training or mentoring programs of employees;

(F) assist in the recruitment or retention of employees; or

(G) respond to an emergency involving a direct threat to life of property or other unusual circumstances.

(3) The head of an agency may not waive the application of subsection (a) or (b) with respect to an annuitant—

(A) for more than 520 hours of service performed by that annuitant during the period ending 6 months following the individual’s annuity commencing date;

(B) for more than 1040 hours of service performed by that annuitant during any 12-month period; or

(C) for more than a total of 3120 hours of service performed by that annuitant.

(4)(A) The total number of annuitants to whom a waiver by the head of an agency under this subsection or section 8468(i) applies may not exceed 2.5 percent of the total number of full-time employees of that agency.

(B) If the total number of annuitants to whom a waiver by the head of an agency under this subsection or section 8468(i) applies exceeds 1 percent of the total number of full-time employees of that agency, the head of that agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Personnel Management—

(i) a report with an explanation that justifies the need for the waivers in excess of that percentage; and

(ii) not later than 180 days after submitting the report under clause (i), a succession plan.

(5)(A) The Director of the Office of Personnel Management may promulgate regulations providing for the administration of this subsection.

(B) Any regulations promulgated under subparagraph (A) may—

(i) provide standards for the maintenance and form of necessary records of employment under this subsection;

(ii) to the extent not otherwise expressly prohibited by law, require employing agencies to provide records of such employment to the Office of Personnel Management or other employing agencies as necessary to ensure compliance with paragraph (3);

(iii) authorize other administratively convenient periods substantially equivalent to 12 months, such as 26 pay periods, to be used in determining compliance with paragraph (3)(B);

(iv) include such other administrative requirements as the Director of the Office of Personnel Management may find appropriate to provide for the effective operation of, or to ensure compliance with, this subsection; and

(v) encourage the training and mentoring of employees by any limited time appointee employed under this subsection.

(6)(A) Any hours of training or mentoring of employees by any limited time appointee employed under this subsection shall not be included in the hours of service performed for purposes of paragraph (3), but those hours of training or mentoring may not exceed 520 hours.

(B) If the primary service performed by any limited time appointee employed under this subsection is training or mentoring of employees, the hours of that service shall be included in the hours of service performed for purposes of paragraph (3).

(7) The authority of the head of an agency under this subsection to waive the application of subsection (a) or (b) shall terminate 5 years after the date of enactment of the National Defense Authorization Act for Fiscal Year 2010.

(m)(1) For the purpose of subsections (i) through (l), “Executive agency” shall not include the Government Accountability Office.

(2) An employee as to whom a waiver under subsection (i), (j), (k), or (l) is in effect shall not be considered an employee for purposes of this chapter or chapter 84 of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 581; Pub. L. 90-83, §1(83), Sept. 11, 1967, 81 Stat. 217; Pub. L. 91-375, §6(c)(20), Aug. 12, 1970, 84 Stat. 776; Pub. L. 91-658, §4, Jan. 8, 1971, 84 Stat. 1962; Pub. L. 92-297, §7(5), May 16, 1972, 86 Stat. 145; Pub. L. 94-397, §1(a)-(c), Sept. 3, 1976, 90 Stat. 1202, 1303; Pub. L. 95-454, title IX, §906(a)(14), Oct. 13, 1978, 92 Stat. 1226; Pub. L. 95-598, title III, §338(d), Nov. 6, 1978, 92 Stat. 2681; Pub. L. 96-179, §4, Jan. 2, 1980, 93 Stat. 1299; Pub. L. 96-504, §1, Dec. 5, 1980, 94 Stat. 2741; Pub. L. 97-141, §5(a), Dec. 29, 1981, 95 Stat. 1719; Pub. L. 97-276, §151(g), Oct. 2, 1982, 96 Stat. 1202; Pub. L. 97-346, §3(j)(2), Oct. 15, 1982, 96 Stat. 1649; Pub. L. 98-353, title I, §112, July 10, 1984, 98 Stat. 343; Pub. L. 98-396, title I, Aug. 22, 1984, 98 Stat. 1403; Pub. L. 98-525, title XV, §1537(e), Oct. 19, 1984, 98 Stat. 2636; Pub. L. 99-88, title I, §100, Aug. 15, 1985, 99 Stat. 351; Pub. L. 99-500, §101(l), Oct. 18, 1986, 100 Stat. 1783-308, and Pub. L. 99-591, §101(l), Oct. 30, 1986, 100 Stat.

3341–308; Pub. L. 100–202, §§101(l) [title I], 106, Dec. 22, 1987, 101 Stat. 1329–358, 1329–362, 1329–433; Pub. L. 100–457, title I, Sept. 30, 1988, 102 Stat. 2129; Pub. L. 101–428, §2(d)(8), Oct. 15, 1990, 104 Stat. 929; Pub. L. 101–509, title V, §529 [title I, §108(b)], Nov. 5, 1990, 104 Stat. 1427, 1450; Pub. L. 101–510, div. A, title XII, §1206(j)(2), Nov. 5, 1990, 104 Stat. 1664; Pub. L. 102–190, div. A, title VI, §655(b), Dec. 5, 1991, 105 Stat. 1391; Pub. L. 102–378, §8(a), Oct. 2, 1992, 106 Stat. 1359; Pub. L. 105–55, title I, §107, Oct. 7, 1997, 111 Stat. 1184; Pub. L. 105–61, title V, §516(a)(6), Oct. 10, 1997, 111 Stat. 1306; Pub. L. 106–398, §1 [[div. A], title X, §1087(f)(5)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293; Pub. L. 106–553, §1(a)(2) [title III, §308(h)(8)], Dec. 21, 2000, 114 Stat. 2762, 2762A–89; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 111–84, div. A, title XI, §1122(a), Oct. 28, 2009, 123 Stat. 2505; Pub. L. 111–383, div. A, title X, §1075(a)(1), Jan. 7, 2011, 124 Stat. 4368.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2263 (less (a)).	July 31, 1956, ch. 804, §401 “Sec. 13 (less (a))”, 70 Stat. 757. July 7, 1960, Pub. L. 86–604, §1(f), 74 Stat. 358. July 12, 1960, Pub. L. 86–622, §3(a), 74 Stat. 410. Oct. 4, 1961, Pub. L. 87–350, §5, 75 Stat. 771.

In subsections (a) and (b), the words “except for lump-sum leave payment purposes under section 61b of this title” are omitted as unnecessary as section 5551(a) provides that a “lump-sum leave payment is considered pay for taxation purposes only”.

In subsection (a), the words “after September 30, 1956” are substituted for “hereafter” on authority of §406 of the Act of July 31, 1956, ch. 804, 70 Stat. 761. In paragraph (2), the words “other than an automatic separation” are substituted for “excluding a separation under the automatic separation provisions of this chapter”. In the third sentence, the words “and this provision concerning the lump-sum leave payments shall also be effective in the case of each retired employee separated from reemployment after December 15, 1953, and before the effective date of the Civil Service Retirement Act Amendments of 1956” are omitted as executed, and any existing rights are preserved by technical section 8. In the fourth sentence, the words “except as President” are added to preserve the exception stated in former section 2252(b). In the penultimate sentence, the words “after October 3, 1961” are substituted for “on or after October 4, 1961”. In the last sentence, the words “in any manner” are omitted as unnecessary.

In subsection (b), the words “receiving annuity from the Fund” are substituted for “heretofore or hereafter retired under this chapter”. The word “hereafter” is omitted as unnecessary. In paragraph (1)(B), the words “the day after” are substituted for “the first day of the month following” on authority of former section 2264(b), which is carried into section 8345(b). In paragraph (1), former clause (C) is omitted as obsolete. In paragraph (2)(D), the words “of the United States” are 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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8344(a)	5 App.: 2263(b) (last sentence).	Mar. 30, 1966, Pub. L. 89–378, §1, 80 Stat. 93.

In subsection (a), the words “after July 11, 1960” are substituted for “on or after July 12, 1960.” In subsection (b)(1), the amendment is made for consistency within the subchapter.

In the codification of 5 U.S.C. 8344 by Public Law 89–554, the words “except for lump-sum leave payment purposes under section 61b of this title” were omitted from the third sentence of subsection (a) and from subsection (b)(2)(C) on the basis that they were unnecessary since former 5 U.S.C. 61b [now codified as 5 U.S.C. 5551(a)] provided that a lump-sum leave payment was considered pay for taxation purposes only. This amendment restores to 5 U.S.C. 8344 the language that was so omitted to conform to the source statute (section 13 of the Civil Service Retirement Act, as amended) and in recognition that the language was expressly placed in the source statute to overcome certain decisions of the Comptroller General of the United States (see 28 Comp. Gen. 294; 33 id. 591, and 36 id. 209).

REFERENCES IN TEXT

Level V of the Executive Schedule, referred to in subsec. (h)(1), is set out in section 5316 of this title.

The American Recovery and Reinvestment Act of 2009, referred to in subsec. (l)(2)(B), is Pub. L. 111–5, Feb. 17, 2009, 123 Stat. 115. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 1 of Title 26, Internal Revenue Code, and Tables.

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (l)(2)(B), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765. Title I of the Act is classified principally to subchapter I (§5211 et seq.) of chapter 52 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of Title 12 and Tables.

The date of enactment of the National Defense Authorization Act for Fiscal Year 2010, referred to in subsec. (l)(7), is the date of enactment of Pub. L. 111–84, which was approved Oct. 28, 2009.

CODIFICATION

Amendment of subsec. (h)(2) by Pub. L. 99–500 and 99–591 is based on provisions under the subheading “Federal Aviation Administration, Operations”, in title I of H.R. 5205 (Department of Transportation and Related Agencies Appropriations Act, 1987), as incorporated by reference by section 101(l) of Pub. L. 99–500 and 99–591, and enacted into law by section 106 of Pub. L. 100–202.

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2011—Subsec. (l)(2)(B). Pub. L. 111–383 substituted “5211 et seq.” for “5201 et seq.”

2009—Subsec. (l). Pub. L. 111–84, §1122(a)(1), (2), added subsec. (l). Former subsec. (l) redesignated (m).

Subsec. (m). Pub. L. 111–84, §1122(a)(1), redesignated subsec. (l) as (m).

Subsec. (m)(1). Pub. L. 111–84, §1122(a)(3)(A), substituted “(l)” for “(k)”.

Subsec. (m)(2). Pub. L. 111–84, §1122(a)(3)(B), substituted “(k), or (l)” for “or (k)”.

2004—Subsec. (l)(1). Pub. L. 108–271 substituted “Government Accountability Office” for “General Accounting Office”.

2000—Subsec. (a)(A). Pub. L. 106–553 substituted “(q), (r), and (s)” for “(q), and (r)”.

Subsec. (h)(1). Pub. L. 106–398 inserted “(as in effect before the repeal of that section by section 651(a) of Public Law 106–65)” after “section 5532(f)(2) of this title”.

1997—Subsec. (a)(A). Pub. L. 105-61 substituted “(q), and (r)” for “and (q) of this title”.

Subsec. (k)(2)(B), (3). Pub. L. 105-55 substituted “the Committee on House Oversight of the House of Representatives” for “the Speaker of the House of Representatives”.

1992—Subsec. (i). Pub. L. 102-378 repealed Pub. L. 101-510, §1206(j)(2). See 1990 Amendment note below.

1991—Subsec. (i)(3). Pub. L. 102-190, §655(b)(2), struck out par. (3) which read as follows: “An employee to whom a waiver under subparagraph (A) or (B) of paragraph (1) applies shall not be deemed an employee for the purposes of this chapter or chapter 84 while such waiver is in effect.”

Subsecs. (j) to (l). Pub. L. 102-190, §655(b)(1), added subsecs. (j) to (l).

1990—Subsec. (a)(A). Pub. L. 101-428 substituted “(i), (n), and (q)” for “(i), and (n)”.

Subsec. (i). Pub. L. 101-510, §1206(j)(2), added a subsec. (i) identical to that added by Pub. L. 101-509, see below. Pub. L. 102-378, §8(a), repealed Pub. L. 101-510, §1206(j)(2), and provided that this title shall read as if such section 1206(j)(2) had not been enacted.

Pub. L. 101-509 added subsec. (i).

1988—Subsec. (h)(2). Pub. L. 100-457 substituted “1987” for “1986”.

1987—Subsec. (h)(2). Pub. L. 100-202, §101(l) [title I], substituted “December 31, 1986” for “April 1, 1986”.

For amendment by section 106 of Pub. L. 100-202, see 1986 Amendment note below.

1986—Subsec. (h)(2). Pub. L. 99-500 and Pub. L. 99-591, §101(l), as enacted by Pub. L. 100-202, §106, substituted “April 1, 1986” for “April 1, 1985”. See Codification note above.

1985—Subsec. (h)(1). Pub. L. 99-88 inserted proviso directing that the amount an annuitant may receive in pay, excluding premium pay, in any pay period when aggregated with the annuity payable during that same period shall not exceed the rate payable for level V of the Executive Schedule.

Subsec. (h)(2). Pub. L. 99-88 substituted “April 1, 1985” for “August 3, 1981”.

1984—Subsec. (a)(A). Pub. L. 98-353 substituted “and (n)” for “and (o)”.

Subsec. (d). Pub. L. 98-396 substituted “on termination of the employment in the amount equal to the sum of the amount of the annuity the member was receiving immediately before the commencement of the employment and the amount of the increases which would have been made in the amount of the annuity under section 8340 of this title during the period of the employment if the annuity had been payable during that period” for “in the same amount on termination of the employment”.

Subsec. (h)(1). Pub. L. 98-525 inserted “or the Secretary of Defense”.

1982—Subsec. (a). Pub. L. 97-346 inserted “unless the individual elects to have such deductions withheld under subparagraph (A)” and “(to the extent deposits or deductions have not otherwise been made)”.

Subsec. (a)(4)(A). Pub. L. 97-346 inserted “deductions for the Fund may be withheld from his pay (if the employee so elects)”.

Subsec. (h). Pub. L. 97-276 added subsec. (h).

1981—Subsec. (c). Pub. L. 97-141 inserted provision that upon separation from such position, an individual whose annuity is so terminated is entitled to have his rights redetermined under this subchapter, except that the amount of the annuity resulting from such redetermination shall be at least equal to the amount of the terminated annuity plus any increases under section 8340 of this title occurring after the termination and before the commencement of the redetermined annuity.

1980—Subsec. (c). Pub. L. 96-179 inserted “or is elected as a Member.” after “subject to this subchapter.”.

Subsecs. (f), (g). Pub. L. 96-504 added subsecs. (f) and (g).

1978—Subsec. (a). Pub. L. 95-598 inserted reference to subsec. (o) of section 8339 of this title in par. (A).

Pub. L. 95-454 substituted “Office of Personnel Management” for “Commission” in provisions following par. (B).

1976—Subsec. (a). Pub. L. 94-397, §1(a), inserted provisions requiring applicability to annuitants whose annuity is terminated under subsecs. (b) and (c) of this section, authorizing deducted amounts to be deposited in the Treasury to the credit of the Fund, and covering described employment continuing for the equivalent of five years in the case of part-time employment, and struck out provisions requiring employment after Sept. 30, 1956, or service on July 31, 1956, for application of coverage, and redetermination rights for an annuitant whose annuity is based on involuntary separation from the service and who is separated after July 11, 1960 for full-time employment began before Oct. 1, 1956.

Subsecs. (b), (c). Pub. L. 94-397, §1(b), added subsecs. (b) and (c). Former subsecs. (b) and (c) redesignated (d) and (e), respectively.

Subsec. (d). Pub. L. 94-397, §1(b), (c), redesignated former subsec. (b) as (d) and struck out prohibition of application of subsec. to a Member appointed by the President to a position not requiring confirmation by the Senate.

Subsec. (e). Pub. L. 94-397, §1(b), redesignated former subsec. (c) as (e).

1972—Subsec. (a). Pub. L. 92-297 substituted “section 8339(a), (b), (d), (e), (h), and (i)” for “section 8339(a), (b), (d), (g), and (h)”, in subpar. (A), and “section 8339(j) or section 8339(k)(2)” for “section 8339(i) or section 8339(j)(2)”, in sentence following cl. (ii).

1971—Subsec. (a). Pub. L. 91-658 substituted provisions respecting reemployed annuitants and reduction in their annuity and increase in survivor annuity, notice to Commission of a desire not to increase the survivor annuity, increase in survivor annuity where annuitant dies while still reemployed, and redetermination of rights to survivor annuity where reemployment continued for five or more years upon election to deposit in the Fund, for prior provision that employment of an annuitant did not create an annuity for or affect the annuity of a survivor.

1970—Subsec. (c). Pub. L. 91-375 added subsec. (c).

CHANGE OF NAME

Committee on House Oversight of House of Representatives changed to Committee on House Administration of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-553 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 1(a)(2) [title III, §308(i), (j)] of Pub. L. 106-553, 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 8334 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-378 effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102-378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 106 of Pub. L. 100-202 provided that the amendment by Pub. L. 99-500 and 99-591 is effective on

date of enactment [Oct. 18, 1986] of the “pertinent joint resolution” making continuing appropriations for fiscal year 1987 [Pub. L. 99-500 and 99-591].

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-525 effective Oct. 1, 1984, see section 1537(f) of Pub. L. 98-525, set out as a note under section 4109 of this title.

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-276 effective at 5 o'clock ante meridian eastern daylight time, Aug. 3, 1981, see section 151(h)(1) of Pub. L. 97-276, set out as an Effective Date note under section 5546a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 5(b) of Pub. L. 97-141 provided that:

“(1) Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to individuals whose annuities terminate under section 8344(c) of title 5, United States Code, on or after October 1, 1976.

“(2) In the case of an individual whose reemployment ended before the date of the enactment of this Act [Dec. 29, 1981], the amendment shall apply only upon application by the individual to the Office of Personnel Management within one year after the date of enactment. Upon receipt of such application, the Office shall recompute the annuity, effective as of the day following the day reemployment ended.”

EFFECTIVE DATE OF 1980 AMENDMENT

Section 6 of Pub. L. 96-504 provided that:

“(a) The provisions of this Act [amending this section, repealing section 375 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under sections 8342 of this title and section 376 of Title 28] shall take effect on—

“(1) the date of the enactment of this Act [Dec. 5, 1980], or

“(2) October 1, 1980, whichever date is later.

“(b) The provisions of subsection (f) of section 8344 of title 5, United States Code, as added by the first section of this Act, shall apply only to an individual who becomes employed as a justice or judge of the United States on or after the effective date of this Act. The provisions of subsection (g) of such section, as added by the first section of this Act, shall apply to an individual employed as a justice or judge of the United States on the effective date of this Act and to an individual appointed as such a justice or judge on or after such effective date.”

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2 of Pub. L. 94-397 provided that:

“(a) Except as provided under subsection (b) of this section, the amendments made by this Act [amending this section and section 8339 of this title] shall become effective on the date of the enactment of this Act [Sept. 3, 1976] or October 1, 1976, whichever is later, and shall apply to annuitants serving in appointive or elective positions on and after such date.

“(b) The amendment made by subsection (c) of the first section of this Act [amending this section] shall

become effective on the date of the enactment of this Act [Sept. 3, 1976] or October 1, 1976, whichever is later, but shall not apply to any annuitant reemployed before such date.”

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92-297, set out as an Effective Date note under section 3381 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 5(d) of Pub. L. 91-658 provided that: “The amendment made by section 4 of this Act [amending this section] shall apply only with respect to a reemployed annuitant whose employment terminates on or after the date of enactment of this Act [Jan. 8, 1971].”

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by section 1(83)(A), (D) of Pub. L. 90-83 effective as of Sept. 6, 1966, for all purposes, see section 9(h) of Pub. L. 90-83, set out as a note under section 5102 of this title.

ELIMINATION OF DUPLICATIVE AMENDMENTS

Pub. L. 102-378, §8(a), Oct. 2, 1992, 106 Stat. 1359, provided that: “Subsections (i) and (j) of section 1206 of the Defense Acquisition Workforce Improvement Act, as contained in the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1662, 1663) [enacting section 5380 of this title, amending this section and sections 5532 and 8468 of this title, and enacting provisions set out as notes under sections 5532 and 5380 of this title], are repealed, and title 5, United States Code, shall read as if such subsections had not been enacted.”

CONSTRUCTION OF 2009 AMENDMENT

Pub. L. 111-84, div. A, title XI, §1122(c), Oct. 28, 2009, 123 Stat. 2509, provided that: “Nothing in the amendments made by this section [amending this section, section 8468 of this title, and section 1005 of Title 39, Postal Service] may be construed to authorize the waiver of the hiring preferences under chapter 33 of title 5, United States Code in selecting annuitants to employ in an appointive or elective position.”

ANNUAL REPORT TO CONGRESS

Pub. L. 102-190, div. A, title VI, §655(d), Dec. 5, 1991, 105 Stat. 1393, provided that:

“(1) For the purpose of this subsection, the term ‘agency in the legislative branch’ has the meaning given such term by section 5531(4) of title 5, United States Code, as amended by subsection (a).

“(2) Each agency in the legislative branch shall submit to the Speaker of the House of Representatives and the Committee on Rules and Administration of the Senate, for each calendar year, a written report on how any authority made available as a result of the enactment of this section [amending this section and sections 5531, 5532, and 8468 of this title] was used by such agency during the period covered by such report.

“(3) A report under this subsection—

“(A) shall include the number of instances in which each type of authority was exercised, the circumstances justifying the exercise of authority, and, unless previously submitted, a description of the policies and procedures governing each type of authority exercised; and

“(B) shall be submitted not later than 30 days after the end of the calendar year to which it relates.”

COMMISSION ON THE OPERATION OF THE SENATE

Pub. L. 94-252, Mar. 30, 1976, 90 Stat. 294, provided that: "On and after the date of the enactment of the joint resolution [Mar. 30, 1976], the provisions of section 8344 of title 5, United States Code, shall not apply to any individual serving as a member of the Commission on the Operation of the Senate."

§ 8345. Payment of benefits; commencement, termination, and waiver of annuity

(a) Each annuity is stated as an annual amount, one-twelfth of which, rounded to the next lowest dollar, constitutes the monthly rate payable on the first business day of the month after the month or other period for which it has accrued.

(b)(1) Except as otherwise provided—

(A) an annuity of an employee or Member commences on the first day of the month after—

- (i) separation from the service; or
- (ii) pay ceases and the service and age requirements for title to annuity are met; and

(B) any other annuity payable from the Fund commences on the first day of the month after the occurrence of the event on which payment thereof is based.

(2) The annuity of—

(A) an employee involuntarily separated from service, except by removal for cause on charges of misconduct or delinquency; and

(B) an employee or Member retiring under section 8337 of this title due to a disability;

shall commence on the day after separation from the service or the day after pay ceases and the service and age or disability requirements for title to annuity are met.

(c) The annuity of a retired employee or Member terminates on the day death or other terminating event provided by this subchapter occurs. The annuity of a survivor terminates on the last day of the month before death or other terminating event occurs.

(d) An individual entitled to annuity from the Fund may decline to accept all or any part of the annuity by a waiver signed and filed with the Office of Personnel Management. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

(e) Payment due a minor, or an individual mentally incompetent or under other legal disability, may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of the claimant or is otherwise legally vested with the care of the claimant or his estate. If a guardian or other fiduciary of the individual under legal disability has not been appointed under the law of the State of residence of the claimant, payment may be made to any person who, in the judgment of the Office, is responsible for the care of the claimant, and the payment bars recovery by any other person.

[(f) Repealed. Pub. L. 99-251, title III, §305(a), Feb. 27, 1986, 100 Stat. 26.]

(g) The Office shall prescribe regulations to provide that the amount of any monthly annuity payable under this section accruing for any month and which is computed with regard to

service that includes any service referred to in section 8332(b)(6) performed by an individual prior to January 1, 1969, shall be reduced by the portion of any benefits under any State retirement system to which such individual is entitled (or on proper application would be entitled) for such month which is attributable to such service performed by such individual before such date.

(h) An individual entitled to an annuity from the Fund may make allotments or assignments of amounts from his annuity for such purposes as the Office of Personnel Management in its sole discretion considers appropriate.

(i)(1) No payment shall be made from the Fund unless an application for benefits based on the service of an employee or Member is received in the Office of Personnel Management before the one hundred and fifteenth anniversary of his birth.

(2) Notwithstanding paragraph (1) of this subsection, after the death of an employee, Member, or annuitant, no benefit based on his service shall be paid from the Fund unless an application therefor is received in the Office of Personnel Management within 30 years after the death or other event which gives rise to title to the benefit.

(j)(1) Payments under this subchapter which would otherwise be made to an employee, Member, or annuitant based on service of that individual shall be paid (in whole or in part) by the Office to another person if and to the extent expressly provided for in the terms of—

(A) any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation; or

(B) any court order or other similar process in the nature of garnishment for the enforcement of a judgment rendered against such employee, Member, or annuitant, for physically, sexually, or emotionally abusing a child.

In the event that the Office is served with more than 1 decree, order, or other legal process with respect to the same moneys due or payable to any individual, such moneys shall be available to satisfy such processes on a first-come, first-served basis, with any such process being satisfied out of such moneys as remain after the satisfaction of all such processes which have been previously served.

(2) Paragraph (1) shall only apply to payments made by the Office under this subchapter after the date of receipt in the Office of written notice of such decree, order, other legal process, or agreement, and such additional information and documentation as the Office may prescribe.

(3) For the purpose of this subsection—

(A) the term "court" means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court;

(B) the term "judgment rendered for physically, sexually, or emotionally abusing a child" means any legal claim perfected through a final enforceable judgment, which claim is based in whole or in part upon the physical, sexual, or emotional abuse of a child,

whether or not that abuse is accompanied by other actionable wrongdoing, such as sexual exploitation or gross negligence; and

(C) the term “child” means an individual under 18 years of age.

(k)(1) The Office shall, in accordance with this subsection, enter into an agreement with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Office shall withhold State income tax in the case of the monthly annuity of any annuitant who voluntarily requests, in writing, such withholding. The amounts withheld during any calendar quarter shall be held in the Fund and disbursed to the States during the month following that calendar quarter.

(2) An annuitant may have in effect at any time only one request for withholding under this subsection, and an annuitant may not have more than two such requests in effect during any one calendar year.

(3) Subject to paragraph (2) of this subsection, an annuitant may change the State designated by that annuitant for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with such change. An annuitant also may revoke any request of that annuitant for withholding. Any change in the State designated or revocation is effective on the first day of the month after the month in which the request or the revocation is processed by the Office, but in no event later than on the first day of the second month beginning after the day on which such request or revocation is received by the Office.

(4) This subsection does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of this subsection. The Office may not accept pay from a State for services performed in withholding State income taxes from annuities. Any amount erroneously withheld from an annuity and paid to a State by the Office shall be repaid by the State in accordance with regulations issued by the Office.

(5) For the purpose of this subsection, “State” means a State, the District of Columbia, or any territory or possession of the United States.

(l) Transfers of contributions and deposits authorized by section 408(a)(3) of the Foreign Service Act of 1980 shall be deemed to be a complete and final payment of benefits under this chapter.

(Pub. L. 89-544, Sept. 6, 1966, 80 Stat. 582; Pub. L. 93-273, §1, Apr. 26, 1974, 88 Stat. 93; Pub. L. 94-126, §1(c), Nov. 12, 1975, 89 Stat. 679; Pub. L. 94-166, §1, Dec. 23, 1975, 89 Stat. 1002; Pub. L. 94-183, §1, Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95-366, §1(a), Sept. 15, 1978, 92 Stat. 600; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 97-35, title XVII, §1705(a), Aug. 13, 1981, 95 Stat. 758; Pub. L. 97-253, title III, §§304(b), 305(a), Sept. 8, 1982, 96 Stat. 795; Pub. L. 98-615, §2(6), Nov. 8, 1984, 98 Stat. 3202; Pub. L. 99-251, title III, §305(a), Feb. 27, 1986, 100 Stat. 26; Pub. L. 101-246, title I, §141(b), Feb. 16, 1990, 104 Stat. 35; Pub. L. 103-358, §2(a), Oct. 14, 1994, 108 Stat. 3420.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2264.	July 31, 1956, ch. 804, §401 “Sec. 14”, 70 Stat. 757. Sept. 6, 1960, Pub. L. 86-713, §1(b), 74 Stat. 814.

In subsection (b), the second sentence of former section 2264(b) is omitted as included in the second sentence of the revised subsection. The words “after September 5, 1960” are substituted for “on or after September 6, 1960”.

In subsection (c), the first sentence of former section 2264(c) is omitted as covered by the remainder of the subsection. The words “on or after September 6, 1960” are omitted as obsolete.

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

REFERENCES IN TEXT

Section 408(a)(3) of the Foreign Service Act of 1980, referred to in subsec. (l), is classified to section 3968(a)(3) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1994—Subsec. (j)(1). Pub. L. 103-358, §2(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Payments under this subchapter which would otherwise be made to an employee, Member, or annuitant based upon his service shall be paid (in whole or in part) by the Office to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.”

Subsec. (j)(2). Pub. L. 103-358, §2(a)(2), inserted “other legal process,” after “order.”

Subsec. (j)(3). Pub. L. 103-358, §2(a)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “As used in this subsection, ‘court’ means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.”

1990—Subsec. (l). Pub. L. 101-246 added subsec. (l).

1986—Subsec. (f). Pub. L. 99-251 struck out subsec. (f) which provided minimum monthly rates of annuity payable under subsec. (a) with certain exceptions.

1984—Subsec. (f)(4). Pub. L. 98-615, §2(6)(A), added par. (4).

Subsec. (j)(3). Pub. L. 98-615, §2(6)(B), inserted reference to the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and any Indian court.

1982—Subsec. (a). Pub. L. 97-253, §304(b), substituted “rounded to the next lowest” for “fixed at the nearest”.

Subsec. (b). Pub. L. 97-253, §305(a), substituted provisions that an annuity of an employee or Member commences on the first day of the month after separation from service or pay ceases and the service and age requirements for title to annuity are met, that any other annuity payable from the Fund commences on the first day of the month after the occurrence of the event on which the payment thereof is based, and that the annuity of an employee involuntarily separated from service or of an employee or Member retiring due to a disability shall commence on the day after separation from the service or the day after pay ceases and the service and age or disability requirements for title to annuity are met for provisions that the annuity of an employee or Member would commence on the day after he was separated from the service, or on the day after his pay

ceased and he met the service and the age or disability requirements for title to annuity and that an annuity payable from the Fund allowed after September 5, 1960, would commence on the day after the occurrence of the event on which payment thereof was based.

1981—Subsec. (k). Pub. L. 97-35 added subsec. (k).

1978—Subsecs. (d), (e). Pub. L. 95-454, §906(a)(2), (3), substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission”.

Subsec. (g). Pub. L. 95-454, §906(a)(3), substituted “Office” for “Commission” in the subsec. (g) added by Pub. L. 94-126.

Pub. L. 95-366 redesignated as subsec. (h) the subsec. (g) added by Pub. L. 94-166.

Subsec. (h). Pub. L. 95-454, §906(a)(2), substituted “Office of Personnel Management” for “Civil Service Commission”.

Pub. L. 95-366 redesignated former subsec. (g), added by Pub. L. 94-166, as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 95-454, §906(a)(2), substituted “Office of Personnel Management” for “Civil Service Commission” wherever appearing.

Pub. L. 95-366 redesignated former subsec. (h) as (i).

Subsec. (j). Pub. L. 95-454, §906(a)(3), substituted “Office” for “Commission” wherever appearing.

Pub. L. 95-366 added subsec. (j).

1975—Subsec. (g). Pub. L. 94-166 added subsec. (g) authorizing allotment or assignment of amounts from annuities.

Pub. L. 94-126 added subsec. (g) relating to the crediting of National Guard technician service in connection with civil service retirement.

Subsec. (h). Pub. L. 94-183 added subsec. (h).

1974—Subsec. (f). Pub. L. 93-273 added subsec. (f).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 3 of Pub. L. 103-358 provided that: “The amendments made by this Act [amending this section and sections 8437 and 8467 of this title] shall take effect on the date of enactment of this Act [Oct. 14, 1994], and shall apply with respect to any decree, order, or other legal process, or notice of agreement received by the Office of Personnel Management or the Executive Director of the Federal Retirement Thrift Investment Board on or after such date of enactment.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions and specific applicability provisions, see section 4(a)(1), (5)(D) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 304(b) of Pub. L. 97-253 applicable with respect to any annuity commencing on or after Oct. 1, 1982, and with respect to any adjustment or redetermination of any annuity made on or after such date, see section 304(c) of Pub. L. 97-253, set out as a note under section 8340 of this title.

Section 305(b) of Pub. L. 97-253, as amended by Pub. L. 97-377, title I, §124, Dec. 21, 1982, 96 Stat. 1913, provided that: “The amendment made by subsection (a) [amending this section] shall apply to annuities which commence on or after October 1, 1982, except for those individuals who serve three days or less in the month of retirement.”

EFFECTIVE DATE OF 1981 AMENDMENT

Section 1705(b) of Pub. L. 97-35 provided that: “The amendment made by subsection (a) [amending this section] shall take effect October 1, 1981.”

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

Section 2 of Pub. L. 95-366 provided that: “The amendments made by the first section of this Act [amending this section and section 8346 of this title] shall only apply to payments made from the Civil Service Retirement and Disability Fund after the date of the enactment of this Act [Sept. 15, 1978].”

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-126 effective as of Jan. 1, 1969, applicable to a person who, on Nov. 12, 1975, is receiving or is entitled to receive benefits under any Federal retirement system and requests in writing the application of the amendment to him by the office administering his retirement system, and additional benefits to commence Dec. 1, 1975, see section 3 of Pub. L. 94-126, set out as a note under section 8334 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 3 of Pub. L. 93-273 provided that: “This Act [amending this section and enacting provisions set out as notes under this section and sections 8339 and 8341 of this title] shall become effective on the date of enactment [Apr. 26, 1974]. Annuity increases under this Act shall apply to annuities which commence before, on, or after the date of enactment of this Act, but no increase in annuity shall be paid for any period prior to the first day of the first month which begins on or after the ninetieth day after the date of enactment of this Act, or the date on which the annuity commences, whichever is later.”

MINIMUM ANNUITY UNDER CIVIL SERVICE RETIREMENT AND DISABILITY SYSTEM

Section 305(b)-(d) of Pub. L. 99-251 provided that:

“(b) SAVINGS PROVISION.—An annuity payable from the Civil Service Retirement and Disability Fund as of the day before the date of enactment of this Act [Feb. 27, 1986] shall not be reduced—

“(1) by reason of the repeal of section 8345(f) of title 5, United States Code; or

“(2) if or to the extent that the reduction is to be made for the purpose of eliminating an overpayment resulting from the manner in which such section 8345(f) has been administered by the Office of Personnel Management.

“(c) RATIFICATION OF ERRONEOUS PAYMENTS.—Any individual to whom an overpayment of an annuity has been made from the Civil Service Retirement and Disability Fund before the date of enactment of this Act [Feb. 27, 1986] shall be deemed to have been entitled to that overpayment if and to the extent that such overpayment resulted from the manner in which the Office of Personnel Management has administered section 8345(f) of title 5, United States Code.

“(d) ADJUSTMENTS OF CERTAIN REDUCTIONS.—(1) Effective for any month after the date of enactment of this Act [Feb. 27, 1986], the amount of any annuity which—

“(A) is payable from the Civil Service Retirement and Disability Fund; and

“(B) was reduced after June 30, 1985, and before the date of enactment of this Act, to eliminate any overpayment resulting from the manner in which the Office of Personnel Management administered section 8345(f) of title 5, United States Code,

shall not be less than the amount which would have been payable as of such date of enactment if the reduction described in clause (B) had not been made.

“(2)(A) The Office shall make a lump-sum payment to each individual receiving an annuity to which paragraph (1) applies.

“(B) The lump-sum payment made to any individual under this paragraph shall be equal to the excess of—

“(i) the total amount of the annuity payments which would have been made to the individual for the period beginning with the first month in which the reduction described in paragraph (1)(B) was made and ending on the last day of the month in which this Act is enacted if the reduction had not been made, over

“(ii) the total amount of the annuity payments which have been paid to such individual for that period.”

AVAILABILITY OF THE CIVIL SERVICE RETIREMENT AND DISABILITY FUND FOR EXPENSES INCURRED BY THE OFFICE OF PERSONNEL MANAGEMENT

Section 1705(c) of Pub. L. 97-35 provided that: “The Civil Service Retirement and Disability Fund is available for expenses incurred by the Office of Personnel Management in the initial implementation of the amendments made by this section [amending this section].”

MONTHLY RATE OF MINIMUM ANNUITY

Section 2(c) of Pub. L. 93-273 provided that: “The monthly rate of an annuity resulting from an increase under this section [enacting provisions set out as notes under sections 8339 and 8341 of this title] shall be considered as the monthly rate of annuity payable under section 8345(a) of title 5, United States Code [subsec. (a) of this section], for purposes of computing the minimum annuity under section 8345(f) of title 5 [subsec. (f) of this section], as added by the first section of this Act.”

§ 8346. Exemption from legal process; recovery of payments

(a) The money mentioned by this subchapter is not assignable, either in law or equity, except under the provisions of subsections (h) and (j) of section 8345 of this title, or subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal laws.

(b) Recovery of payments under this subchapter may not be made from an individual when, in the judgment of the Office of Personnel Management, the individual is without fault and recovery would be against equity and good conscience. Withholding or recovery of money mentioned by this subchapter on account of a certification or payment made by a former employee of the United States in the discharge of his official duties may be made only if the head of the agency on behalf of which the certification or payment was made certifies to the Office that the certification or payment involved fraud on the part of the former employee.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 583; Pub. L. 94-166, § 2, Dec. 23, 1975, 89 Stat. 1002; Pub. L. 95-366, § 1(b), Sept. 15, 1978, 92 Stat. 600; Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 2265. July 31, 1956, ch. 804, § 401 "Sec. 15", 70 Stat. 758.

In subsection (b), the words “Notwithstanding any other provision of law” are omitted as unnecessary. The second word of the second sentence “or” is substituted for “of” to correct a printing error.

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

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-366 substituted references to subsecs. (h) and (j) of section 8345 for reference to subsec. (g) of section 8345.

Subsec. (b). Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively.

1975—Subsec. (a). Pub. L. 94-166 inserted “except under the provisions of section 8345(g) of this title,” after “equity”, and “, except as otherwise may be provided by Federal laws” after “process”.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

Amendment by Pub. L. 95-366 applicable to payments made from Civil Service Retirement and Disability Fund after Sept. 15, 1978, see section 2 of Pub. L. 95-366, set out as a note under section 8345 of this title.

§ 8347. Administration; regulations

(a) The Office of Personnel Management shall administer this subchapter. Except as otherwise specifically provided herein, the Office shall perform, or cause to be performed, such acts and prescribe such regulations as are necessary and proper to carry out this subchapter.

(b) Applications under this subchapter shall be in such form as the Office prescribes. Agencies shall support the applications by such certificates as the Office considers necessary to the determination of the rights of applicants. The Office shall adjudicate all claims under this subchapter.

(c) The Office shall determine questions of disability and dependency arising under this subchapter. Except to the extent provided under subsection (d) of this section, the decisions of the Office concerning these matters are final and conclusive and are not subject to review. The Office may direct at any time such medical or other examinations as it considers necessary to determine the facts concerning disability or dependency of an individual receiving or applying for annuity under this subchapter. The Office may suspend or deny annuity for failure to submit to examination.

(d)(1) Subject to paragraph (2) of this subsection, an administrative action or order affecting the rights or interests of an individual or of the United States under this subchapter may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(2) In the case of any individual found by the Office to be disabled in whole or in part on the basis of the individual’s mental condition, and that finding was made pursuant to an application by an agency for purposes of disability retirement under section 8337(a) of this title, the procedures under section 7701 of this title shall apply and the decision of the Board shall be subject to judicial review under section 7703 of this title.

(e) The Office shall fix the fees for examinations made under this subchapter by physicians or surgeons who are not medical officers of the United States. The fees and reasonable traveling and other expenses incurred in connection with the examinations are paid from appropriations for the cost of administering this subchapter.

(f) The Office shall select three actuaries, to be known as the Board of Actuaries of the Civil Service Retirement System. The Office shall fix the pay of the members of the Board, except members otherwise in the employ of the United States. The Board shall report annually on the actuarial status of the System and furnish its advice and opinion on matters referred to it by

the Office. The Board may recommend to the Office and to Congress such changes as in the Board's judgment are necessary to protect the public interest and maintain the System on a sound financial basis. The Office shall keep, or cause to be kept, such records as it considers necessary for making periodic actuarial valuations of the System. The Board shall make actuarial valuations every 5 years, or oftener if considered necessary by the Office.

(g) The Office may exclude from the operation of this subchapter an employee or group of employees in or under an Executive agency whose employment is temporary or intermittent. However, the Office may not exclude any employee who occupies a position on a part-time career employment basis (as defined in section 3401(2) of this title).

(h) The Office, on recommendation by the Mayor of the District of Columbia, may exclude from the operation of this subchapter an individual or group of individuals employed by the government of the District of Columbia whose employment is temporary or intermittent.

(i) The Architect of the Capitol may exclude from the operation of this subchapter an employee under the Office of the Architect of the Capitol whose employment is temporary or of uncertain duration.

(j) The Librarian of Congress may exclude from the operation of this subchapter an employee under the Library of Congress whose employment is temporary or of uncertain duration.

(k) The Secretary of Agriculture shall prescribe regulations to effect the application and operation of this subchapter to an individual named by section 8331(1)(F) of this title.

(l) The Director or Acting Director of the Botanic Garden may exclude from the operation of this subchapter an employee under the Botanic Garden whose employment is temporary or of uncertain duration.

(m) Notwithstanding any other provision of law, for the purpose of ensuring the accuracy of information used in the administration of this chapter, at the request of the Director of the Office of Personnel Management—

(1) the Secretary of Defense or the Secretary's designee shall provide information on retired or retainer pay provided under title 10;

(2) the Secretary of Veterans Affairs shall provide information on pensions or compensation provided under title 38;

(3) the Commissioner of Social Security or the Secretary's¹ designee shall provide information contained in the records of the Social Security Administration; and

(4) the Secretary of Labor or the Secretary's designee shall provide information on benefits paid under subchapter I of chapter 81 of this title.

The Director shall request only such information as the Director determines is necessary. The Director, in consultation with the officials from whom information is requested, shall establish, by regulation and otherwise, such safeguards as are necessary to ensure that information made available under this subsection is used only for the purpose authorized.

(n)(1) Notwithstanding any other provision of this subchapter, the Director of Central Intelligence shall, in a manner consistent with the administration of this subchapter by the Office, and to the extent considered appropriate by the Director of Central Intelligence—

(A) determine entitlement to benefits under this subchapter based on the service of employees of the Central Intelligence Agency;

(B) maintain records relating to the service of such employees;

(C) compute benefits under this subchapter based on the service of such employees;

(D) collect deposits to the Fund made by such employees, their spouses, and their former spouses;

(E) authorize and direct disbursements from the Fund to the extent based on service of such employees; and

(F) perform such other functions under this subchapter as the Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management, determines to be appropriate.

(2) The Director of the Office of Personnel Management shall furnish such information and, on a reimbursable basis, such services to the Director of Central Intelligence as the Director of Central Intelligence requests to carry out paragraph (1) of this subsection.

(3)(A) The Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management, shall by regulation prescribe appropriate procedures to carry out this subsection.

(B) The regulations shall provide procedures for the Director of the Office of Personnel Management to inspect and audit disbursements from the Civil Service Retirement and Disability Fund under this subchapter.

(C) The Director of Central Intelligence shall submit the regulations prescribed under subparagraph (A) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the regulations take effect.

(4)(A) Section 201(c) of the Central Intelligence Agency Retirement Act shall apply in the administration of this subchapter to the extent that the provisions of this subchapter are administered under this subsection.

(B) Notwithstanding subparagraph (A) of this paragraph, section 8347(d) of this title shall apply with respect to employees of the Central Intelligence Agency who are subject to the Civil Service Retirement System.

(o) Any provision of law outside of this subchapter which provides coverage, service credit, or any other benefit under this subchapter to any individuals who (based on their being employed by an entity other than the Government) would not otherwise be eligible for any such coverage, credit, or benefit, shall not apply with respect to any individual appointed, transferred, or otherwise commencing that type of employment on or after October 1, 1988.

(p) The Director of the Administrative Office of the United States Courts may exclude from the operation of this subchapter an employee of the Administrative Office of the United States Courts, the Federal Judicial Center, or a court

¹ So in original. Probably should be "Commissioner's".

named by section 610 of title 28, whose employment is temporary or of uncertain duration.

(q)(1) Under regulations prescribed by the Office of Personnel Management, an employee who—

(A) has not previously made an election under this subsection or had an opportunity to make an election under this paragraph; and

(B) moves, without a break in service of more than 1 year, to employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, described in section 2105(c),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered as an employee under this subchapter during any employment described in section 2105(c) after such move.

(2) Under regulations prescribed by the Office of Personnel Management, an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, described in section 2105(c), who—

(A) has not previously made an election under this subsection or had an opportunity to make an election under this paragraph;

(B) is a participant in a retirement system established for employees described in section 2105(c);

(C) moves, without a break in service of more than 1 year, to a position that is not described in section 2105(c); and

(D) is excluded from coverage under chapter 84 by section 8402(b),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered, during any subsequent employment as an employee as defined in section 2105(a) or section 2105(c), by the retirement system applicable to such employee's current or most recent employment described in section 2105(c) rather than be subject to this subchapter.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 583; Pub. L. 90-83, §1(84), Sept. 11, 1967, 81 Stat. 218; Pub. L. 90-623, §1(22), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 95-437, §4(a), Oct. 10, 1978, 92 Stat. 1058; Pub. L. 95-454, title IX, §906(a)(2), (3), (9), (c)(2)(F), Oct. 13, 1978, 92 Stat. 1224, 1225, 1227; Pub. L. 96-54, §2(a)(50), Aug. 14, 1979, 93 Stat. 384; Pub. L. 96-499, title IV, §404(b), Dec. 5, 1980, 94 Stat. 2606; Pub. L. 96-500, §1, Dec. 5, 1980, 94 Stat. 2696; Pub. L. 97-253, title III, §302(b), Sept. 8, 1982, 96 Stat. 793; Pub. L. 99-335, title II, §207(i), June 6, 1986, 100 Stat. 596; Pub. L. 100-238, title I, §108(a)(1), Jan. 8, 1988, 101 Stat. 1747; Pub. L. 101-474, §5(n), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101-508, title VII, §7202(j)(2), Nov. 5, 1990, 104 Stat. 1388-337; Pub. L. 102-54, §13(b)(5), June 13, 1991, 105 Stat. 274; Pub. L. 102-378, §2(64), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 102-496, title VIII, §803(c), Oct. 24, 1992, 106 Stat. 3253; Pub. L. 103-296, title I, §108(e)(5), Aug. 15, 1994, 108 Stat. 1486; Pub. L. 104-106, div. A, title X, §1043(a)(1), Feb. 10, 1996, 110 Stat. 434; Pub. L. 107-107, div. A, title XI, §1131(a), Dec. 28, 2001, 115 Stat. 1242.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)-(f)	5 U.S.C. 2266 (less (f)).	July 31, 1956, ch. 804, §401 "Sec. 16 (less (f))", 70 Stat. 758.
(g)-(k)	5 U.S.C. 2252(e), (f) (words after semicolon), (h) (1).	July 31, 1956, ch. 804, §401 "Sec. 2(e), (f) (words after semicolon)", 70 Stat. 745. July 1, 1960, Pub. L. 86-568, §115(b)(1) "(h) (1)", 74 Stat. 302.

In subsection (a), the words "to carry out this subchapter" are substituted for "for the purpose of carrying the provisions of this chapter into full force and effect".

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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8347(l)	5 App.: 2252(f).	Sept. 26, 1966, Pub. L. 89-604, §1(c), 80 Stat. 847.

REFERENCES IN TEXT

Section 201(c) of the Central Intelligence Agency Retirement Act, referred to in subsec. (n)(4)(A), is classified to section 2011(c) of Title 50, War and National Defense.

AMENDMENTS

2001—Subsec. (q)(1). Pub. L. 107-107, §1131(a)(1), inserted "and" after semicolon in subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: "has 5 or more years of civilian service creditable under this subchapter; and".

Subsec. (q)(2)(B). Pub. L. 107-107, §1131(a)(2), struck out "vested" before "participant in a retirement system" and struck out "as the term 'vested participant' is defined by such system" before semicolon at end.

1996—Subsec. (q)(1). Pub. L. 104-106, §1043(a)(1)(A), struck out "of the Department of Defense or the Coast Guard" after "an employee" in introductory provisions and substituted "1 year" for "3 days" in subpar. (C).

Subsec. (q)(2)(C). Pub. L. 104-106, §1043(a)(1)(B), substituted "1 year" for "3 days" and struck out "in the Department of Defense or the Coast Guard, respectively," after "to a position".

1994—Subsec. (m)(3). Pub. L. 103-296 substituted "Commissioner of Social Security" for "Secretary of Health and Human Services".

1992—Subsec. (n)(4)(A). Pub. L. 102-496 substituted "the Central Intelligence Agency Retirement Act" for "the Central Intelligence Agency Retirement Act of 1964 for Certain Employees".

Subsec. (p). Pub. L. 102-378, §2(64)(A), redesignated subsec. (p), relating to employees of Department of Defense and Coast Guard, as (q).

Subsec. (q). Pub. L. 102-378, §2(64)(A), redesignated subsec. (p), relating to employees of Department of Defense and Coast Guard, as (q).

Subsec. (q)(1)(A), (2)(A). Pub. L. 102-378, §2(64)(B), amended subpars. (A) generally. Prior to amendment, subpars. (A) read as follows: "has not previously made or had an opportunity to make an election under this subsection;"

1991—Subsec. (m)(2). Pub. L. 102-54 substituted "Secretary" for "Administrator".

1990—Subsec. (p). Pub. L. 101-508 added subsec. (p) relating to elections by employees of Department of Defense, Coast Guard, or a nonappropriated fund instrumentality of Department of Defense or Coast Guard.

Pub. L. 101-474 added subsec. (p) relating to Director of Administrative Office of United States Courts.

1988—Subsec. (o). Pub. L. 100-238 added subsec. (o).
 1986—Subsec. (n). Pub. L. 99-335 added subsec. (n).
 1982—Subsec. (m)(3), (4). Pub. L. 97-253 added pars. (3) and (4).

1980—Subsec. (c). Pub. L. 96-500, §1(a), substituted “Except to the extent provided under subsection (d) of this section, the decisions of the Office concerning” for “The decisions of the Office concerning”.

Subsec. (d). Pub. L. 96-500, §1(b), designated existing provisions as par. (1), made such par. (1) subject to the provisions of par. (2), and added par. (2).

Subsec. (m). Pub. L. 96-499 added subsec. (m).

1979—Subsec. (h). Pub. L. 96-54 substituted “Mayor” for “Commissioner”.

1978—Subsecs. (a) to (c). Pub. L. 95-454, §906(a)(2), (3), substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively.

Subsec. (d). Pub. L. 95-454, §906(a)(9), substituted “Merit Systems Protection Board” for “Commission”, and “Board” for “Commission”.

Subsecs. (e), (f). Pub. L. 95-454, §906(a)(3), substituted “Office” for “Commission” wherever appearing.

Subsec. (g). Pub. L. 95-454, §906(a)(3), (c)(2)(F), substituted “Office” for “Commission” wherever appearing, and “3401” for “3391”.

Pub. L. 95-437 inserted provision prohibiting the Commission from excluding any employee who occupies a position on a part-time career employment basis, as defined in section 3391(2) of this title.

Subsec. (h). Pub. L. 95-454, §906(a)(3), substituted “Office” for “Commission”.

1968—Subsec. (h). Pub. L. 90-623 substituted “Commissioner” for “Commissioners”.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 401 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendments by Pub. L. 104-106, see Regulations; Effective Date of 1996 Amendment note below.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102-496 effective on first day of fourth month beginning after Oct. 24, 1992, see section 805 of Pub. L. 102-496, set out as an Effective Date note under section 2001 of Title 50, War and National Defense.

Amendment by section 2(64) of Pub. L. 102-378 effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102-378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not

described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101-508, set out as a note under section 2105 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-253 effective Oct. 1, 1982, see section 302(c)(1) of Pub. L. 97-253, as amended by section 3(i) of Pub. L. 97-346, set out as a note under section 8337 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 2 of Pub. L. 96-500 provided that: “The amendments made by the first section of this Act [amending this section] shall apply with respect to determinations made by the Office of Personnel Management on or after the first day of the first month beginning after the date of the enactment of this Act [Dec. 5, 1980].”

Amendment by Pub. L. 96-499 effective Dec. 5, 1980, see section 404(c) of Pub. L. 96-499, set out as a note under section 8339 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90-623, set out as a note under section 5334 of this title.

REGULATIONS; EFFECTIVE DATE OF 1996 AMENDMENT

Section 1043(b), (c) of Pub. L. 104-106 provided that:
 “(b) REGULATIONS.—Not later than 6 months after the date of the enactment of this Act [Feb. 10, 1996], the Office of Personnel Management (and each of the other administrative authorities, within the meaning of subsection (c)(2)(C)(iii)) shall prescribe any regulations (or make any modifications in existing regulations) necessary to carry out this section [amending this section and sections 3502 and 8461 of this title and enacting provisions set out as a note under section 3502 of this title] and the amendments made by this section, including regulations to provide for the notification of individuals who may be affected by the enactment of this section. All regulations (and modifications to regulations) under the preceding sentence shall take effect on the same date.

“(c) APPLICABILITY; RELATED PROVISIONS.—

“(1) PROSPECTIVE RULES.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 3502 and 8461 of this title] shall apply with respect to moves occurring on or after the effective date of the regulations under subsection (b). Moves occurring on or after the date of the enactment of this Act [Feb. 10, 1996] and before the effective date of such regulations shall be subject to applicable provisions of title 5, United States Code, disregarding the amendments made by this section, except that any individual making an election pursuant to this sentence shall be ineligible to make an election otherwise allowable under paragraph (2).

“(2) RETROACTIVE RULES.—

“(A) IN GENERAL.—The regulations under subsection (b) shall include provisions for the application of sections 8347(q) and 8461(n) of title 5, United States Code, as amended by this section, with respect to any individual who, at any time after December 31, 1965, and before the effective date of such regulations, moved between positions in circumstances that would have qualified such individual to make an election under the provisions of such section 8347(q) or 8461(n), as so amended, if such provisions had then been in effect.

“(B) DEADLINE; RELATED PROVISIONS.—An election pursuant to this paragraph—

“(i) shall be made within 1 year after the effective date of the regulations under subsection (b), and

“(ii) shall have the same force and effect as if it had been timely made at the time of the move, except that no such election may be made by any individual—

“(I) who has previously made, or had an opportunity to make, an election under section 8347(q) or 8461(n) of title 5, United States Code (as in effect before being amended by this section); however, this subclause shall not be considered to render an individual ineligible, based on an opportunity arising out of a move occurring during the period described in the second sentence of paragraph (1), if no election has in fact been made by such individual based on such move;

“(II) who has not, since the move on which eligibility for the election is based, remained continuously subject (disregarding any break in service of less than 3 days) to CSRS or FERS or both seriatim (if the move was from a NAFI position) or any retirement system (or 2 or more such systems seriatim) established for employees described in section 2105(c) of such title (if the move was to a NAFI position); or

“(III) if such election would be based on a move to the Civil Service Retirement System from a retirement system established for employees described in section 2105(c) of such title.

“(C) TRANSFERS OF CONTRIBUTIONS.—

“(i) IN GENERAL.—If an individual makes an election under this paragraph to be transferred back to a retirement system in which such individual previously participated (in this section referred to as the ‘previous system’), all individual contributions (including interest) and Government contributions to the retirement system in which such individual is then currently participating (in this section referred to as the ‘current system’), excluding those made to the Thrift Savings Plan or any other defined contribution plan, which are attributable to periods of service performed since the move on which the election is based, shall be paid to the fund, account, or other repository for contributions made under the previous system. For purposes of this section, the term ‘current system’ shall be considered also to include any retirement system (besides the one in which the individual is participating at the time of making the election) in which such individual previously participated since the move on which the election is based.

“(ii) CONDITION SUBSEQUENT RELATING TO REPAYMENT OF LUMP-SUM CREDIT.—In the case of an individual who has received such individual’s lump-sum credit (within the meaning of section 8401(19) of title 5, United States Code, or a similar payment) from such individual’s previous system, the payment described in clause (i) shall not be made (and the election to which it relates shall be ineffective) unless such lump-sum credit is redeposited or otherwise paid at such time and in such manner as shall be required under applicable regulations. Regulations to carry out this clause shall include provisions for the computation of interest (consistent with section 8334(e)(2) and (3)

of title 5, United States Code), if no provisions for such computation otherwise exist.

“(iii) CONDITION SUBSEQUENT RELATING TO DEFICIENCY IN PAYMENTS RELATIVE TO AMOUNTS NEEDED TO ENSURE THAT BENEFITS ARE FULLY FUNDED.—

“(I) IN GENERAL.—Except as provided in subclause (II), the payment described in clause (i) shall not be made (and the election to which it relates shall be ineffective) if the actuarial present value of the future benefits that would be payable under the previous system with respect to service performed by such individual after the move on which the election under this paragraph is based and before the effective date of the election, exceeds the total amounts required to be transferred to the previous system under the preceding provisions of this subparagraph with respect to such service, as determined by the authority administering such previous system (in this section referred to as the ‘administrative authority’).

“(II) PAYMENT OF DEFICIENCY.—A determination of a deficiency under this clause shall not render an election ineffective if the individual pays or arranges to pay, at a time and in a manner satisfactory to such administrative authority, the full amount of the deficiency described in subclause (I).

“(D) ALTERNATIVE ELECTION FOR AN INDIVIDUAL THEN PARTICIPATING IN FERS.—

“(i) APPLICABILITY.—This subparagraph applies with respect to any individual who—

“(I) is then currently participating in FERS; and

“(II) would then otherwise be eligible to make an election under subparagraphs (A) through (C) of this paragraph, determined disregarding the matter in subclause (I) of subparagraph (B) before the first semicolon therein.

“(ii) ELECTION.—An individual described in clause (i) may, instead of making an election for which such individual is otherwise eligible under this paragraph, elect to have all prior qualifying NAFI service of such individual treated as creditable service for purposes of any annuity under FERS payable out of the Civil Service Retirement and Disability Fund.

“(iii) QUALIFYING NAFI SERVICE.—For purposes of this subparagraph, the term ‘qualifying NAFI service’ means any service which, but for this subparagraph, would be creditable for purposes of any retirement system established for employees described in section 2105(c) of title 5, United States Code.

“(iv) SERVICE CEASES TO BE CREDITABLE FOR NAFI RETIREMENT SYSTEM PURPOSES.—Any qualifying NAFI service that becomes creditable for FERS purposes by virtue of an election made under this subparagraph shall not be creditable for purposes of any retirement system referred to in clause (iii).

“(v) CONDITIONS.—An election under this subparagraph shall be subject to requirements, similar to those set forth in subparagraph (C), to ensure that—

“(I) appropriate transfers of individual and Government contributions are made to the Civil Service Retirement and Disability Fund; and

“(II) the actuarial present value of future benefits under FERS attributable to service made creditable by such election is fully funded.

“(E) ALTERNATIVE ELECTION FOR AN INDIVIDUAL THEN PARTICIPATING IN A NAFI RETIREMENT SYSTEM.—

“(i) APPLICABILITY.—This subparagraph applies with respect to any individual who—

“(I) is then currently participating in any retirement system established for employees described in section 2105(c) of title 5, United States Code (in this subparagraph referred to as a ‘NAFI retirement system’); and

“(II) would then otherwise be eligible to make an election under subparagraphs (A) through (C) of this paragraph (determined disregarding the matter in subclause (I) of subparagraph (B) before the first semicolon therein) based on a move from FERS.

“(ii) ELECTION.—An individual described in clause (i) may, instead of making an election for which such individual is otherwise eligible under this paragraph, elect to have all prior qualifying FERS service of such individual treated as creditable service for purposes of determining eligibility for benefits under a NAFI retirement system, but not for purposes of computing the amount of any such benefits except as provided in clause (v)(II).

“(iii) QUALIFYING FERS SERVICE.—For purposes of this subparagraph, the term ‘qualifying FERS service’ means any service which, but for this subparagraph, would be creditable for purposes of the Federal Employees’ Retirement System.

“(iv) SERVICE CEASES TO BE CREDITABLE FOR PURPOSES OF FERS.—Any qualifying FERS service that becomes creditable for NAFI purposes by virtue of an election made under this subparagraph shall not be creditable for purposes of the Federal Employees’ Retirement System.

“(v) FUNDING REQUIREMENTS.—

“(I) IN GENERAL.—Except as provided in subclause (II), nothing in this section or in any other provision of law or any other authority shall be considered to require any payment or transfer of monies in order for an election under this subparagraph to be effective.

“(II) CONTRIBUTION REQUIRED ONLY IF INDIVIDUAL ELECTS TO HAVE SERVICE MADE CREDITABLE FOR COMPUTATION PURPOSES AS WELL.—Under regulations prescribed by the appropriate administrative authority, an individual making an election under this subparagraph may further elect to have the qualifying FERS service made creditable for computation purposes under a NAFI retirement system, but only if the individual pays or arranges to pay, at a time and in a manner satisfactory to such administrative authority, the amount necessary to fully fund the actuarial present value of future benefits under the NAFI retirement system attributable to the qualifying FERS service.

“(3) INFORMATION.—The regulations under subsection (b) shall include provisions under which any individual—

“(A) shall, upon request, be provided information or assistance in determining whether such individual is eligible to make an election under paragraph (2) and, if so, the exact amount of any payment which would be required of such individual in connection with any such election; and

“(B) may seek any other information or assistance relating to any such election.”

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the report required by subsec. (f) of this section is listed on page 187), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TREATMENT OF INDIVIDUALS ELECTING TO REMAIN SUBJECT TO THEIR FORMER RETIREMENT SYSTEM

For provisions relating to the deductions and contributions required with respect to individuals electing under section 8347(q) or 8461(n) of this title to remain covered under subchapter III of chapter 83 of this title, chapter 84 of this title, or a retirement system for employees described in section 2105(c) of this title, see section 7202(n) of Pub. L. 101-508, set out as a note under section 2105 of this title.

§ 8348. Civil Service Retirement and Disability Fund

(a) There is a Civil Service Retirement and Disability Fund. The Fund—

(1) is appropriated for the payment of—

(A) benefits as provided by this subchapter or by the provisions of chapter 84 of this title which relate to benefits payable out of the Fund; and

(B) administrative expenses incurred by the Office of Personnel Management in placing in effect each annuity adjustment granted under section 8340 or 8462 of this title, in administering survivor annuities and elections providing therefor under sections 8339 and 8341 of this title or subchapters II and IV of chapter 84 of this title, in administering alternative forms of annuities under sections 8343a and 8420a (and related provisions of law), in making an allotment or assignment made by an individual under section 8345(h) or 8465(b) of this title, and in withholding taxes pursuant to section 3405 of title 26 or section 8345(k) or 8469 of this title;

(2) is made available, subject to such annual limitation as the Congress may prescribe, for any expenses incurred by the Office in connection with the administration of this chapter, chapter 84 of this title, and other retirement and annuity statutes; and

(3) is made available, subject to such annual limitation as the Congress may prescribe, for any expenses incurred by the Merit Systems Protection Board in the administration of appeals authorized under sections 8347(d) and 8461(e) of this title.

(b) The Secretary of the Treasury may accept and credit to the Fund money received in the form of a donation, gift, legacy, or bequest, or otherwise contributed for the benefit of civil-service employees generally.

(c) The Secretary shall immediately invest in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

(d) The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are extended to authorize the issuance at par of public-debt obligations for purchase by the Fund. The obligations issued for purchase by the Fund shall have maturities fixed with due regard for the needs of the Fund and bear interest at a rate equal to the average market yield computed as of the end of the calendar month next preceding the date of the issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public

debt which are not due or callable until after the expiration of 4 years from the end of that calendar month. If the average market yield is not a multiple of $\frac{1}{8}$ of 1 percent, the rate of interest on the obligations shall be the multiple of $\frac{1}{8}$ of 1 percent nearest the average market yield.

(e) The Secretary may purchase other interest-bearing obligations of the United States, or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price only if he determines that the purchases are in the public interest.

(f) Any statute which authorizes—

(1) new or liberalized benefits payable from the Fund, including annuity increases other than under section 8340 of this title;

(2) extension of the coverage of this subchapter to new groups of employees; or

(3) increases in pay on which benefits are computed;

is deemed to authorize appropriations to the Fund to finance the unfunded liability created by that statute, in 30 equal annual installments with interest computed at the rate used in the then most recent valuation of the Civil Service Retirement System and with the first payment thereof due as of the end of the fiscal year in which each new or liberalized benefit, extension of coverage, or increase in pay is effective.

(g) At the end of each fiscal year, the Office shall notify the Secretary of the Treasury of the amount equivalent to (1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and (2) that portion of disbursement for annuities for that year which the Office estimates is attributable to credit allowed for military service, less an amount determined by the Office to be appropriate to reflect the value of the deposits made to the credit of the Fund under section 8334(j) of this title. Before closing the accounts for each fiscal year, the Secretary shall credit to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the following percentages of such amounts: 10 percent for 1971; 20 percent for 1972; 30 percent for 1973; 40 percent for 1974; 50 percent for 1975; 60 percent for 1976; 70 percent for 1977; 80 percent for 1978; 90 percent for 1979; and 100 percent for 1980 and for each fiscal year thereafter.

(h)(1) In this subsection, the term “Postal surplus or supplemental liability” means the estimated difference, as determined by the Office, between—

(A) the actuarial present value of all future benefits payable from the Fund under this subchapter to current or former employees of the United States Postal Service and attributable to civilian employment with the United States Postal Service; and

(B) the sum of—

(i) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter under section 8334;

(ii) that portion of the Fund balance, as of the date the Postal surplus or supplemental liability is determined, attributable to pay-

ments to the Fund by the United States Postal Service and its employees, minus benefit payments attributable to civilian employment with the United States Postal Service, plus the earnings on such amounts while in the Fund; and

(iii) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

(2)(A) Not later than June 15, 2007, the Office shall determine the Postal surplus or supplemental liability, as of September 30, 2006. If that result is a surplus, the amount of the surplus shall be transferred to the Postal Service Retiree Health Benefits Fund established under section 8909a by June 30, 2007.

(B) The Office shall redetermine the Postal surplus or supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2007, through the fiscal year ending September 30, 2038. If the result is a surplus, that amount shall remain in the Fund until distribution is authorized under subparagraph (C). Beginning June 15, 2017, if the result is a supplemental liability, the Office shall establish an amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2043.

(C) As of the close of the fiscal years ending September 30, 2015, 2025, 2035, and 2039, if the result is a surplus, that amount shall be transferred to the Postal Service Retiree Health Benefits Fund, and any prior amortization schedule for payments shall be terminated.

(D) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

(E) The United States Postal Service shall pay the amounts so determined to the Office, with payments due not later than the date scheduled by the Office.

(3) Notwithstanding any other provision of law, in computing the amount of any payment under any other subsection of this section that is based upon the amount of the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.

(i)(1) Notwithstanding any other provision of law, the Panama Canal Commission shall be liable for that portion of any estimated increase in the unfunded liability of the fund which is attributable to any benefits payable from the Fund to or on behalf of employees and their survivors to the extent attributable to the amendments made by sections 1241 and 1242, and the provisions of sections 1231(b) and 1243(a)(1), of the Panama Canal Act of 1979, and the amendments made by section 3506 of the Panama Canal Commission Authorization Act for Fiscal Year 1991.

(2) The estimated increase in the unfunded liability referred to in paragraph (1) of this subsection shall be determined by the Office of Per-

sonnel Management. The Panama Canal Commission shall pay to the Fund from funds available to it for that purpose the amount so determined in annual installments with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

(j)(1) Notwithstanding subsection (c) of this section, the Secretary of the Treasury may suspend additional investment of amounts in the Fund if such additional investment could not be made without causing the public debt of the United States to exceed the public debt limit.

(2) Any amounts in the Fund which, solely by reason of the public debt limit, are not invested shall be invested by the Secretary of the Treasury as soon as such investments can be made without exceeding the public debt limit.

(3) Upon expiration of the debt issuance suspension period, the Secretary of the Treasury shall immediately issue to the Fund obligations under chapter 31 of title 31 that (notwithstanding subsection (d) of this section) bear such interest rates and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of the Fund will replicate to the maximum extent practicable the obligations that would then be held by the Fund if the suspension of investment under paragraph (1) of this subsection, and any redemption or disinvestment under subsection (k) of this section for the purpose described in such paragraph, during such period had not occurred.

(4) On the first normal interest payment date after the expiration of any debt issuance suspension period, the Secretary of the Treasury shall pay to the Fund, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount determined by the Secretary to be equal to the excess of—

(A) the net amount of interest that would have been earned by the Fund during such debt issuance suspension period if—

(i) amounts in the Fund that were not invested during such debt issuance suspension period solely by reason of the public debt limit had been invested, and

(ii) redemptions and disinvestments with respect to the Fund which occurred during such debt issuance suspension period solely by reason of the public debt limit had not occurred, over

(B) the net amount of interest actually earned by the Fund during such debt issuance suspension period.

(5) For purposes of this subsection and subsections (k) and (l) of this section—

(A) the term “public debt limit” means the limitation imposed by section 3101(b) of title 31; and

(B) the term “debt issuance suspension period” means any period for which the Secretary of the Treasury determines for purposes of this subsection that the issuance of obligations of the United States may not be made without exceeding the public debt limit.

(k)(1) Subject to paragraph (2) of this subsection, the Secretary of the Treasury may sell or redeem securities, obligations, or other invested assets of the Fund before maturity in order to prevent the public debt of the United States from exceeding the public debt limit.

(2) The Secretary may sell or redeem securities, obligations, or other invested assets of the Fund under paragraph (1) of this subsection only during a debt issuance suspension period, and only to the extent necessary to obtain any amount of funds not exceeding the amount equal to the total amount of the payments authorized to be made from the Fund under the provisions of this subchapter or chapter 84 of this title or related provisions of law during such period. A sale or redemption may be made under this subsection even if, before the sale or redemption, there is a sufficient amount in the Fund to ensure that such payments are made in a timely manner.

(l)(1) The Secretary of the Treasury shall report to Congress on the operation and status of the Fund during each debt issuance suspension period for which the Secretary is required to take action under paragraph (3) or (4) of subsection (j) of this section. The report shall be submitted as soon as possible after the expiration of such period, but not later than the date that is 30 days after the first normal interest payment date occurring after the expiration of such period.

(2) Whenever the Secretary of the Treasury determines that, by reason of the public debt limit, the Secretary will be unable to fully comply with the requirements of subsection (c) of this section, the Secretary shall immediately notify Congress of the determination. The notification shall be made in writing.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 584; Pub. L. 90-83, §1(85), Sept. 11, 1967, 81 Stat. 218; Pub. L. 91-93, title I, §103(a), Oct. 20, 1969, 83 Stat. 137; Pub. L. 93-349, §1, July 12, 1974, 88 Stat. 354; Pub. L. 94-183, §2(37), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-70, title I, §1244, Sept. 27, 1979, 93 Stat. 474; Pub. L. 97-253, title III, §306(f), Sept. 8, 1982, 96 Stat. 797; Pub. L. 97-346, §3(g), Oct. 15, 1982, 96 Stat. 1648; Pub. L. 98-216, §3(a)(5), Feb. 14, 1984, 98 Stat. 6; Pub. L. 98-615, §2(7), Nov. 8, 1984, 98 Stat. 3202; Pub. L. 99-335, title II, §207(j), June 6, 1986, 100 Stat. 597; Pub. L. 99-509, title VI, §6002, Oct. 21, 1986, 100 Stat. 1931; Pub. L. 100-203, title V, §5428(d), Dec. 22, 1987, 101 Stat. 1330-274; Pub. L. 101-239, title IV, §4002(a), Dec. 19, 1989, 103 Stat. 2133; Pub. L. 101-508, title VII, §§7001(a)(3), 7101(a), Nov. 5, 1990, 104 Stat. 1388-328, 1388-331; Pub. L. 101-510, div. C, title XXXV, §3506(c), Nov. 5, 1990, 104 Stat. 1847; Pub. L. 103-424, §10, Oct. 29, 1994, 108 Stat. 4366; Pub. L. 104-52, title IV, §2, Nov. 19, 1995, 109 Stat. 490; Pub. L. 104-316, title I, §103(h), Oct. 19, 1996, 110 Stat. 3829; Pub. L. 105-362, title XIII, §1302(c), Nov. 10, 1998, 112 Stat. 3293; Pub. L. 108-18, §2(c), (d)(1)(A), Apr. 23, 2003, 117 Stat. 625, 626; Pub. L. 109-435, title VIII, §802(a)(2), Dec. 20, 2006, 120 Stat. 3249.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)-(f)	5 U.S.C. 2267.	July 31, 1956, ch. 804, §401 “Sec. 17”, 70 Stat. 759. Oct. 4, 1961, Pub. L. 87-350, §1(a), 75 Stat. 770.

HISTORICAL AND REVISION NOTES—CONTINUED
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(g)	[Uncodified].	Aug. 28, 1958, Pub. L. 85-844, §101 (par. under "Civil Service Retirement and Disability Fund"), 72 Stat. 1064.

In subsection (a), the first sentence is based on former section 2251(f), which is carried into section 8331.

In subsection (f), the words "to carry out this chapter" are substituted for "to continue this chapter in full force and effect".

In subsection (g), the words "after the enactment of this Act" are omitted as executed.

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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8348(a)	5 App.: 2267(a).	Sept. 27, 1965, Pub. L. 89-205, §1(b), 79 Stat. 840.

The change in subsection (f) is made for uniformity in style and because the full title of the Commission appears in subsection (a).

REFERENCES IN TEXT

Sections 1241 and 1242 of the Panama Canal Act of 1979 [Pub. L. 96-70], referred to in subsec. (i)(1), amended sections 8336 and 8339 of this title, respectively.

Sections 1231(b) and 1243(a)(1) of the Panama Canal Act of 1979 [Pub. L. 96-70], referred to in subsec. (i)(1), are classified to sections 3671(b) and 3681(a)(1) of Title 22, Foreign Relations and Intercourse, respectively.

Section 3506 of the Panama Canal Commission Authorization Act for Fiscal Year 1991 [Pub. L. 101-510, div. C, title XXXV], referred to in subsec. (i)(1), amended sections 8336, 8339, and 8348 of this title.

AMENDMENTS

2006—Subsec. (h). Pub. L. 109-435 amended subsec. (h) generally. Prior to amendment, subsec. (h) related to postal supplemental liability.

2003—Subsec. (h). Pub. L. 108-18, §2(c), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows:

"(h)(1) Notwithstanding any other statute, the United States Postal Service shall be liable for that portion of any estimated increase in the unfunded liability of the Fund which is attributable to any benefits payable from the Fund to active and retired Postal Service officers and employees, and to their survivors, when the increase results from an employee-management agreement under title 39, or any administrative action by the Postal Service taken pursuant to law, which authorizes increases in pay on which benefits are computed.

"(2) The estimated increase in the unfunded liability, referred to in paragraph (1) of this subsection, shall be determined by the Office of Personnel Management. The United States Postal Service shall pay the amount so determined to the Office in 30 equal annual installments with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System, with the first payment thereof due at the end of the fiscal year in which an increase in pay becomes effective."

Subsec. (m). Pub. L. 108-18, §2(d)(1)(A), struck out subsec. (m) which read as follows:

"(m)(1) Notwithstanding any other provision of law, the United States Postal Service shall be liable for that portion of any estimated increase in the unfunded li-

ability of the Fund which is attributable to any benefits payable from the Fund to former employees of the Postal Service who first become annuitants by reason of separation from the Postal Service on or after July 1, 1971, or to their survivors, or to the survivors of individuals who die on or after July 1, 1971, while employed by the Postal Service, when the increase results from a cost-of-living adjustment under section 8340 of this title.

"(2) The estimated increase in the unfunded liability referred to in paragraph (1) of this subsection shall be determined by the Office after consultation with the Postal Service. The Postal Service shall pay the amount so determined to the Office in 15 equal annual installments with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System, and with the first payment thereof due at the end of the fiscal year in which the cost-of-living adjustment with respect to which the payment relates becomes effective.

"(3) In determining any amount for which the Postal Service is liable under this subsection, the amount of the liability shall be prorated to reflect only that portion of total service (used in computing the benefits involved) which is attributable to civilian service performed after June 30, 1971, as estimated by the Office."

1998—Subsec. (g). Pub. L. 105-362 struck out at end "The Office shall report to the President and to the Congress the sums credited to the Fund under this subsection."

1996—Subsec. (l)(1). Pub. L. 104-316 struck out at end "The Secretary shall concurrently transmit a copy of such report to the Comptroller General of the United States."

1995—Subsec. (a)(1)(B). Pub. L. 104-52 inserted "in making an allotment or assignment made by an individual under section 8345(h) or 8465(b) of this title," after "of law," and "or section 8345(k) or 8469 of this title" before semicolon at end.

1994—Subsec. (a)(3). Pub. L. 103-424 added par. (3).

1990—Subsec. (a)(1)(B). Pub. L. 101-508, §7001(a)(3), inserted "in administering alternative forms of annuities under sections 8343a and 8420a (and related provisions of law)," before "and in withholding".

Subsec. (i)(1). Pub. L. 101-510 substituted "1979, and the amendments made by section 3506 of the Panama Canal Commission Authorization Act for Fiscal Year 1991" for "1979".

Subsec. (m)(1). Pub. L. 101-508, §7101(a), substituted "July 1, 1971" for "October 1, 1986" in two places.

1989—Subsec. (m). Pub. L. 101-239 added subsec. (m).

1987—Subsec. (i)(2). Pub. L. 100-203 substituted "The Panama Canal Commission shall pay to the Fund from funds available to it" for "The Secretary of the Treasury shall pay to the Fund from appropriations".

1986—Subsec. (a). Pub. L. 99-335 inserted reference to provisions of chapter 84 of this title which relate to benefits payable out of the Fund in par. (1)(A), inserted "or 8462" and reference to subchapters II and IV of chapter 84 of this title in par. (1)(B), and inserted reference to chapter 84 of this title in par. (2).

Subsecs. (j) to (l). Pub. L. 99-509 added subsecs. (j) to (l).

1984—Subsec. (a)(1)(B). Pub. L. 98-615 inserted "in administering survivor annuities and elections providing therefor under sections 8339 and 8341 of this title,".

Subsec. (d). Pub. L. 98-216 substituted "chapter 31 of title 31" for "the Second Liberty Bond Act, as amended,".

1982—Subsec. (a)(1)(B). Pub. L. 97-346 inserted "and in withholding taxes pursuant to section 3405 of title 26".

Subsec. (g). Pub. L. 97-253, §306(f), inserted "less an amount determined by the Office to be appropriate to reflect the value of the deposits made to the credit of the Fund under section 8334(j) of this title" after "allowed for military service".

1979—Subsec. (i). Pub. L. 96-70 added subsec. (i).

1978—Subsecs. (a), (g), (h)(2). Pub. L. 95-454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively, wherever appearing.

1975—Subsec. (h)(2). Pub. L. 94-183 substituted “30” for “thirty”.

1974—Subsec. (h). Pub. L. 93-349 added subsec. (h).

1969—Subsec. (a). Pub. L. 91-93, §103(a)(1), designated existing provisions as par. (1)(A) and (B) and added par. (2).

Subsec. (f). Pub. L. 91-93, §103(a)(2), added subsec. (f) and struck out former subsec. (f) which required the Commission to submit estimates of appropriations necessary to finance the Fund on a normal cost plus interest basis and to carry out this subchapter.

Subsec. (g). Pub. L. 91-93, §103(a)(2), added subsec. (g) and struck out former subsec. (g) which contained restriction against use of Fund money to pay an increase in annuity benefits or a new annuity benefit under this subchapter or an earlier statute without an appropriation being made to the Fund in a sufficient amount to prevent an immediate increase in the unfunded accrued liability of the Fund.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-435 effective Oct. 1, 2006, see section 805(a) of Pub. L. 109-435, set out as a note under section 8334 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-18, §2(d)(2), Apr. 23, 2003, 117 Stat. 627, provided that: “Nothing in this subsection [repealing subsec. (m) of this section and provisions set out as a note under this section] shall be considered to affect any payments made before the date of the enactment of this Act [Apr. 23, 2003] under either of the provisions of law repealed by paragraph (1).”

EFFECTIVE DATE OF 1990 AMENDMENT

Section 7101(d) of Pub. L. 101-508 provided that: “This section and the amendments made by this section [amending this section, enacting provisions set out as a note under this section, and repealing provisions set out as notes under this section] shall take effect on October 1, 1990.”

EFFECTIVE DATE OF 1989 AMENDMENT

Section 4002(b)(1) of Pub. L. 101-239, which provided that section 4002 of Pub. L. 101-239 (amending this section and enacting provisions set out as notes under this section) be effective as of Oct. 1, 1986, was repealed by Pub. L. 101-508, title VII, §7101(b), Nov. 5, 1990, 104 Stat. 1388-331.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 effective Jan. 1, 1988, see section 5429 of Pub. L. 100-203, set out as a note under section 3712 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions and specific applicability provisions, see section 4(a)(1), (5)(D) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97-346 effective Sept. 8, 1982, see section 3(n) of Pub. L. 97-346, set out as a note under section 8332 of this title.

Amendment by Pub. L. 97-253 effective Oct. 1, 1982, except that any employee or Member who retired after Sept. 8, 1982, and before Oct. 1, 1985, or is entitled to an annuity under chapter 83 of this title based on a separation from service occurring during such period, or a survivor of such individual, may make a payment

under section 8334(j)(1) of this title, and regulations required to be issued under section 8334(j)(1) of this title, to be issued by the Office of Personnel Management within 90 days after such effective date, see section 306(g) of Pub. L. 97-253, as amended, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96-70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-349 effective July 1, 1971, except that the Postal Service shall not be required to make (1) the payments due June 30, 1972, June 30, 1973, and June 30, 1974, attributable to pay increases granted by the Postal Service prior to July 1, 1973, until such time as funds are appropriated to the Postal Service for that purpose, and (2) the transfer to the Civil Service Retirement and Disability Fund required by title II of the Treasury, Postal Service, and General Government Appropriation Act, 1974, Public Law 93-143, see section 3 of Pub. L. 93-349, set out as a note under section 1005 of Title 39, Postal Service.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 103(b)(1) of Pub. L. 91-93 provided that: “The provisions of subsection (g) of section 8348 of title 5, United States Code, as contained in the amendment made by subsection (a)(2) of this section, shall become effective at the beginning of the fiscal year which ends on June 30, 1971.”

REVIEW BY POSTAL REGULATORY COMMISSION

Pub. L. 109-435, title VIII, §802(c), Dec. 20, 2006, 120 Stat. 3250, provided that:

“(1) IN GENERAL.—

“(A) REQUEST FOR REVIEW.—Notwithstanding any other provision of this section [amending this section and section 8334 of this title] (including any amendment made by this section), any determination or redetermination made by the Office of Personnel Management under this section (including any amendment made by this section) shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this subsection.

“(B) REPORT.—Upon receiving a request under subparagraph (A), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of pension obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this paragraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

“(2) RECONSIDERATION.—Upon receiving the report from the Commission under paragraph (1), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.”

PAYMENTS TO REIMBURSE FUND FOR INCREASE IN UNFUNDED LIABILITY

Pub. L. 105-261, div. C, title XXXI, §3154(l), Oct. 17, 1998, 112 Stat. 2256, provided that:

“(1) The Department of Energy shall pay into the Civil Service Retirement and Disability Fund an amount determined by the Director of the Office of Personnel Management to be necessary to reimburse the Fund for any estimated increase in the unfunded liability of the Fund resulting from the amendments related to the Civil Service Retirement System under this section [amending sections 3307, 8331, 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title], and for any estimated increase in the supplemental liability of the Fund resulting from the amendments related to the Federal Employees Retirement System under this section.

“(2) The Department shall pay the amount so determined in five equal annual installments with interest computed at the rate used in the most recent valuation of the Federal Employees Retirement System.

“(3) The Department shall make payments under this subsection from amounts available for weapons activities of the Department.”

PAYMENTS BY POSTAL SERVICE RELATING TO CORRECTED CALCULATIONS FOR PAST RETIREMENT COLAS

Pub. L. 103-66, title XI, §11101(a), Aug. 10, 1993, 107 Stat. 413, required the United States Postal Service to pay into the Civil Service Retirement and Disability Fund a total of \$693,000,000 not later than September 30, 1998, in addition to other payments required by law.

TIMELY PROCESSING OF RETIREMENT BENEFITS

Pub. L. 102-484, div. D, title XLIV, §4436(d), Oct. 23, 1992, 106 Stat. 2724, as amended by Pub. L. 103-337, div. A, title III, §341(b)(2), Oct. 5, 1994, 108 Stat. 2720; Pub. L. 105-85, div. A, title XI, §1106(b)(2), Nov. 18, 1997, 111 Stat. 1924, provided that:

“(1) In order to ensure the timely processing of applications for retirement benefits, under the Civil Service Retirement System or the Federal Employees' Retirement System, for civilian employees of the Department of Defense and other employees who retire when their agency is undergoing a major reorganization, a major reduction in force, or a major transfer of function, the costs incurred by the Office of Personnel Management in processing any such application shall be deemed to be an administrative expense described in section 8348(a)(1)(B) of title 5, United States Code.

“(2) This subsection shall apply with respect to applications for retirement benefits based on separations occurring before January 1, 2002.”

PRE-1991 COST-OF-LIVING ADJUSTMENTS

Pub. L. 101-508, title VII, §7101(c), Nov. 5, 1990, 104 Stat. 1388-331, as amended by Pub. L. 102-378, §5(a)(1), Oct. 2, 1992, 106 Stat. 1358, related to pre-1991 cost-of-living adjustments, prior to repeal by Pub. L. 108-18, §2(d)(1)(B), Apr. 23, 2003, 117 Stat. 627.

PAYMENTS RELATING TO AMOUNTS WHICH WOULD HAVE BEEN DUE BEFORE FISCAL YEAR 1987

Pub. L. 101-508, title VII, §7103, Nov. 5, 1990, 104 Stat. 1388-333, required the United States Postal Service to pay, not later than Sept. 30, 1995, into the Civil Service Retirement and Disability Fund and into the Employees Health Benefits Fund certain sums for retirement COLA and health benefits which would have been due in any pre-1987 fiscal year if certain amendments had been in effect as of July 1, 1971.

CERTAIN POSTAL SERVICE ANNUITANTS; SIZE OF ANNUAL INSTALLMENTS TO FUND PREVIOUS YEARS' COLAS

Section 4002(b)(2) of Pub. L. 101-239, which provided that notwithstanding any provision of section 8348(m) of this title the estimated increase in the unfunded liability referred to in section 8348(m)(1) was to be payable based on annual installments equal to specified amounts for fiscal years 1987 to 1989, was repealed by Pub. L. 101-508, title VII, §7101(b), Nov. 5, 1990, 104 Stat. 1388-331.

CERTAIN POSTAL SERVICE ANNUITANTS; ADDITIONAL AMOUNT PAYABLE

Section 4002(b)(3) of Pub. L. 101-239, which provided that first payment made under provisions of section 8348(m) of this title was to include, in addition to the amount which would otherwise have been payable at that time, an amount equal to the sum of any amounts which would have been due under those provisions in any prior year if this section had been enacted before Oct. 1, 1986, and which provided the method of computation, was repealed by Pub. L. 101-508, title VII, §7101(b), Nov. 5, 1990, 104 Stat. 1388-331.

STATUS OF ORIGINAL SUBSEC. (g) PROVISIONS DURING PERIOD FROM OCT. 20, 1969 TO JUNE 30, 1970

Section 103(b)(2) of Pub. L. 91-93 provided that: “Paragraph (1) of this subsection [set out as Effective Date of 1969 Amendment note above], shall not be held or considered to continue in effect after the enactment of this Act [Oct. 20, 1969], the provisions of section 8348(g) of title 5, United States Code, as in effect immediately prior to such enactment.”

INAPPLICABILITY TO BENEFITS UNDER PUB. L. 89-737 OF PROHIBITION AGAINST PAYMENT OF INCREASED ANNUITY BENEFIT WITHOUT COMPENSATING APPROPRIATION

Section 3 of Pub. L. 89-737, Nov. 2, 1966, 80 Stat. 1164, which provided that section 8348(g) of title 5, United States Code, does not apply with respect to annuity benefits resulting from the enactment of this Act [amending sections 8114, 8331, and 8704 of this title and section 1117 of former Title 5, Executive Departments and Government Officers and Employees], was repealed by Pub. L. 90-83, §10(b), Sept. 11, 1967, 81 Stat. 223.

REDEMPTION OF OBLIGATIONS HELD PRIOR TO OCT. 4, 1961; REINVESTMENT OF PROCEEDS

Pub. L. 87-350, §1(b) Oct. 4, 1961, 75 Stat. 770, provided that: “All special issues in which the civil service retirement and disability fund is invested in accordance with section 17(d) of the Civil Service Retirement Act [subsecs. (d) and (e) of this section] as in effect prior to the enactment of this Act [Oct. 4, 1961] shall be redeemed and the moneys reinvested by the Secretary of the Treasury, as nearly as may be practicable, in equal annual amounts over the period of ten calendar years beginning with the calendar year 1962, in accordance with such section 17(d), as amended by subsection (a) of this section.”

§ 8349. Offset relating to certain benefits under the Social Security Act

(a)(1) Notwithstanding any other provision of this subchapter, if an individual under section 8402(b)(2) is entitled, or would on proper application be entitled, to old-age insurance benefits under title II of the Social Security Act, the annuity otherwise payable to such individual shall be reduced under this subsection.

(2) A reduction under this subsection commences beginning with the first month for which the individual both—

(A) is entitled to an annuity under this subchapter; and

(B) is entitled, or would on proper application be entitled, to old-age insurance benefits under title II of the Social Security Act.

(3)(A)(i) Subject to clause (ii) and subparagraphs (B) and (C), the amount of a reduction under this subsection shall be equal to the difference between—

(I) the old-age insurance benefit which would be payable to the individual for the month referred to in paragraph (2); and

(II) the old-age insurance benefit which would be so payable, excluding all wages de-

rived from Federal service of the individual, and assuming the individual were fully insured (as defined by section 214(a) of the Social Security Act).

(ii) For purposes of this subsection, the amount of a benefit referred to in subclause (I) or (II) of clause (i) shall be determined without regard to subsections (b) through (l) of section 203 of the Social Security Act, and without regard to the requirement that an application for such benefit be filed.

(B) A reduction under this subsection—

(i) may not exceed an amount equal to the product of—

(I) the old-age insurance benefit to which the individual is entitled (or would on proper application be entitled) for the month referred to in paragraph (2), determined without regard to subsections (b) through (l) of section 203 of the Social Security Act; and

(II) a fraction, as determined under section 8421(b)(3) with respect to the individual, except that the reference to “service” in subparagraph (A) of such section shall be considered to mean Federal service; and

(ii) may not cause the annuity payment for an individual to be reduced below zero.

(C) An amount computed under subclause (I) or (II) of subparagraph (A)(i), or under subparagraph (B)(i)(I), for purposes of determining the amount of a reduction under this subsection shall be adjusted under section 8340 of this title.

(4) A reduction under this subsection applies with respect to the annuity otherwise payable to such individual under this subchapter (other than under section 8337) for the month involved—

(A) based on service of such individual; and

(B) without regard to section 8345(j), if otherwise applicable.

(5) The operation of the preceding paragraphs of this subsection shall not be considered for purposes of applying the provisions of the second sentence of section 215(a)(7)(B)(i) or the provisions of section 215(d)(5)(ii) of the Social Security Act in determining any amount under subclause (I) or (II) of paragraph (3)(A)(i) or paragraph (3)(B)(i)(I) for purposes of this subsection.

(b)(1) Notwithstanding any other provision of this subchapter—

(A) a disability annuity to which an individual described in section 8402(b)(2) is entitled under this subchapter, and

(B) a survivor annuity to which a person is entitled under this subchapter based on the service of an individual described in section 8402(b)(2),

shall be subject to reduction under this subsection if that individual or person is also entitled (or would on proper application also be entitled) to any similar benefits under title II of the Social Security Act based on the wages and self-employment income of such individual described in section 8402(b)(2).

(2)(A) Subject to subparagraph (B), reductions under this subsection shall be made in a manner consistent with the manner in which reductions under subsection (a) are computed and otherwise made.

(B) Reductions under this subsection shall be discontinued if, or for so long as, entitlement to the similar benefits under title II of the Social Security Act (as referred to in paragraph (1)) is terminated (or, in the case of an individual who has not made proper application therefor, would be terminated).

(3) For the purpose of applying section 224 of the Social Security Act to the disability insurance benefit used to compute the reduction under this subsection, the amount of the CSRS annuity considered shall be the amount of the CSRS annuity before application of this section.

(4) The Office shall prescribe regulations to carry out this subsection.

(c) For the purpose of this section, the term “Federal service” means service which is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986 by reason of the amendments made by section 101 of the Social Security Amendments of 1983.

(d) In administering subsections (a) through (c)—

(1) the terms “an individual under section 8402(b)(2)” and “an individual described in section 8402(b)(2)” shall each be considered to include any individual—

(A) who is subject to this subchapter as a result of any provision of law described in section 8347(o), and

(B) whose employment (as described in section 8347(o)) is also employment for purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986; and

(2) the term “Federal service”, as applied with respect to any individual to whom this section applies as a result of paragraph (1), means any employment referred to in paragraph (1)(B) performed after December 31, 1983.

(Added Pub. L. 99-335, title II, § 201(b)(1), June 6, 1986, 100 Stat. 589; amended Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-238, title I, § 108(b)(2), Jan. 8, 1988, 101 Stat. 1748.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 203, 214, 215, and 224 of the Social Security Act are classified to sections 403, 414, 415, and 424a, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Chapter 21 of the Internal Revenue Code of 1986, referred to in subsecs. (c) and (d)(1)(B), is classified to chapter 21 (§ 3101 et seq.) of Title 26, Internal Revenue Code.

Section 101 of the Social Security Amendments of 1983 [Pub. L. 98-21], referred to in subsec. (c), amended section 3121 of Title 26 and sections 409 and 410 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under section 3121 of Title 26 and section 410 of Title 42.

AMENDMENTS

1988—Subsec. (d). Pub. L. 100-238 added subsec. (d).

1986—Subsec. (c). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective Jan. 1, 1987, see section 108(b)(3) of Pub. L. 100-238, set out as a note under section 8334 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as a note under section 8401 of this title.

OFFSETS TO PREVENT FULL DOUBLE COVERAGE FOR EMPLOYEES OF PARK POLICE AND SECRET SERVICE

For provisions relating to offsets for prevention of full double coverage for employees of Park Police and Secret Service, see section 103(e) of Pub. L. 100-238, set out as a note under section 8334 of this title.

§ 8350. Retirement counseling

(a) For the purposes of this section, the term "retirement counselor", when used with respect to an agency, means an employee of the agency who is designated by the head of the agency to furnish information on benefits under this subchapter and chapter 84 of this title and counseling services relating to such benefits to other employees of the agency.

(b) The Director of the Office of Personnel Management shall establish a training program for all retirement counselors of agencies of the Federal Government.

(c)(1) The training program established under subsection (b) of this section shall provide for comprehensive training in the provisions and administration of this subchapter and chapter 84 of this title, shall be designed to promote fully informed retirement decisions by employees and Members under this subchapter and individuals subject to chapter 84 of this title, and shall be revised as necessary to assure that the information furnished to retirement counselors of agencies under the program is current.

(2) The Director shall conduct a training session under the training program at least once every 3 months.

(3) Once each year, each retirement counselor of an agency shall successfully complete a training session conducted under the training program.

(Added Pub. L. 99-335, title II, §205(a), June 6, 1986, 100 Stat. 592; amended Pub. L. 99-556, title II, § 202, Oct. 27, 1986, 100 Stat. 3135.)

AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 99-556 substituted "subsection (b)" for "subsection (b)(1)".

EFFECTIVE DATE

Section effective June 6, 1986, see section 702(b)(3) of Pub. L. 99-335, set out as a note under section 8401 of this title.

ENHANCING FINANCIAL LITERACY

Pub. L. 108-469, §2, Dec. 21, 2004, 118 Stat. 3892, provided that:

"(a) IN GENERAL.—The Federal Retirement Thrift Investment Board (in this section referred to as the 'Board') shall periodically evaluate whether the tools available to participants provide the information needed to understand, evaluate, and compare financial products, services, and opportunities offered through the Thrift Savings Plan. The Board shall use these evaluations to improve its existing education program for Thrift Savings Plan participants.

"(b) REPORT ON FINANCIAL LITERACY EFFORTS.—The Board shall annually report to the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Committee on Government Reform [now Committee on Oversight and Government Reform] of the House of Representatives on its Thrift Savings Plan education efforts on behalf of plan participants.

"(c) STRATEGY.—As part of the retirement training offered by Office of Personnel Management under section 8350 of title 5, United States Code, the Office, in consultation with the Board, shall—

"(1) not later than 6 months after the date of enactment of this Act [Dec. 21, 2004], develop and implement a retirement financial literacy and education strategy for Federal employees that—

"(A) shall educate Federal employees on the need for retirement savings and investment; and

"(B) provide information related to how Federal employees can receive additional information on how to plan for retirement and calculate what their retirement investment should be in order to meet their retirement goals; and

"(2) submit a report to the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Committee on Government Reform [now Committee on Oversight and Government Reform] of the House of Representatives on the strategy described under paragraph (1)."

§ 8351. Participation in the Thrift Savings Plan

(a)(1) An employee or Member may elect to contribute to the Thrift Savings Fund established by section 8437 of this title.

(2) An election may be made under paragraph (1) as provided under section 8432(b) for individuals who are subject to chapter 84 of this title.

(b)(1) Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of this title shall apply with respect to employees and Members making contributions to the Thrift Savings Fund under subsection (a) of this section.

(2)(A) An employee or Member may contribute to the Thrift Savings Fund in any pay period any amount not exceeding the maximum percentage of such employee's or Member's basic pay for such pay period allowable under subparagraph (B).

(B) The maximum percentage allowable under this subparagraph shall be determined in accordance with the following table:

In the case of a pay period beginning in fiscal year:	The maximum percentage allowable is:
2001	6
2002	7
2003	8
2004	9
2005	10
2006 or thereafter	100.

(C) Notwithstanding any limitation under this paragraph, an eligible participant (as defined by section 414(v) of the Internal Revenue Code of 1986) may make such additional contributions to the Thrift Savings Fund as are permitted by such section 414(v) and regulations of the Executive Director consistent therewith.

(3) No contributions may be made by an employing agency for the benefit of an employee or Member under section 8432(c) of this title.

(4) Section 8433(b) of this title applies to any employee or Member who elects to make con-

contributions to the Thrift Savings Fund under subsection (a) of this section and separates from Government employment.

(5)(A) The provisions of section 8435 of this title that require a waiver or consent by the spouse of an employee or Member (or former employee or Member) shall not apply with respect to sums in the Thrift Savings Fund contributed by the employee or Member (or former employee or Member) and earnings in the fund attributable to such sums.

(B) An election or change of election authorized by subchapter III of chapter 84 of this title shall be effective in the case of a married employee or Member, and a loan or withdrawal may be approved under section 8433(g) and (h) of this title in such case, only after the Executive Director notifies the employee's or Member's spouse that the election or change of election has been made or that the Executive Director has received an application for such loan or withdrawal, as the case may be.

(C) Subparagraph (B) may be waived with respect to a spouse if the employee or Member establishes to the satisfaction of the Executive Director of the Federal Retirement Thrift Investment Board that the whereabouts of such spouse cannot be determined.

(D) Except with respect to the making of loans or withdrawals under section 8433(g) or (h), none of the provisions of this paragraph requiring notification to a spouse or former spouse of an employee, Member, former employee, or former Member shall apply in any case in which the nonforfeitable account balance of the employee, Member, former employee, or former Member is \$3,500 or less.

(6) Notwithstanding paragraph (4), if an employee or Member separates from Government employment and such employee's or Member's nonforfeitable account balance is less than an amount that the Executive Director prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.

(7) For the purpose of this section, the term "nonforfeitable account balance" has the same meaning as under section 8401(32).

(8) In applying section 8432b to an employee contributing to the Thrift Savings Fund after being restored to or reemployed in a position subject to this subchapter, pursuant to chapter 43 of title 38—

(A) any reference in such section to contributions under section 8432(a) shall be considered a reference to employee contributions under this section, except that the reference in section 8432b(b)(2)(B) to employee contributions under section 8432(a) shall be considered a reference to employee contributions under this subchapter and section 8440e;

(B) the contribution rate under section 8432b(b)(2)(A) shall be the maximum percentage allowable under subsection (b)(2) of this section; and

(C) subsections (c) and (d) of section 8432b shall be disregarded.

(9) For the purpose of this section, separation from Government employment includes a transfer described in section 8431.

(c) A member of the Foreign Service described in section 103(6) of the Foreign Service Act of

1980 shall be ineligible to make any election under this section.

(d)(1) A foreign national employee of the Central Intelligence Agency whose services are performed outside the United States shall be ineligible to make an election under this section.

(2)(A) Only those employees of the Central Intelligence Agency participating in the pilot project required by section 402(b) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107-306; 50 U.S.C. 403-4 note) and making contributions to the Thrift Savings Fund out of basic pay may also contribute (by direct transfer to the Fund) any part of bonus pay received by the employee as part of the pilot project.

(B) Contributions under this paragraph are subject to section 8432(d) of this title.

(e) The Executive Director of the Federal Retirement Thrift Investment Board may prescribe regulations to carry out this section.

(Added Pub. L. 99-335, title II, §206(a)(1), June 6, 1986, 100 Stat. 593; amended Pub. L. 100-238, title I, §111(a), Jan. 8, 1988, 101 Stat. 1750; Pub. L. 101-335, §§3(b)(1), 6(b)(1), July 17, 1990, 104 Stat. 320, 323; Pub. L. 102-183, title III, §308(a), Dec. 4, 1991, 105 Stat. 1265; Pub. L. 102-484, div. D, title XLIV, §4437(c), Oct. 23, 1992, 106 Stat. 2724; Pub. L. 103-226, §9(a), (i)(1), (2), Mar. 30, 1994, 108 Stat. 118, 121; Pub. L. 103-353, §4(d), Oct. 13, 1994, 108 Stat. 3172; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title II, §202]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-374; Pub. L. 106-65, div. A, title VI, §661(a)(3)(B), Oct. 5, 1999, 113 Stat. 671; Pub. L. 106-168, title II, §203(b), Dec. 12, 1999, 113 Stat. 1820; Pub. L. 106-554, §1(a)(4) [div. B, title I, §138(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-234; Pub. L. 107-304, §1(a), Nov. 27, 2002, 116 Stat. 2363; Pub. L. 108-177, title IV, §405(b)(1), Dec. 13, 2003, 117 Stat. 2632; Pub. L. 108-469, §1(d)(1), Dec. 21, 2004, 118 Stat. 3891.)

REFERENCES IN TEXT

Section 414(v) of the Internal Revenue Code of 1986, referred to in subsec. (b)(2)(C), is classified to section 414(v) of Title 26, Internal Revenue Code.

Section 103(6) of the Foreign Service Act of 1980, referred to in subsec. (c), is classified to section 3903(6) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108-469 substituted "as" for "only during a period".

2003—Subsec. (d). Pub. L. 108-177 designated existing provisions as par. (1) and added par. (2).

2002—Subsec. (b)(2)(C). Pub. L. 107-304 added subpar. (C).

2000—Subsec. (b)(2). Pub. L. 106-554 designated existing provisions as subpar. (A), substituted "the maximum percentage of such employee's or Member's basic pay for such pay period allowable under subparagraph (B)." for "5 percent of the amount of the employee's or Member's basic pay for such period.", and added subpar. (B).

1999—Subsec. (b)(8)(A). Pub. L. 106-65, §661(a)(3)(B)(ii), inserted before semicolon at end " , except that the reference in section 8432b(b)(2)(B) to employee contributions under section 8432(a) shall be considered a reference to employee contributions under this subchapter and section 8440e".

Pub. L. 106-65, §661(a)(3)(B)(i), and Pub. L. 106-168, amended subsec. (b) identically, redesignating par. (11) as (8).

Subsec. (b)(9). Pub. L. 106-168 added par. (9).

Subsec. (b)(11). Pub. L. 106-65, § 661(a)(3)(B)(i), and Pub. L. 106-168, amended subsec. (b) identically, redesignating par. (11) as (8).

1996—Subsec. (b)(5)(B). Pub. L. 104-208, § 101(f) [title VI, § 659 [title II, § 202(1)(A)]], substituted “An election or change of election” for “An election, change of election, or modification (relating to the commencement date of a deferred annuity)”, inserted “or withdrawal” after “and a loan” and “and (h)” after “8433(g)”, substituted “the election or change of election” for “the election, change of election, or modification”, and inserted “or withdrawal” after “for such loan”.

Subsec. (b)(5)(D). Pub. L. 104-208, § 101(f) [title VI, § 659 [title II, § 202(1)(B)]], inserted “or withdrawals” after “of loans” and “or (h)” after “8433(g)”.

Subsec. (b)(6). Pub. L. 104-208, § 101(f) [title VI, § 659 [title II, § 202(2)]], substituted “less than an amount that the Executive Director prescribes by regulation” for “\$3,500 or less” and struck out “unless the employee or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under subsection (b)” before period at end.

1994—Subsec. (b)(4). Pub. L. 103-226, § 9(a)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “Section 8433(b) of this title applies to any employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and separates from Government employment entitled to an immediate annuity under this subchapter (including a disability retirement annuity under section 8337 of this title), separates from Government employment pursuant to regulations under section 3502(a) of this title or procedures under section 3595(a) of this title in a reduction in force, or separates from Government employment entitled to benefits under subchapter I of chapter 81 of this title.”

Subsec. (b)(5). Pub. L. 103-226, § 9(a)(2), (3), redesignated par. (7) as (5) and struck out former par. (5) which read as follows: “Section 8433(c) of this title applies to any employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and separates entitled to a deferred annuity under this subchapter.”

Subsec. (b)(5)(B) to (D). Pub. L. 103-226, § 9(a)(4), (i)(1), (2), substituted “section 8433(g)” for “section 8433(i)” in subpars. (B) and (D) and struck out “or former spouse” after “spouse” in two places in subpar. (C).

Subsec. (b)(6). Pub. L. 103-226, § 9(a)(5), amended par. (6) generally. Prior to amendment, par. (6) read as follows: “Notwithstanding paragraphs (4) and (5), if an employee or Member separates from Government employment under circumstances making such employee or Member eligible to make an election under subsection (b) or (c) of section 8433, and such employee’s or Member’s nonforfeitable account balance is \$3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the employee or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under such subsection (b) or (c), as applicable.”

Pub. L. 103-226, § 9(a)(2), (3), redesignated par. (9) as (6) and struck out former par. (6) which read as follows: “Section 8433(d) of this title applies to any employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and separates from the service before becoming entitled to an immediate or deferred annuity under this subchapter.”

Subsec. (b)(7). Pub. L. 103-226, § 9(a)(6), which directed substitution of “nonforfeitable” for “nonforfeiture”, could not be executed because the term “nonforfeiture” does not appear in text.

Pub. L. 103-226, § 9(a)(3), redesignated par. (10) as (7). Former par. (7) redesignated (5).

Subsec. (b)(8). Pub. L. 103-226, § 9(a)(2), struck out par. (8) which read as follows: “Notwithstanding paragraph (6), if an employee or Member who elects to make contributions to the Thrift Savings Fund under subsection

(a) separates from Government employment before becoming entitled to a deferred or immediate annuity under this subchapter, and such employee’s or Member’s nonforfeitable account balance is \$3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the employee or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, to have the nonforfeitable account balance transferred to an eligible retirement plan as provided in section 8433(e).”

Subsec. (b)(9), (10). Pub. L. 103-226, § 9(a)(3), redesignated pars. (9) and (10) as (6) and (7), respectively.

Subsec. (b)(11). Pub. L. 103-353 added par. (11).

1992—Subsec. (b)(4). Pub. L. 102-484 inserted “, separates from Government employment pursuant to regulations under section 3502(a) of this title or procedures under section 3595(a) of this title in a reduction in force,” after “section 8337 of this title”.

1991—Subsecs. (d), (e). Pub. L. 102-183 added subsec. (d) and redesignated former subsec. (d) as (e).

1990—Subsec. (b)(7)(D). Pub. L. 101-335, § 6(b)(1)(B), added subpar. (D).

Subsec. (b)(8). Pub. L. 101-335, § 6(b)(1)(A), added par. (8).

Pub. L. 101-335, § 3(b)(1), struck out par. (8) which read as follows: “Sums contributed under this section and earnings attributable to such sums may be invested and reinvested only in the Government Securities Investment Fund established under section 8433(b)(1)(A) of this title.”

Subsec. (b)(9), (10). Pub. L. 101-335, § 6(b)(1)(A), added pars. (9) and (10).

1988—Subsecs. (c), (d). Pub. L. 100-238 added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-304, § 1(c), Nov. 27, 2002, 116 Stat. 2363, provided that: “The amendments made by this section [amending this section and sections 8432 and 8440f of this title] shall take effect as of the earliest practicable date, as determined by the Executive Director (appointed under section 8474(a) of title 5, United States Code) in regulations.”

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-554, § 1(a)(4) [div. B, title I, § 138(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-234, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting section 8440f of this title and amending this section and sections 8432 and 8440a to 8440e of this title] shall take effect on the date of enactment of this Act [Dec. 21, 2000].

“(2) COORDINATION WITH ELECTION PERIODS.—The Executive Director shall by regulation determine the first election period in which elections may be made consistent with the amendments made by this section.

“(3) DEFINITIONS.—For purposes of this section—

“(A) the term ‘election period’ means a period afforded under section 8432(b) of title 5, United States Code; and

“(B) the term ‘Executive Director’ has the meaning given such term by section 8401(13) of title 5, United States Code.”

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by Pub. L. 106-168 applicable with respect to transfers occurring before, on, or after Dec. 12, 1999, with special rule for applying amendment with respect to transfers occurring before Dec. 12, 1999, see section 203(c) of Pub. L. 106-168, set out as an Effective Date note under section 8431 of this title.

Amendment by section 661(a)(3)(B)(ii) of Pub. L. 106-65 effective 180 days after Oct. 30, 2000, unless postponed, see section 663 of Pub. L. 106-65, as amended, set out as an Effective Date note under section 8440e of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective Sept. 30, 1996, and withdrawals and elections as provided under such

amendment to be made at earliest practicable date as determined by Executive Director in regulations, see section 101(f) [title VI, § 659 [title II, § 207]] of Pub. L. 104-208, set out as a note under section 5545a of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103-353 effective Oct. 13, 1994, and applicable to any employee whose release from military service, discharge from hospitalization, or other similar event making the individual eligible to seek restoration or reemployment under chapter 43 of Title 38, Veterans' Benefits, occurs on or after Aug. 2, 1990, with special rules for applying amendment to employees restored or reemployed before effective date, see section 4(e), (f) of Pub. L. 103-353, set out as an Effective Date note under section 8432b of this title.

Section 9(j) of Pub. L. 103-226 provided that: "This section [amending this section and sections 8433 to 8435, 8437, and 8440a to 8440d of this title] shall take effect 1 year after the date of the enactment of this Act [Mar. 30, 1994] or on such earlier date as the Executive Director of the Federal Retirement Thrift Investment Board shall provide in regulation." [Implementing regulations were published in the Federal Register Feb. 21, 1995, 60 F.R. 9595, effective Mar. 10, 1995.]

EFFECTIVE DATE OF 1992 AMENDMENT

Section 4437(d) of Pub. L. 102-484 provided that: "The amendments made by this section [amending this section and sections 8433 and 8435 of this title] shall apply with respect to separations occurring after December 31, 1993, or such earlier date as the Executive Director (appointed under section 8474 of title 5, United States Code) may by regulation prescribe."

EFFECTIVE DATE OF 1991 AMENDMENT

Section 308(b) of Pub. L. 102-183 provided that:
 "(1) The amendment made by subsection (a) [amending this section] shall take effect as of January 1, 1987.
 "(2) Any refund which becomes payable as a result of the effective date specified in paragraph (1) shall, to the extent that that refund involves an individual's contributions to the Thrift Savings Fund (established under section 8437 of title 5, United States Code), be adjusted to reflect any earnings attributable thereto."

EFFECTIVE DATE OF 1990 AMENDMENT

Section 3(c) of Pub. L. 101-335 provided that: "Subsections (a) and (b), and the amendments made by such subsections [amending this section and sections 8438, 8440a, and 8440b of this title and enacting provisions set out as a note under section 8438 of this title], shall be effective as of the second election period described in section 8432(b) of title 5, United States Code, beginning after the date of enactment of this Act [July 17, 1990], or as of such earlier date as the Executive Director may by regulation prescribe."

Section 6(c) of Pub. L. 101-335 provided that: "This section, and the amendments made by this section [amending this section and sections 8401, 8433, 8435, 8440a, and 8440b of this title and enacting provisions set out as a note under section 8433 of this title], shall be effective as of the second election period described in section 8432(b) of title 5, United States Code, beginning after the date of enactment of this Act [July 17, 1990] (or as of such earlier date as the Executive Director may by regulation prescribe), and shall apply with respect to separations occurring before, on, or after that effective date."

EFFECTIVE DATE OF 1988 AMENDMENT

Section 111(b) of Pub. L. 100-238 provided that: "The amendments made by subsection (a) [amending this section] shall be effective as of March 31, 1987. Any refund which becomes payable as a result of the preceding sentence shall, to the extent that such refund involves an individual's contributions to the Thrift Savings Fund (established under section 8437 of title 5,

United States Code), be adjusted to reflect any earnings attributable thereto."

EFFECTIVE DATE

Section effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as a note under section 8401 of this title.

PERIOD WHEN ELECTION MAY FIRST BE MADE

Section 206(b) of Pub. L. 99-335, as amended by Pub. L. 99-509, title VI, § 6001(b), Oct. 21, 1986, 100 Stat. 1930, provided that an election could first be made by a Federal employee or a Member of Congress under 5 U.S.C. 8351 (a)(2) during an election period prescribed by Executive Director of Federal Retirement Thrift Investment Board to begin on Apr. 1, 1987, with such election to take effect on first day of employee's or Member's first pay period which began on or after the date of the election. The maximum amount that an employee or Member could elect to contribute during any pay period which began on or after Apr. 1, 1987, and before Oct. 1, 1987, was an amount equal to 7.5 percent of the individual's basic pay for that period.

CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

SUBCHAPTER I—GENERAL PROVISIONS

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SUBCHAPTER II—BASIC ANNUITY

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AMENDMENTS

2009—Pub. L. 111-84, div. A, title XIX, §1904(b)(3)(B), Oct. 28, 2009, 123 Stat. 2617, added item 8422 and struck out former item 8422 “Deductions from pay; contributions for other service”.

Pub. L. 111-31, div. B, title I, §§103(b), 107(b), June 22, 2009, 123 Stat. 1854, 1856, added items 8432d and 8480.

2001—Pub. L. 107-107, div. A, title XI, §1132(b)(2)(C), Dec. 28, 2001, 115 Stat. 1244, substituted “other service” for “military service” in item 8422.

2000—Pub. L. 106-554, §1(a)(4) [div. B, title I, §138(a)(7)(B)], Dec. 21, 2000, 114 Stat. 2763, 2763A-234, added item 8440f.

1999—Pub. L. 106-168, title II, §203(a)(2), Dec. 12, 1999, 113 Stat. 1820, added item 8431.

Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title III, §334(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-441, added item 8432c.

Pub. L. 106-65, div. A, title VI, §§661(a)(2)(B), 663, Oct. 5, 1999, 113 Stat. 671, 673, as amended by Pub. L. 106-398, §1 [div. A], title VI, §661(a), Oct. 30, 2000, 114 Stat.

1654, 1654A-167, added item 8440e, effective 180 days after Oct. 30, 2000, unless postponed.

1998—Pub. L. 105-368, title V, §512(b)(2)(B), Nov. 11, 1998, 112 Stat. 3342, substituted “Judges of the United States Court of Appeals for Veterans Claims” for “Judges of the United States Court of Veterans Appeals” in item 8440d.

1996—Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title II, §206(b)(1)]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-378, struck out item 8431 “Definition”.

1994—Pub. L. 103-353, §4(a)(2), Oct. 13, 1994, 108 Stat. 3172, added item 8432b.

1992—Pub. L. 102-572, title IX, §902(b)(2), Oct. 29, 1992, 106 Stat. 4516, substituted “Court of Federal Claims” for “Claims Court” in item 8440c.

Pub. L. 102-378, §5(d)(2), Oct. 2, 1992, 106 Stat. 1358, amended directory language of Pub. L. 101-198, §7(c)(4)(B). See 1991 Amendment note below.

1991—Pub. L. 102-198, §7(c)(2), Dec. 9, 1991, 105 Stat. 1625, redesignated item 8440b “Claims Court judges” as item 8440c.

Pub. L. 102-198, §7(c)(4)(B), Dec. 9, 1991, 105 Stat. 1625, as amended by Pub. L. 102-378, §5(d)(2), Oct. 2, 1992, 106 Stat. 1358, redesignated item 8440c “Judges of the United States Court of Veterans Appeals” as item 8440d.

Pub. L. 102-82, §5(a)(2), Aug. 6, 1991, 105 Stat. 376, added item 8440c “Judges of the United States Court of Veterans Appeals”.

1990—Pub. L. 101-650, title III, §306(d)(2), Dec. 1, 1990, 104 Stat. 5111, which directed the amendment of the table of sections for this chapter by adding at the end thereof item 8440b “Claims Court judges”, was executed by adding that item after the first item 8440b.

Pub. L. 101-335, §§2(a)(2), 9(b), July 17, 1990, 104 Stat. 320, 326, added item 8432a and redesignated item 8440a “Bankruptcy judges and magistrates” as item 8440b.

1988—Pub. L. 100-659, §7(b), Nov. 15, 1988, 102 Stat. 3920, added item 8440a “Bankruptcy judges and magistrates”.

Pub. L. 100-654, title IV, §401(b), Nov. 14, 1988, 102 Stat. 3847, added item 8440a “Justices and judges”.

Pub. L. 100-238, title I, §124(a)(2), (b)(2), Jan. 8, 1988, 101 Stat. 1756, added item 8464a, redesignated item 8457 as 8456, and struck out former item 8456 “Relationship to workers' compensation”.

1986—Pub. L. 99-556, title I, §110(b), Oct. 27, 1986, 100 Stat. 3132, added item 8478a.

CHANGE OF NAME

Words “magistrate judges” substituted for “magistrates” in item 8440b pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

SUBCHAPTER I—GENERAL PROVISIONS

§ 8401. Definitions

For the purpose of this chapter—

(1) the term “account” means an account established and maintained under section 8439(a) of this title;

(2) the term “annuitant” means a former employee or Member who, on the basis of that individual's service, meets all requirements for title to an annuity under subchapter II or V of this chapter and files claim therefor;

(3) the term “average pay” means the largest annual rate resulting from averaging an employee's or Member's rates of basic pay in effect over any 3 consecutive years of service or, in the case of an annuity under this chapter based on service of less than 3 years, over the total service, with each rate weighted by the period it was in effect;

(4) the term “basic pay” has the meaning given such term by section 8331(3);

(5) the term “Board” means the Federal Retirement Thrift Investment Board established by section 8472(a) of this title;

(6) the term “Civil Service Retirement and Disability Fund” or “Fund” means the Civil Service Retirement and Disability Fund under section 8348;

(7) the term “court” means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court;

(8) the term “Director” means the Director of the Office of Personnel Management;

(9) the term “dynamic assumptions” means economic assumptions that are used in determining actuarial costs and liabilities of a retirement system and in anticipating the effects of long-term future—

- (A) investment yields;
- (B) increases in rates of basic pay; and
- (C) rates of price inflation;

(10) the term “earnings”, when used with respect to the Thrift Savings Fund, means the amount of the gain realized or yield received from the investment of sums in such Fund;

(11) the term “employee” means—

(A) an individual referred to in subparagraph (A), (E), (F), (H), (I), (J), or (K) of section 8331(1) of this title;

(B) a Congressional employee as defined in section 2107 of this title, including a temporary Congressional employee and an employee of the Congressional Budget Office; and

(C) an employee described in section 2105(c) who has made an election under section 8461(n)(1) to remain covered under this chapter;

whose civilian service after December 31, 1983, is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986, except that such term does not include—

(i) any individual referred to in—

- (I) clause (i), (vi), or (ix) of paragraph (1) of section 8331;
- (II) clause (ii) of such paragraph; or
- (III) the undesignated material after the last clause of such paragraph;

(ii) any individual excluded under section 8402(c) of this title;

(iii) a member of the Foreign Service described in section 103(6) of the Foreign Service Act of 1980; or

(iv) an employee who has made an election under section 8461(n)(2) to remain covered by a retirement system established for employees described in section 2105(c);

(12) the term “former spouse” means a former spouse of an individual—

- (A) if such individual performed at least 18 months of civilian service creditable under section 8411 as an employee or Member; and
- (B) if the former spouse was married to such individual for at least 9 months;

(13) the term “Executive Director” means the Executive Director appointed under section 8474(a);

(14) the term “firefighter” means—

(A) an employee, the duties of whose position—

(i) are primarily to perform work directly connected with the control and extinguishment of fires; and

(ii) are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the Director considering the recommendations of the employing agency; and

(B) an employee who is transferred directly to a supervisory or administrative position after performing duties described in subparagraph (A) for at least 3 years;

(15) the term “Government” means the Federal Government, Gallaudet College, and, in the case of an employee described in paragraph (11)(C), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c);

(16) the term “Indian court” has the meaning given such term by section 8331(24);

(17) the term “law enforcement officer” means—

(A) an employee, the duties of whose position—

(i) are primarily—

(I) the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, or

(II) the protection of officials of the United States against threats to personal safety; and

(ii) are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the Director considering the recommendations of the employing agency;

(B) an employee of the Department of the Interior or the Department of the Treasury (excluding any employee under subparagraph (A)) who occupies a position that, but for the enactment of the Federal Employees’ Retirement System Act of 1986, would be subject to the District of Columbia Police and Firefighters’ Retirement System, as determined by the Secretary of the Interior or the Secretary of the Treasury, as appropriate;

(C) an employee who is transferred directly to a supervisory or administrative position after performing duties described in subparagraph (A) and (B) for at least 3 years; and

(D) an employee—

(i) of the Bureau of Prisons or Federal Prison Industries, Incorporated;

(ii) of the Public Health Service assigned to the field service of the Bureau of Prisons or of the Federal Prison Industries, Incorporated; or

(iii) in the field service at Army or Navy disciplinary barracks or at any other confinement and rehabilitation facility operated by any of the armed forces;

whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniform Code of Military Justice (chapter 47 of title 10) require frequent direct contact with these individuals in their detention and are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the head of the employing agency;

(18) the term “loss”, as used with respect to the Thrift Savings Fund, includes the amount of any loss resulting from the investment of sums in such Fund, or from the breach of any responsibility, duty, or obligation under section 8477.¹

(19) the term “lump-sum credit” means the unrefunded amount consisting of—

(A) retirement deductions made from the basic pay of an employee or Member under section 8422(a) of this title (or under section 204 of the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983);

(B) amounts deposited by an employee or Member under section 8422(e);

(C) amounts deposited by an employee, Member, or survivor under section 8411(f) or 8422(i); and

(D) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 8348(c), (d), and (e), as determined by the Secretary (compounded annually);

but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for a fractional part of a month in the total service;

(20) the term “Member” has the same meaning as provided in section 2106, except that such term does not include an individual who irrevocably elects, by written notice to the official by whom such individual is paid, not to participate in the Federal Employees’ Retirement System, and who (in the case of an individual who is a Member of the House of Representatives, including a Delegate or Resident Commissioner to the Congress) serves as a Member prior to the date of the enactment of the Legislative Branch Appropriations Act, 2004;

(21) the term “net earnings” means the excess of earnings over losses;

(22) the term “net losses” means the excess of losses over earnings;

(23) the term “normal-cost percentage” means the entry-age normal cost of the provisions of the System which relate to the Fund, computed by the Office in accordance with generally accepted actuarial practice and standards (using dynamic assumptions) and

expressed as a level percentage of aggregate basic pay;

(24) the term “Office” means the Office of Personnel Management;

(25) the term “price index” has the same meaning as provided in section 8331(15);

(26) the term “service” means service which is creditable under section 8411;

(27) the term “supplemental liability” means the estimated excess of—

(A) the actuarial present value of all future benefits payable from the Fund under this chapter based on the service of current or former employees or Members, over

(B) the sum of—

(i) the actuarial present value of deductions to be withheld from the future basic pay of employees and Members currently subject to this chapter pursuant to section 8422;

(ii) the actuarial present value of the future contributions to be made pursuant to section 8423(a) with respect to employees and Members currently subject to this chapter;

(iii) the Fund balance as of the date the supplemental liability is determined, to the extent that such balance is attributable—

(I) to the System, or

(II) to contributions made under the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 by or on behalf of an individual who became subject to the System; and

(iv) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles;

(28) the term “survivor” means an individual entitled to an annuity under subchapter IV of this chapter;

(29) the term “System” means the Federal Employees’ Retirement System described in section 8402(a);

(30) the term “military technician (dual status)” means an employee described in section 10216 of title 10;

(31) the term “military service” means honorable active service—

(A) in the armed forces;

(B) in the commissioned corps of the Public Health Service after June 30, 1960; or

(C) in the commissioned corps of the National Oceanic and Atmospheric Administration, or a predecessor entity in function, after June 30, 1961;

and includes service as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, but does not include service in the National Guard except when ordered to active duty in the service of the United States or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this subchapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990;

¹ So in original. The period probably should be a semicolon.

(32) the term “nonforfeitable account balance” means any amounts in an account, established and maintained under subchapter III, which are nonforfeitable (as determined under section 8432(g));

(33) “Nuclear materials courier” has the meaning given that term in section 8331(27);

(34) the term “Government physician” has the meaning given such term under section 5948;

(35) the term “air traffic controller” or “controller” means—

(A) a controller within the meaning of section 2109(1); and

(B) a civilian employee of the Department of Transportation or the Department of Defense who is the immediate supervisor of a person described in section 2109(1)(B); and

(36) the term “customs and border protection officer” means an employee in the Department of Homeland Security (A) who holds a position within the GS-1895 job series (determined applying the criteria in effect as of September 1, 2007) or any successor position, and (B) whose duties include activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry, including any such employee who is transferred directly to a supervisory or administrative position in the Department of Homeland Security after performing such duties (as described in subparagraph (B)) in 1 or more positions (as described in subparagraph (A)) for at least 3 years.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 517; amended Pub. L. 99-556, title I, §§107, 109, 119, Oct. 27, 1986, 100 Stat. 3132, 3134; Pub. L. 100-238, title I, §§103(a)(2), (c), (d)(2), 113(b)(1), Jan. 8, 1988, 101 Stat. 1744, 1745, 1750; Pub. L. 100-679, §13(a)(2), Nov. 17, 1988, 102 Stat. 4071; Pub. L. 101-335, §6(a)(1), July 17, 1990, 104 Stat. 322; Pub. L. 101-474, §5(o), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101-508, title VII, §7202(k)(1), Nov. 5, 1990, 104 Stat. 1388-338; Pub. L. 103-337, div. A, title XVI, §1677(a)(4), Oct. 5, 1994, 108 Stat. 3019; Pub. L. 103-353, §5(c), (e)(1), Oct. 13, 1994, 108 Stat. 3174; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title II, §206(a)(1)]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-378; Pub. L. 105-261, div. C, title XXXI, §3154(f), Oct. 17, 1998, 112 Stat. 2255; Pub. L. 106-65, div. A, title V, §522(c)(2), Oct. 5, 1999, 113 Stat. 597; Pub. L. 106-571, §3(c)(2), Dec. 28, 2000, 114 Stat. 3056; Pub. L. 108-83, title I, §104(a), Sept. 30, 2003, 117 Stat. 1017; Pub. L. 108-176, title II, §226(a)(2), Dec. 12, 2003, 117 Stat. 2529; Pub. L. 110-161, div. E, title V, §535(b)(1), Dec. 26, 2007, 121 Stat. 2076; Pub. L. 110-181, div. A, title XI, §1115(b), Jan. 28, 2008, 122 Stat. 361; Pub. L. 111-84, div. A, title XIX, §1904(b)(1), Oct. 28, 2009, 123 Stat. 2616.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (11), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Chapter 21 of the Internal Revenue Code of 1986, referred to in par. (11), is classified to chapter 21 (§3101 et seq.) of Title 26, Internal Revenue Code.

Section 103(6) of the Foreign Service Act of 1980, referred to in par. (11)(iii), is classified to section 3903(6) of Title 22, Foreign Relations and Intercourse.

The Federal Employees' Retirement System Act of 1986, referred to in par. (17)(B), is Pub. L. 99-335, June 6, 1986, 100 Stat. 514. For complete classification of this Act to the Code, see Short Title note set out under section 8401 of this title and Tables.

The Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, referred to in pars. (19)(A) and (27)(B)(iii)(II), is Pub. L. 98-168, title II, Nov. 29, 1983, 97 Stat. 1106, which is set out as a note under section 8331 of this title.

The date of the enactment of the Legislative Branch Appropriations Act, 2004, referred to in par. (20), is the date of enactment of Pub. L. 108-83, which was approved Sept. 30, 2003.

AMENDMENTS

2009—Par. (19)(C). Pub. L. 111-84 substituted “8411(f) or 8422(i);” for “8411(f);”.

2008—Par. (31). Pub. L. 110-181, in concluding provisions, substituted “and includes service as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, but” for “but”.

2007—Par. (36). Pub. L. 110-161 added par. (36).

2003—Par. (20). Pub. L. 108-83 inserted before semicolon at end “, and who (in the case of an individual who is a Member of the House of Representatives, including a Delegate or Resident Commissioner to the Congress) serves as a Member prior to the date of the enactment of the Legislative Branch Appropriations Act, 2004”.

Par. (35). Pub. L. 108-176 added par. (35).

2000—Par. (34). Pub. L. 106-571 added par. (34).

1999—Par. (30). Pub. L. 106-65 amended par. (30) generally. Prior to amendment, par. (30) read as follows: “the term ‘militian’ means a member of one of the reserve components of the armed forces specified in section 10101 of title 10 who—

“(A) is assigned to a civilian position as a technician in the administration and training of such reserve components or in the maintenance and repair of supplies issued to such reserve components; and

“(B) as a condition of employment in such position, is required to be a member of one of such reserve components serving in a specified military grade;”.

1998—Par. (33). Pub. L. 105-261 added par. (33).

1996—Par. (4). Pub. L. 104-208 struck out “except as provided in subchapter III of this chapter;” before “the term”.

1994—Par. (11). Pub. L. 103-353, §5(e)(1), in flush provisions before cl. (i), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

Par. (30). Pub. L. 103-337 substituted “section 10101” for “section 261(a)” in introductory provisions.

Par. (31). Pub. L. 103-353, §5(c), in closing provisions, inserted before semicolon “or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this subchapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990”.

1990—Par. (11)(C). Pub. L. 101-508, §7202(k)(1)(A)(i)-(iii), added subpar. (C).

Par. (11)(i)(D). Pub. L. 101-474 struck out “(v),” after “(i),”.

Par. (11)(iv). Pub. L. 101-508, §7202(k)(1)(A)(iv)-(vi), added cl. (iv).

Par. (15). Pub. L. 101-508, §7202(k)(1)(B), substituted “, Gallaudet College, and, in the case of an employee described in paragraph (11)(C), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c);” for “and Gallaudet College;”.

Par. (32). Pub. L. 101-335 added par. (32).

1988—Par. (11)(A). Pub. L. 100-679 substituted “(J), or (K)” for “or (J)”.

Par. (11)(i)(II). Pub. L. 100-238, §103(d)(2), struck out “(other than an employee of the United States Park Police, or the United States Secret Service, whose civilian service after December 31, 1983, is such employment)”.

Par. (11)(iii). Pub. L. 100-238, §113(b)(1), added cl. (iii).

Par. (14)(A)(ii). Pub. L. 100-238, §103(a)(2), substituted “should be” for “are required to be”.

Par. (14)(B). Pub. L. 100-238, §103(c)(2), substituted “for at least 3 years” for “for at least 10 years”.

Par. (17). Pub. L. 100-238, §103(a)(2), (c)(1), in subpar. (A)(ii), substituted “should be” for “are required to be”, added subpar. (B), redesignated former subpar. (B) as (C) and amended it generally, substituting “subparagraph (A) and (B) for at least 3 years” for “subparagraph (A) for at least 10 years”, redesignated former subpar. (C) as (D), and in concluding provisions, substituted “should be” for “are required to be”.

1986—Par. (11). Pub. L. 99-556, §119, struck out “any of” before “whose civilian service” in two places.

Par. (18). Pub. L. 99-556, §109, amended par. (18) generally. Prior to amendment, par. (18) read as follows: “the term ‘loss’, when used with respect to the Thrift Savings Fund, means the amount of the loss resulting from the investment of sums in such Fund;”.

Par. (19)(C), (D). Pub. L. 99-556, §107, added subpar. (C) and redesignated former subpar. (C) as (D).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-181 applicable to any annuity, eligibility for which is based upon a separation occurring before, on, or after Jan. 28, 2008, and any period of service as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, occurring before, on, or after Jan. 28, 2008, see section 1115(c) of Pub. L. 110-181, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110-161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110-161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-176, title II, §226(c), Dec. 12, 2003, 117 Stat. 2530, provided that:

“(1) IN GENERAL.—This section [amending this section and sections 8331, 8335, 8415, 8422, 8425, 8452, and 8468 of this title] and the amendments made by this section—

“(A) shall take effect on the 60th day after the date of enactment of this Act [Dec. 12, 2003]; and

“(B) shall apply with respect to—

“(i) any annuity entitlement to which is based on an individual’s separation from service occurring on or after the effective date of this section; and

“(ii) any service performed by any such individual before, on, or after the effective date of this section, subject to paragraph (2).

“(2) SPECIAL RULE.—

“(A) DEPOSIT REQUIREMENT.—For purposes of determining eligibility for immediate retirement under section 8412(e) of title 5, United States Code, the amendment made by subsection (a)(2) [amending this section] shall, with respect to any service described in subparagraph (B), be disregarded unless there is deposited into the Civil Service Retirement and Disability Fund, with respect to such service, in such time, form, and manner as the Office of Personnel Management by regulation requires, an amount equal to the amount by which—

“(i) the deductions from pay which would have been required for such service if the amendments made by subsection (a)(2) had been in effect when such service was performed, exceeds

“(ii) the unrefunded deductions or deposits actually made under subchapter II of chapter 84 of such title with respect to such service.

An amount under this subparagraph shall include interest, computed under paragraphs (2) and (3) of section 8334(e) of such title 5.

“(B) PRIOR SERVICE DESCRIBED.—This paragraph applies with respect to any service performed by an individual before the effective date of this section as an employee described in section 8401(35)(B) of title 5, United States Code (as amended by subsection (a)(2)).”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-261 effective at the beginning of the first pay period that begins after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105-261, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective Sept. 30, 1996, and withdrawals and elections as provided under such amendment to be made at earliest practicable date as determined by Executive Director in regulations, see section 101(f) [title VI, §659 [title II, §207]] of Pub. L. 104-208, set out as a note under section 5545a of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103-353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103-353, set out as an Effective Date note under section 4301 of Title 38, Veterans’ Benefits.

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101-508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101-508, set out as a note under section 2105 of this title.

Amendment by Pub. L. 101-335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or such earlier date as Executive Director may by regulation prescribe, and applicable with respect to separations occurring before, on, or after that effective date, see section 6(c) of Pub. L. 101-335, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 103(a)(2), (c), and (d)(2) of Pub. L. 100-238, effective Jan. 1, 1987, see section 103(f) of Pub. L. 100-238, set out as a note under section 3307 of this title.

Section 113(b)(2) of Pub. L. 100-238 provided that: “The amendments made by paragraph (1) [amending this section] shall be effective as of January 1, 1987. Any refund which becomes payable as a result of the preceding sentence shall, to the extent that such refund involves an individual’s contributions to the Thrift Savings Fund (established under section 8437 of title 5, United States Code), be adjusted to reflect any earnings attributable thereto.”

EFFECTIVE DATE

Section 702(a), (b) of Pub. L. 99-335 provided that:

“(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments made by this Act [see Short Title note below] shall take effect on January 1, 1987.

“(b) EXCEPTIONS.—(1) Subchapter VII of chapter 84 of title 5, United States Code, as added by section 101 of this Act, shall take effect on the date of the enactment of this Act [June 6, 1986].

“(2) Except as provided in section 305 of this Act [enacting and amending provisions set out as notes under section 8331 of this title], title III of this Act, and the amendments made by such title [amending sections 3121 and 6103 of Title 26, Internal Revenue Code, section 1005 of Title 39, Postal Service, and section 410 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 8331, 8432, and 8472 of this title and section 6103 of Title 26, and amending provisions set out as a note under section 8331 of this title], shall take effect on the date of the enactment of this Act.

“(3) The amendments made by sections 204 and 205 of this Act [enacting sections 8343a and 8350 of this title and amending section 8342 of this title] shall take effect on the date of the enactment of this Act.

“(4) Section 701 of this Act [enacting provisions set out as a note under section 8472 of this title] shall take effect on the date of the enactment of this Act.

“(5) Sections 505 [amending provisions formerly set out as a note under section 403 of Title 50, War and National Defense] and 601 of this Act and the amendments made by such section 601 [not classified to the Code] shall take effect on the date of the enactment of this Act.”

Reference to a specific date in section 702(a) of Pub. L. 99-335, set out above, for certain purposes, deemed to be a reference to the first day of the first pay period beginning after such date, or to the day before such day, as appropriate, see section 505 of Pub. L. 99-556, set out as a Coordination With Pay Periods note under section 8331 of this title.

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106-168, title II, §201, Dec. 12, 1999, 113 Stat. 1817, provided that: “This title [enacting section 8431 of this title, amending sections 8351, 8402, and 8411 of this title, and enacting provisions set out as notes under sections 8402 and 8431 of this title] may be cited as the ‘Federal Reserve Board Retirement Portability Act’.”

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-274, §1, Oct. 21, 1998, 112 Stat. 2419, provided that: “This Act [amending section 8402 of this title and enacting provisions set out as a note under section 8402 of this title] may be cited as the ‘District of Columbia Courts and Justice Technical Corrections Act of 1998’.”

SHORT TITLE OF 1996 AMENDMENT

Section 101(f) [title VI, §659 [title I, §101]] of Pub. L. 104-208 provided that: “This title [title I (§§101-104) of section 659 of section 101(f) of Pub. L. 104-208, amending sections 8438 and 8439 of this title and enacting provisions set out as a note under section 8438 of this title] may be cited as the ‘Thrift Savings Investment Funds Act of 1996’.”

Section 101(f) [title VI, §659 [title II, §201]] of Pub. L. 104-208 provided that: “This title [title II (§§201-207) of section 659 of section 101(f) of Pub. L. 104-208, amending this section and sections 5545a, 8351, 8433, 8435, and 8440a to 8440c of this title, repealing section 8431 of this title, enacting provisions set out as notes under sections 5545a and 8433 of this title, and amending provisions set out as a note under section 5343 of this title] may be cited as the ‘Thrift Savings Plan Act of 1996’.”

SHORT TITLE OF 1990 AMENDMENT

Section 1 of Pub. L. 101-335 provided that: “This Act [enacting section 8432a of this title, amending this sec-

tion and sections 3392, 8351, 8433 to 8435, 8438, 8440a, 8440b, and 8477 of this title, renumbering former section 8440a of this title as section 8440b, enacting provisions set out as notes under sections 3392, 8351, 8432a, 8433, 8434, and 8438 of this title, and amending provisions set out as a note under section 8477 of this title] may be cited as the ‘Thrift Savings Plan Technical Amendments Act of 1990’.”

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100-43, §1, May 22, 1987, 101 Stat. 315, provided: “That this Act [amending section 8438 of this title] may be cited as the ‘Thrift Savings Fund Investment Act of 1987’.”

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99-556 provided that: “This Act [enacting section 8478a of this title and section 4069 of Title 22, Foreign Relations and Intercourse, amending this section and sections 6301, 8332, 8350, 8402, 8411 to 8413, 8415, 8421a, 8442, 8443, 8452, 8457, 8461, 8462, 8477, 8478, and 8901 of this title and sections 4046, 4064, 4071c, 4071d, and 4071j of Title 22, enacting provisions set out as notes under sections 6301, 8331, 8332, 8335, 8341, 8477, and 8478 of this title and section 4046 of Title 22, and amending provisions set out as notes under sections 8331 and 8341 of this title] may be cited as the ‘Federal Employees’ Retirement System Technical Corrections Act of 1986’.”

SHORT TITLE

Section 100(a) of Pub. L. 99-335 provided that: “This Act [enacting this chapter, sections 8343a, 8349, 8350, and 8351 of this title, and sections 4068 and 4071 to 4071k of Title 22, Foreign Relations and Intercourse, amending sections 2105, 2109, 5102, 5314, 6301, 6303, 8116, 8331, 8332, 8334, 8342, 8347, 8348, 8701, 8706, 8714, 8714b, 8714c, 8901, and 8905 of this title, section 1605 of Title 10, Armed Forces, sections 4041 to 4049, 4054 to 4056, 4058, 4060, 4061, 4063, 4064, 4066, and 4067 of Title 22, sections 3121 and 6103 of Title 26, Internal Revenue Code, section 1005 of Title 39, Postal Service, and section 410 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 8331, 8351, 8432, and 8472 of this title, sections 3901 and 4046 of Title 22, and section 6103 of Title 26, and amending provisions set out as notes under section 8331 of this title and sections 402 and 403 of Title 50, War and National Defense] may be cited as the ‘Federal Employees’ Retirement System Act of 1986’.”

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ELECTION

Pub. L. 108-83, title I, §104(b), Sept. 30, 2003, 117 Stat. 1018, provided that:

“(1) During the 60-day period which begins on the date of the enactment of the Legislative Branch Appropriations Act, 2004 [Sept. 30, 2003], any individual who, as of such date, is serving as a Member of the House of Representatives and on such date is not subject to chapter 84 of title 5, United States Code, may elect to become subject to such chapter.

“(2) Any election under this paragraph shall be carried out in accordance with such procedures as the Office of Personnel Management may provide.

“(3) In this subsection, the term ‘Member of the House of Representatives’ includes a Delegate or Resident Commissioner to the Congress.”

SERVICE AS LAW ENFORCEMENT OFFICER

Pub. L. 104-52, title VI, §640, Nov. 19, 1995, 109 Stat. 513, as amended by Pub. L. 104-208, div. A, title I, §101(f) [title VI, §629(a)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-362, provided that: "Hereafter, service performed during the period January 1, 1984, through December 31, 1986, which would, if performed after that period, be considered service as a law enforcement officer, as defined in section 8401(17)(A)(i)(II) and (B) of title 5, United States Code, shall be deemed service as a law enforcement officer for the purposes of chapter 84 of such title."

[Pub. L. 104-208, div. A, title I, §101(f) [title VI, §629(b)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-362, provided that: "The amendment made by subsection (a) [amending section 640 of Pub. L. 104-52, set out above] shall take effect as if included in Public Law 104-52 on the date of its enactment [Nov. 19, 1995]."]

CONGRESSIONAL DECLARATION OF PURPOSE

Section 100A of Pub. L. 99-335 provided that: "The purposes of this Act [see Short Title note above] are—

"(1) to establish a Federal employees' retirement plan which is coordinated with title II of the Social Security Act [42 U.S.C. 401 et seq.];

"(2) to ensure a fully funded and financially sound retirement benefits plan for Federal employees;

"(3) to enhance portability of retirement assets earned as an employee of the Federal Government;

"(4) to provide options for Federal employees with respect to retirement planning;

"(5) to assist in building a quality career work force in the Federal Government;

"(6) to encourage Federal employees to increase personal savings for retirement; and

"(7) to extend financial protection from disability to additional Federal employees and to increase such protection for eligible Federal employees."

USE OF NORMAL-COST PERCENTAGE

Section 307 of Pub. L. 99-335, as amended by Pub. L. 100-366, §1, July 13, 1988, 102 Stat. 826, provided that: "Notwithstanding any other provision of law, the normal-cost percentage (as defined by section 8401(23) of title 5, United States Code, as added by this Act) of the Federal Employees' Retirement System shall be used to value the cost of such System to the Civil Service Retirement and Disability Fund for all purposes in which the cost of the System is required to be determined by the Federal Government. For any comparisons between the cost of performing commercial activities under the contract with commercial sources and the cost of performing such activities using Government facilities and personnel, the cost of the System shall include the cost of such System to the Civil Service Retirement and Disability Fund as specified in the preceding sentence, the cost of the thrift savings plan under subchapter III of chapter 84 of title 5, United States Code, and the cost of social security."

FIRST COST-OF-LIVING ADJUSTMENT

Section 702(c) of Pub. L. 99-335 provided that:

"(1) For purposes of the first adjustment under subsection (b) of section 8462 of title 5, United States Code (as added by section 101 of this Act), the base quarter ending on September 30, 1986, shall be considered to have been the base quarter for a year in which an adjustment under such subsection was made.

"(2) As used in paragraph (1), the term 'base quarter' has the meaning provided by section 8462(a)(1) of title 5, United States Code (as added by section 101 of this Act)."

§ 8402. Federal Employees' Retirement System; exclusions

(a) The provisions of this chapter comprise the Federal Employees' Retirement System.

(b) The provisions of this chapter shall not apply with respect to—

(1) any individual who has performed service of a type described in subparagraph (C), (D), (E), or (F) of section 210(a)(5) of the Social Security Act continuously since December 31, 1983 (determined in accordance with the provisions of section 210(a)(5)(B) of the Social Security Act, relating to continuity of employment); or

(2)(A) any employee or Member who has separated from the service after—

(i) having been subject to—

(I) subchapter III of chapter 83 of this title;

(II) subchapter I of chapter 8 of title I of the Foreign Service Act of 1980; or

(III) the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act; and

(ii) having completed—

(I) at least 5 years of civilian service creditable under subchapter III of chapter 83 of this title;

(II) at least 5 years of civilian service creditable under subchapter I of chapter 8 of title I of the Foreign Service Act of 1980; or

(III) at least 5 years of civilian service (other than any service performed in the employ of a Federal Reserve Bank) creditable under the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act,

determined without regard to any deposit or redeposit requirement under either such subchapter or under such benefit structure, or any requirement that the individual become subject to either such subchapter or to such benefit structure after performing the service involved; or

(B) any employee having at least 5 years of civilian service performed before January 1, 1987, creditable under subchapter III of chapter 83 of this title (determined without regard to any deposit or redeposit requirement under such subchapter, any requirement that the individual become subject to such subchapter after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such subchapter);

except to the extent provided for under subsection (d) of this section or title III of the Federal Employees' Retirement System Act of 1986 pursuant to an election under such title to become subject to this chapter.

(c)(1) The Office may exclude from the operation of this chapter an employee or group of employees in or under an Executive agency, the United States Postal Service, or the Postal Regulatory Commission, whose employment is tem-

porary or intermittent, except an employee whose employment is part-time career employment (as defined in section 3401(2)).

(2) The Architect of the Capitol may exclude from the operation of this chapter an employee under the Office of the Architect of the Capitol whose employment is temporary or of uncertain duration.

(3) The Librarian of Congress may exclude from the operation of this chapter an employee under the Library of Congress whose employment is temporary or of uncertain duration.

(4) The Director or Acting Director of the Botanic Garden may exclude from the operation of this chapter an employee under the Botanic Garden whose employment is temporary or of uncertain duration.

(5) The Chief Administrative Officer of the House of Representatives and the Secretary of the Senate each may exclude from the operation of this chapter a Congressional employee—

(A) whose employment is temporary or intermittent; and

(B) who is paid by such Chief Administrative Officer or Secretary, as the case may be.

(6) The Director of the Office of Technology Assessment may exclude from the operation of this chapter an employee under the Office of Technology Assessment whose employment is temporary or intermittent.

(7) The Director of the Congressional Budget Office may exclude from the operation of this chapter an employee under the Congressional Budget Office whose employment is temporary or intermittent.

(8) The Director of the Administrative Office of the United States Courts may exclude from the operation of this chapter an employee of the Administrative Office of the United States Courts, the Federal Judicial Center, or a court named by section 610 of title 28, whose employment is temporary or of uncertain duration.

(9) The Joint Committee on Judicial Administration in the District of Columbia may exclude from the operation of this chapter an employee of the District of Columbia Courts whose employment is temporary or of uncertain duration.

(d) Paragraph (2) of subsection (b) shall not apply to an individual who—

(1) becomes subject to—

(A) subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 (relating to the Foreign Service Pension System) pursuant to an election; or

(B) the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984, participate, which benefit structure is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act (and any redesignated or successor version of such benefit structure, if so identified in writing by the Board of Governors of the Federal Reserve System for purposes of this chapter); and

(2) subsequently enters a position in which, but for paragraph (2) of subsection (b), such individual would be subject to this chapter.

(e) A bankruptcy judge or magistrate judge who is covered by section 377 of title 28 or sec-

tion 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 shall be excluded from the operation of this chapter, other than subchapters III and VII of such chapter, if the judge or magistrate judge notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such election, the judge or magistrate judge shall be entitled to a lump-sum credit under section 8424 of this title.

(f) A judge who is covered by section 7296 of title 38 shall be excluded from the operation of this chapter if the judge notifies the Director of the Office of Personnel Management of an election of a retirement annuity under that section. Upon such election, the judge shall be entitled to a lump-sum credit under section 8424 of this title.

(g) A judge of the United States Court of Federal Claims who is covered by section 178 of title 28 shall be excluded from the operation of this chapter, other than subchapters III and VII of such chapter, if the judge notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such election, the judge shall be entitled to a lump-sum credit under section 8424 of this title.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 521; amended Pub. L. 99-556, title I, §116, Oct. 27, 1986, 100 Stat. 3134; Pub. L. 100-238, title I, §130, Jan. 8, 1988, 101 Stat. 1759; Pub. L. 100-659, §6(c), Nov. 15, 1988, 102 Stat. 3919; Pub. L. 101-94, title I, §102(b), Aug. 16, 1989, 103 Stat. 626; Pub. L. 101-474, §5(p), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101-650, title III, §§306(e)(3), 321, Dec. 1, 1990, 104 Stat. 5112, 5117; Pub. L. 102-40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 102-198, §7(d), Dec. 9, 1991, 105 Stat. 1625; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104-53, title I, §115, Nov. 19, 1995, 109 Stat. 527; Pub. L. 104-186, title II, §215(13), Aug. 20, 1996, 110 Stat. 1746; Pub. L. 105-274, §6(a), Oct. 20, 1998, 112 Stat. 2424; Pub. L. 106-168, title II, §202(b), Dec. 12, 1999, 113 Stat. 1818; Pub. L. 109-435, title VI, §604(b), Dec. 20, 2006, 120 Stat. 3241.)

REFERENCES IN TEXT

Section 210(a)(5) of the Social Security Act, referred to in subsec. (b)(1), is classified to section 410(a)(5) of Title 42, The Public Health and Welfare.

The Federal Employees' Retirement System Act of 1986, referred to in subsec. (b), is Pub. L. 99-335, June 6, 1986, 100 Stat. 514. Title III of the Federal Employees' Retirement System Act of 1986 amended sections 3121 and 6103 of Title 26, Internal Revenue Code, section 1005 of Title 39, Postal Service, and section 410 of Title 42, enacted provisions set out as notes under sections 8331, 8401, 8432, and 8472 of this title and section 6103 of Title 26, and amended provisions set out as a note under section 8331 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8401 of this title and Tables.

The Foreign Service Act of 1980, referred to in subsecs. (b)(2)(A)(i)(II), (ii)(II) and (d)(1)(A), is Pub. L. 96-465, Oct. 17, 1980, 94 Stat. 2071. Subchapters I and II of chapter 8 of title I of the Act are classified generally to parts I (§4041 et seq.) and II (§4071 et seq.), respectively, of subchapter VIII of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

Section 10 of the Federal Reserve Act, referred to in subsecs. (b)(2)(A)(i)(III), (ii)(III) and (d)(1)(B), is section 10 of act Dec. 23, 1913, ch. 6, 38 Stat. 260, as amended. For classification of section 10 to the Code, see Codification note set out under section 241 of Title 12, Banks and Banking, and Tables.

Section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, referred to in subsec. (e), is section 2(c) of Pub. L. 100-659, which is set out as a note under section 377 of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2006—Subsec. (c)(1). Pub. L. 109-435 substituted "Postal Regulatory Commission" for "Postal Rate Commission".

1999—Subsec. (b)(2)(A). Pub. L. 106-168, §202(b)(1), added subpar. (A) and struck out former subpar. (A) which read as follows: "any employee or Member who has separated from the service after—

"(i) having been subject to subchapter III of chapter 83 of this title, or subchapter I of chapter 8 of the Foreign Service Act of 1980; and

"(ii) having completed at least 5 years of civilian service creditable under subchapter III of chapter 83 of this title, or at least 5 years of civilian service creditable under subchapter I of the Foreign Service Act of 1980 (determined without regard to any deposit or redeposit requirement under either such subchapter, or any requirement that the individual become subject to either such subchapter after performing the service involved); or".

Subsec. (d). Pub. L. 106-168, §202(b)(2), amended subsec. (d) generally. Prior to amendment, text read as follows: "Paragraph (2) of subsection (b) shall not apply to an individual who becomes subject to subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 (relating to the Foreign Service Pension System) pursuant to an election and who subsequently enters a position in which, but for such paragraph (2), he would be subject to this chapter."

1998—Subsec. (c)(9). Pub. L. 105-274 added par. (9).

1996—Subsec. (c)(5). Pub. L. 104-186 substituted "Chief Administrative Officer" for "Clerk" in introductory provisions and subpar. (B).

1995—Subsec. (c)(7), (8). Pub. L. 104-53 added par. (7) and redesignated former par. (7) as (8).

1992—Subsec. (g). Pub. L. 102-572 substituted "United States Court of Federal Claims" for "United States Claims Court".

1991—Subsec. (f). Pub. L. 102-40 substituted "section 7296 of title 38" for "section 4096 of title 38".

Subsec. (g). Pub. L. 102-198 inserted a comma after "such chapter".

1990—Subsec. (c)(7). Pub. L. 101-474 added par. (7).

Subsec. (g). Pub. L. 101-650 added subsec. (g).

1989—Subsec. (f). Pub. L. 101-94 added subsec. (f).

1988—Subsec. (b)(2). Pub. L. 100-238, §130(1), inserted "subsection (d) of this section or" before "title III" in concluding provisions.

Subsec. (d). Pub. L. 100-238, §130(2), added subsec. (d).

Subsec. (e). Pub. L. 100-659 added subsec. (e).

1986—Subsec. (c)(5), (6). Pub. L. 99-556 added pars. (5) and (6).

CHANGE OF NAME

Words "magistrate judge" substituted for "magistrate" wherever appearing in subsec. (e) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-168, title II, §202(d), Dec. 12, 1999, 113 Stat. 1819, provided that:

"(1) IN GENERAL.—Subject to succeeding provisions of this subsection, this section [amending this section and section 8411 of this title and enacting provisions set out as a note under this section] and the amendments made

by this section shall take effect on the date of the enactment of this Act [Dec. 12, 1999].

"(2) PROVISIONS RELATING TO CREDITABILITY AND CERTAIN FORMER EMPLOYEES.—The amendments made by subsection (a) [amending section 8411 of this title] and the provisions of subsection (c) [set out as a note below] shall apply only to individuals who separate from service subject to chapter 84 of title 5, United States Code, on or after the date of the enactment of this Act [Dec. 12, 1999].

"(3) PROVISIONS RELATING TO EXCLUSION FROM CHAPTER.—The amendments made by subsection (b) [amending this section] shall not apply to any former employee of the Board of Governors of the Federal Reserve System who, subsequent to his or her last period of service as an employee of the Board of Governors of the Federal Reserve System and prior to the date of the enactment of this Act [Dec. 12, 1999], became subject to subchapter III of chapter 83 or chapter 84 of title 5, United States Code, under the law in effect at the time of the individual's appointment."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-274, §10, Oct. 20, 1998, 112 Stat. 2429, provided that: "Except as otherwise specifically provided, this Act [amending this section and enacting provisions set out as a note under section 8401 of this title] and the amendments made by this Act shall take effect as if included in the enactment of title XI of the Balanced Budget Act of 1997 [Pub. L. 105-33]."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-650 applicable to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after Dec. 1, 1990, see section 306(f) of Pub. L. 101-650, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-659 effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrate judges who retire on or after Nov. 15, 1988, with exception for judges and magistrate judges retiring on or after July 31, 1987, see section 9 of Pub. L. 100-659, as amended, set out as an Effective Date note under section 377 of Title 28, Judiciary and Judicial Procedure.

PROVISIONS RELATING TO CERTAIN FORMER EMPLOYEES

Pub. L. 106-168, title II, §202(c), Dec. 12, 1999, 113 Stat. 1819, provided that: "A former employee of the Board of Governors of the Federal Reserve System who—

"(1) has at least 5 years of civilian service (other than any service performed in the employ of a Federal Reserve Bank) creditable under the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act [Act Dec. 23, 1913, ch. 6, see Codification note set out under 12 U.S.C. 241];

"(2) was subsequently employed subject to the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984, participate, which benefit structure is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act (and any redesignated or successor version of such benefit structure, if so identified in writing by the Board of Governors of the Federal Reserve System for purposes of chapter 84 of title 5, United States Code); and

“(3) after service described in paragraph (2), becomes subject to and thereafter entitled to benefits under chapter 84 of title 5, United States Code, shall, for purposes of section 302 of the Federal Employees’ Retirement System Act of 1986 [Pub. L. 99-335] (100 Stat. 601; 5 U.S.C. 8331 note) be considered to have become subject to chapter 84 of title 5, United States Code, pursuant to an election under section 301 of such Act [5 U.S.C. 8331 note].”

§ 8403. Relationship to the Social Security Act

Except as otherwise provided in this chapter, the benefits payable under the System are in addition to the benefits payable under the Social Security Act.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 522.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

SUBCHAPTER II—BASIC ANNUITY

§ 8410. Eligibility for annuity

Notwithstanding any other provision of this chapter, an employee or Member must complete at least 5 years of civilian service creditable under section 8411 in order to be eligible for an annuity under this subchapter.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 522.)

§ 8411. Creditable service

(a)(1) The total service of an employee or Member is the full years and twelfth parts thereof, excluding from the aggregate the fractional part of a month, if any.

(2) Credit may not be allowed for a period of separation from the service in excess of 3 calendar days.

(b) For the purpose of this chapter, creditable service of an employee or Member includes—

(1) employment as an employee, and any service as a Member (including the period from the date of the beginning of the term for which elected or appointed to the date of taking office as a Member), after December 31, 1986;

(2) except as provided in subsection (f), service with respect to which deductions and withholdings under section 204(a)(1) of the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 have been made;

(3) except as provided in subsection (f) or (h), any civilian service (performed before January 1, 1989, other than any service under paragraph (1) or (2)) which, but for the amendments made by subsections (a)(4) and (b) of section 202 of the Federal Employees’ Retirement System Act of 1986, would be creditable under subchapter III of chapter 83 of this title (determined without regard to any deposit or re-deposit requirement under such subchapter, any requirement that the individual become subject to such subchapter after performing the

service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual’s desire to become subject to such subchapter);

(4) a period of service (other than any service under any other paragraph of this subsection and other than any military service) that was creditable under the Foreign Service Pension System described in subchapter II of chapter 8¹ of the Foreign Service Act of 1980, if the employee or Member waives credit for such service under the Foreign Service Pension System and makes a payment to the Fund equal to the amount that would have been deducted from pay under section 8422(a) had the employee been subject to this chapter during such period of service (together with interest on such amount computed under paragraphs (2) and (3) of section 8334(e));

(5) a period of service (other than any service under any other paragraph of this subsection, any military service, and any service performed in the employ of a Federal Reserve Bank) that was creditable under the Bank Plan (as defined in subsection (i)), if the employee waives credit for such service under the Bank Plan and makes a payment to the Fund equal to the amount that would have been deducted from pay under section 8422(a) had the employee been subject to this chapter during such period of service (together with interest on such amount computed under paragraphs (2) and (3) of section 8334(e)); and

(6) service performed by any individual as an employee paid from nonappropriated funds of an instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) that is not otherwise creditable, if the individual elects (in accordance with regulations prescribed by the Office) to have such service credited under this paragraph.

Paragraph (5) shall not apply in the case of any employee as to whom subsection (g) (or, to the extent subchapter III of chapter 83 is involved, section 8332(n)) otherwise applies.

(c)(1) Except as provided in paragraphs (2), (3), and (5), an employee or Member shall be allowed credit for—

(A) each period of military service performed before January 1, 1957; and

(B) each period of military service performed after December 31, 1956, and before the separation on which title to annuity is based, if a deposit (including interest, if any) is made with respect to such period in accordance with section 8422(e).

(2) If an employee or Member is awarded retired pay based on any period of military service, the service of the employee or Member may not include credit for such period of military service unless the retired pay is awarded—

(A) based on a service-connected disability—

(i) incurred in combat with an enemy of the United States; or

(ii) caused by an instrumentality of war and incurred in line of duty during a period of war as defined by section 1101 of title 38; or

¹ See References in Text note below.

(B) under chapter 1223 of title 10 (or under chapter 67 of that title as in effect before the effective date of the Reserve Officer Personnel Management Act).

(3) An employee or Member who has made a deposit under section 8334(j) (or a similar prior provision of law) with respect to a period of military service, and who has not taken a refund of such deposit—

(A) shall be allowed credit for such service without regard to the deposit requirement under paragraph (1)(B); and

(B) shall be entitled, upon filing appropriate application therefor with the Office, to a refund equal to the difference between—

(i) the amount deposited with respect to such period under such section 8334(j) (or prior provision), excluding interest; and

(ii) the amount which would otherwise have been required with respect to such period under paragraph (1)(B).

(4)(A) Notwithstanding paragraph (2), for purposes of computing a survivor annuity for a survivor of an employee or Member—

(i) who was awarded retired pay based on any period of military service, and

(ii) whose death occurs before separation from the service,

creditable service of the deceased employee or Member shall include each period of military service includable under subparagraph (A) or (B) of paragraph (1) or under paragraph (3). In carrying out this subparagraph, any amount deposited under section 8422(e)(5) shall be taken into account.

(B) A survivor annuity computed based on an amount which, under authority of subparagraph (A), takes into consideration any period of military service shall be reduced by the amount of any survivor's benefits—

(i) payable to a survivor (other than a child) under a retirement system for members of the uniformed services;

(ii) if, or to the extent that, such benefits are based on such period of military service.

(C) The Office of Personnel Management shall prescribe regulations to carry out this paragraph, including regulations under which—

(i) a survivor may elect not to be covered by this paragraph; and

(ii) this paragraph shall be carried out in any case which involves a former spouse.

(5) If, after January 1, 1997, an employee or Member waives retired pay that is subject to a court order for which there has been effective service on the Secretary concerned for purposes of section 1408 of title 10, the military service on which the retired pay is based may be credited as service for purposes of this chapter only if the employee or Member authorizes the Director to deduct and withhold from the annuity payable to the employee or Member under this subchapter an amount equal to the amount that, if the annuity payment was instead a payment of the employee's or Member's retired pay, would have been deducted and withheld and paid to the former spouse covered by the court order under such section 1408. The amount deducted and withheld under this paragraph shall be paid to

that former spouse. The period of civil service employment by the employee or Member shall not be taken into consideration in determining the amount of the deductions and withholding or the amount of the payment to the former spouse. The Director of the Office of Personnel Management shall prescribe regulations to carry out this paragraph.

(d) Credit under this chapter shall be allowed for leaves of absence without pay granted an employee while performing military service, or while receiving benefits under subchapter I of chapter 81. An employee or former employee who returns to duty after a period of separation is deemed, for the purpose of this subsection, to have been on leave of absence without pay for that part of the period in which that individual was receiving benefits under subchapter I of chapter 81. Credit may not be allowed for so much of other leaves of absence without pay as exceeds 6 months in the aggregate in a calendar year.

(e) Credit shall be allowed for periods of approved leave without pay granted an employee to serve as a full-time officer or employee of an organization composed primarily of employees (as defined by section 8331(1) or 8401(11)), subject to the employee arranging to pay, through the employee's employing agency, within 60 days after commencement of such leave without pay, amounts equal to the retirement deductions and agency contributions which would be applicable under sections 8422(a) and 8423(a), respectively, if the employee were in pay status. If the election and all payments provided by this subsection are not made, the employee may not receive credit for the periods of leave without pay, notwithstanding the third sentence of subsection (d).

(f)(1) An employee or Member who has received a refund of retirement deductions under subchapter III of chapter 83 with respect to any service described in subsection (b)(2) or (b)(3) may not be allowed credit for such service under this chapter unless such employee or Member deposits an amount equal to 1.3 percent of basic pay for such service, with interest. A deposit under this paragraph may be made only with respect to a refund received pursuant to an application filed with the Office before the date on which the employee or Member first becomes subject to this chapter.

(2) An employee or Member may not be allowed credit under this chapter for any service described in subsection (b)(3) for which retirement deductions under subchapter III of chapter 83 have not been made, unless such employee or Member deposits an amount equal to 1.3 percent of basic pay for such service, with interest.

(3) Interest under paragraph (1) or (2) shall be computed in accordance with paragraphs (2) and (3) of section 8334(e) and regulations prescribed by the Office.

(4) For the purpose of survivor annuities, deposits authorized by the preceding provisions of this subsection may also be made by a survivor of an employee or Member.

(g) Any employee who—

(1) served in a position in which the employee was excluded from coverage under this subchapter because the employee was covered

under a retirement system established under section 10 of the Federal Reserve Act; and

(2) transferred without a break in service to a position to which the employee was appointed by the President, with the advice and consent of the Senate, and in which position the employee is subject to this subchapter,

shall be treated for all purposes of this subchapter as if any service that would have been creditable under the retirement system established under section 10 of the Federal Reserve Act was service performed while subject to this subchapter if any employee and employer deductions, contributions or rights with respect to the employee's service are transferred from such retirement system to the Fund.

(h) An employee or Member shall be allowed credit for service as a volunteer or volunteer leader under part A of title VIII of the Economic Opportunity Act of 1964, as a full-time volunteer enrolled in a program of at least 1 year's duration under part A, B,¹ or C of title I of the Domestic Volunteer Service Act of 1973, or as a volunteer or volunteer leader under the Peace Corps Act performed at any time prior to the separation on which the entitlement to any annuity under this subchapter is based if the employee or Member has made a deposit with interest, if any, with respect to such service under section 8422(f).

(i)² For purposes of subsection (b)(5), the term "Bank Plan" means the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984, participate, which benefit structure is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act (and any redesignated or successor version of such benefit structure, if so identified in writing by the Board of Governors of the Federal Reserve System for purposes of this chapter).

(i)(1)² Upon application to the Office of Personnel Management, any individual who was an employee on the date of enactment of this paragraph, and who has on such date or thereafter acquired 5 years or more of creditable civilian service under this section (exclusive of service for which credit is allowed under this subsection) shall be allowed credit (as service as a congressional employee) for service before December 31, 1990, while employed by the Democratic Senatorial Campaign Committee, the Republican Senatorial Campaign Committee, the Democratic National Congressional Committee, or the Republican National Congressional Committee, if—

(A) such employee has at least 4 years and 6 months of service on such committees as of December 31, 1990; and

(B) such employee deposits to the Fund an amount equal to 1.3 percent of the base pay for such service, with interest.

(2) The Office shall accept the certification of the President of the Senate (or the President's designee) or the Speaker of the House of Representatives (or the Speaker's designee), as the

case may be, concerning the service of, and the amount of compensation received by, an employee with respect to whom credit is to be sought under this subsection.

(3) An individual shall not be granted credit for such service under this subsection if eligible for credit under section 8332(m) for such service.

(k)(1)³ The Office of Personnel Management shall accept, for the purposes of this chapter, the certification of the head of a nonappropriated fund instrumentality of the United States concerning service of the type described in subsection (b)(6) that was performed for such nonappropriated fund instrumentality.

(2) Service credited under subsection (b)(6) may not also be credited under any other retirement system provided for employees paid from nonappropriated funds of a nonappropriated fund instrumentality.

(l)(1) Notwithstanding any other provision of this chapter, the service of an individual finally convicted of an offense described in paragraph (2) shall not be taken into account for purposes of this chapter, except that this sentence applies only to service rendered as a Member (irrespective of when rendered). Any such individual (or other person determined under section 8424(d), if applicable) shall be entitled to be paid so much of such individual's lump-sum credit as is attributable to service to which the preceding sentence applies.

(2) An offense described in this paragraph is any offense described in section 8332(o)(2)(B) for which the following apply:

(A) Every act or omission of the individual (referred to in paragraph (1)) that is needed to satisfy the elements of the offense occurs while the individual is a Member.

(B) Every act or omission of the individual that is needed to satisfy the elements of the offense directly relates to the performance of the individual's official duties as a Member.

(C) The offense is committed after the date of enactment of this subsection.

(3) An individual convicted of an offense described in paragraph (2) shall not, after the date of the final conviction, be eligible to participate in the retirement system under this chapter while serving as a Member.

(4) The Office of Personnel Management shall prescribe any regulations necessary to carry out this subsection. Such regulations shall include—

(A) provisions under which interest on any lump-sum payment under the second sentence of paragraph (1) shall be limited in a manner similar to that specified in the last sentence of section 8316(b); and

(B) provisions under which the Office may provide for—

(i) the payment, to the spouse or children of any individual referred to in the first sentence of paragraph (1), of any amounts which (but for this clause) would otherwise have been nonpayable by reason of such first sentence, subject to paragraph (5); and

(ii) an appropriate adjustment in the amount of any lump-sum payment under the second sentence of paragraph (1) to reflect the application of clause (i).

² So in original. Two subsecs. (i) have been enacted.

³ So in original. No subsec. (j) has been enacted.

(5) Regulations to carry out clause (i) of paragraph (4)(B) shall include provisions to ensure that the authority to make any payment under such clause to the spouse or children of an individual shall be available only to the extent that the application of such clause is considered necessary and appropriate taking into account the totality of the circumstances, including the financial needs of the spouse or children, whether the spouse or children participated in an offense described in paragraph (2) of which such individual was finally convicted, and what measures, if any, may be necessary to ensure that the convicted individual does not benefit from any such payment.

(6) For purposes of this subsection—

(A) the terms “finally convicted” and “final conviction” refer to a conviction (i) which has not been appealed and is no longer appealable because the time for taking an appeal has expired, or (ii) which has been appealed and the appeals process for which is completed;

(B) the term “Member” has the meaning given such term by section 2106, notwithstanding section 8401(20); and

(C) the term “child” has the meaning given such term by section 8441.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 522; amended Pub. L. 99-556, title I, §103, title V, §502(b), Oct. 27, 1986, 100 Stat. 3131, 3140; Pub. L. 100-238, title I, §§104(b), 105(a), Jan. 8, 1988, 101 Stat. 1746; Pub. L. 102-83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102-242, title IV, §466(b), Dec. 19, 1991, 105 Stat. 2385; Pub. L. 103-82, title III, §371(b)(1), Sept. 21, 1993, 107 Stat. 910; Pub. L. 103-337, div. A, title XVI, §1677(a)(3), Oct. 5, 1994, 108 Stat. 3019; Pub. L. 104-201, div. A, title VI, §637(b), Sept. 23, 1996, 110 Stat. 2580; Pub. L. 106-168, title II, §202(a), Dec. 12, 1999, 113 Stat. 1817; Pub. L. 106-554, §1(a)(4) [div. A, §901(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-196; Pub. L. 107-107, div. A, title XI, §1132(b)(1), Dec. 28, 2001, 115 Stat. 1243; Pub. L. 110-81, title IV, §401(b), Sept. 14, 2007, 121 Stat. 756.)

REFERENCES IN TEXT

Section 204(a)(1) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [Pub. L. 98-168], referred to in subsec. (b)(2), is set out as a note under section 8331 of this title.

Subsections (a)(4) and (b) of section 202 of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99-335], referred to in subsec. (b)(3), amended section 8331(1) and (2) of this title.

The Foreign Service Act of 1980, referred to in subsec. (b)(4), is Pub. L. 96-465, Oct. 17, 1980, 94 Stat. 2071. Subchapter II of chapter 8 of the Act probably means subchapter II of chapter 8 of title I of the Act which is classified generally to part II (§4071 et seq.) of subchapter VIII of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

Chapter 67 of that title as in effect before the effective date of the Reserve Officer Personnel Management Act, referred to in subsec. (c)(2)(B), means chapter 67 (§1331 et seq.) of Title 10, Armed Forces, prior to its transfer to part II of subtitle E of Title 10, its renumbering as chapter 1223, and its general revision by section 1662(j)(1) of Pub. L. 103-337. A new chapter 67 (§1331) of Title 10 was added by section 1662(j)(7) of Pub. L. 103-337. For effective date of the Reserve Officer Personnel Management Act (Pub. L. 103-337, title XVI), see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10.

Section 10 of the Federal Reserve Act, referred to in subsecs. (g) and (i), is section 10 of act Dec. 23, 1913, ch. 6, 38 Stat. 260. For classification of section 10 to the Code, see Codification note set out under section 241 of Title 12, Banks and Banking, and Tables.

The Economic Opportunity Act of 1964, referred to in subsec. (h), is Pub. L. 88-452, Aug. 20, 1964, 73 Stat. 508. Part A of title VIII of that Act is part A of title VIII of Pub. L. 88-452 as added by Pub. L. 90-222, title I, §110, Dec. 23, 1967, 81 Stat. 722, which was classified generally to part A (§2992 et seq.) of subchapter VIII of chapter 34 of Title 42, The Public Health and Welfare, prior to its repeal by Pub. L. 93-113, title VI, §603, Oct. 1, 1973, 87 Stat. 417. See sections 4951 et seq. and 5055 of Title 42.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (h), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394. Parts A and C of title I of the Act are classified generally to parts A (§4951 et seq.) and C (§4991 et seq.), respectively, of subchapter I of chapter 66 of Title 42, The Public Health and Welfare. Part B of title I of the Act, which was classified generally to part B (§4971 et seq.) of subchapter I of chapter 66 of Title 42, was repealed by Pub. L. 111-13, title II, §2121, Apr. 21, 2009, 123 Stat. 1584. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of Title 42 and Tables.

The Peace Corps Act, referred to in subsec. (h), is Pub. L. 87-293, Sept. 22, 1961, 75 Stat. 612, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

The date of enactment of this paragraph, referred to in subsec. (i)(1), is the date of enactment of Pub. L. 106-554, which was approved Dec. 21, 2000.

The date of enactment of this subsection, referred to in subsec. (l)(2)(C), is the date of enactment of Pub. L. 110-81, which was approved Sept. 14, 2007.

AMENDMENTS

2007—Subsec. (l). Pub. L. 110-81 added subsec. (l).

2001—Subsec. (b)(6). Pub. L. 107-107, §1132(b)(1)(A), added par. (6).

Subsec. (k). Pub. L. 107-107, §1132(b)(1)(B), added subsec. (k).

2000—Subsec. (i). Pub. L. 106-554 added subsec. (i) relating to credit for service as congressional employee for certain service before Dec. 31, 1990.

1999—Subsec. (b). Pub. L. 106-168, §202(a)(1), in par. (3), struck out “and” at end, in par. (4), substituted “other paragraph” for “of the preceding provisions” and “; and” for period at end, and added par. (5) and concluding provisions.

Subsec. (i). Pub. L. 106-168, §202(a)(2), added subsec. (i) defining “Bank Plan” for purposes of subsec. (b)(5).

1996—Subsec. (c)(1). Pub. L. 104-201, §637(b)(2), in introductory provisions, substituted “Except as provided in paragraphs (2), (3), and (5)” for “Except as provided in paragraph (2) or (3)”.

Subsec. (c)(5). Pub. L. 104-201, §637(b)(1), added par. (5).

1994—Subsec. (c)(2)(B). Pub. L. 103-337 substituted “chapter 1223 of title 10 (or under chapter 67 of that title as in effect before the effective date of the Reserve Officer Personnel Management Act)” for “chapter 67 of title 10”.

1993—Subsec. (b)(3). Pub. L. 103-82, §371(b)(1)(A), substituted “subsection (f) or (h)” for “subsection (f)”.

Subsec. (h). Pub. L. 103-82, §371(b)(1)(B), added subsec. (h).

1991—Subsec. (c)(2)(A)(ii). Pub. L. 102-83 substituted “section 1101 of title 38” for “section 301 of title 38”.

Subsec. (g). Pub. L. 102-242 added subsec. (g).

1988—Subsec. (c)(4)(A). Pub. L. 100-238, §104(b), substituted “section 8422(e)(5)” for “subsection (f)(4)” in concluding provisions.

Subsec. (f)(1). Pub. L. 100-238, §105(a), inserted at end “A deposit under this paragraph may be made only with respect to a refund received pursuant to an appli-

cation filed with the Office before the date on which the employee or Member first becomes subject to this chapter.”

1986—Subsec. (b)(2). Pub. L. 99-556, §103(1), inserted “except as provided in subsection (f).”

Subsec. (c)(4). Pub. L. 99-556, §502(b), added par. (4).

Subsec. (f)(1). Pub. L. 99-556, §103(2), inserted “(b)(2) or”.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-107 applicable only to separations from service as an employee of the United States on or after Dec. 28, 2001, see section 1132(c) of Pub. L. 107-107, set out as a note under section 8332 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-168 effective Dec. 12, 1999, and applicable only to individuals who separate from service subject to chapter 84 of this title on or after Dec. 12, 1999, see section 202(d) of Pub. L. 106-168, set out as a note under section 8402 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-201 effective Jan. 1, 1997, see section 637(c) of Pub. L. 104-201, set out as a note under section 8332 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, and applicable with respect to any individual entitled to an annuity on the basis of a separation from service occurring before, on, or after Oct. 1, 1993, subject to rule relating to annuities based on earlier separations, see sections 371(c) and 392 of Pub. L. 103-82, set out as notes under section 8332 of this title and section 4951 of Title 42, The Public Health and Welfare, respectively.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-242 applicable with respect to any individual who transfers to a position in which he or she is subject to subchapter III of chapter 83 of this title or chapter 84 of this title, on or after Oct. 1, 1991, see section 466(c) of Pub. L. 102-242, set out as a note under section 8332 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 502(b) of Pub. L. 99-556 applicable to a survivor of an employee or member who dies on or after the 180th day after Oct. 27, 1986, and to other survivors upon application, see section 502(c) of Pub. L. 99-556, set out as a note under section 8332 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

RETIREMENT CREDIT FOR CERTAIN GOVERNMENT SERVICE PERFORMED ABROAD

Pub. L. 107-228, div. A, title III, §321, Sept. 30, 2002, 116 Stat. 1380, provided that:

“(a) RETIREMENT CREDIT FOR CERTAIN GOVERNMENT SERVICE PERFORMED ABROAD.—Subject to subsection (b)(1), credit under chapter 84 of title 5, United States Code, shall be allowed for any service performed by an individual if or to the extent that—

“(1) it was performed by such individual—

“(A) after December 31, 1988, and before May 24, 1998;

“(B) at a United States diplomatic mission, consular post (other than a consular agency), or other Foreign Service post abroad; and

“(C) under a temporary appointment pursuant to sections 309 and 311 of the Foreign Service Act of 1980 (22 U.S.C. 3949 and 3951);

“(2) at the time of performing such service, such individual would have satisfied all eligibility requirements under regulations of the Department (as in effect on the date of the enactment of this Act [Sept. 30, 2002]) for a family member limited noncareer appointment (within the meaning of such regulations, as in effect on such date of enactment), except that, in applying this paragraph, an individual not employed by the Department while performing such service shall be treated as if then so employed;

“(3) such service would have been creditable under section 8411(b)(3) of such title 5 if—

“(A) the service had been performed before January 1, 1989; and

“(B) the deposit requirements of section 8411(f) of such title 5 had been met with respect to such service;

“(4) such service would not otherwise be creditable under the Federal Employees' Retirement System or any other retirement system for employees of the United States Government (disregarding title II of the Social Security Act [42 U.S.C. 401 et seq.]); and

“(5) the total amount of service performed by such individual (satisfying paragraphs (1) through (4)) is not less than 90 days.

“(b) REQUIREMENTS.—

“(1) REQUIREMENTS OF THE INDIVIDUAL.—In order to receive credit under chapter 84 of title 5, United States Code, for any service described in subsection (a), the individual who performed such service (or, if deceased, any person who is or would be eligible for a survivor annuity under the Federal Employees' Retirement System based on the service of such individual)—

“(A) shall file a written application with the Office of Personnel Management not later than 36 months after the effective date of the regulations prescribed to carry out this section (as specified in those regulations); and

“(B) shall remit to the Office (for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund) the total amount that, under section 8422 of such title 5, should have been deducted from the basic pay of such individual for such service if such service had then been creditable under such chapter 84.

“(2) GOVERNMENT CONTRIBUTIONS.—

“(A) IN GENERAL.—In addition to any other payment that it is required to make under chapter 84 of title 5, United States Code, a department, agency, or other instrumentality of the United States shall remit to the Office of Personnel Management (for deposit in the Treasury of the United States to the credit of the Fund) the amount described in subparagraph (B).

“(B) AMOUNT DESCRIBED.—The amount described in this subparagraph is, with respect to a remittance under paragraph (1), the total amount of Government contributions that would, under section 8423 of title 5, United States Code, have been required of the instrumentality involved (to the extent that it was the employing entity during the period of service to which such remittance relates) in connection with such service.

“(C) SPECIAL RULE.—If an amount cannot be remitted under this paragraph because an instrumentality has ceased to exist, such amount shall instead be treated as part of the supplemental liability referred to in section 8423(b)(1)(A) or (B) of title 5, United States Code (whichever would be appropriate).

“(3) RELATED REQUIREMENTS.—Any remittance under paragraph (1) or (2)—

“(A) shall be made in such time, form, and manner as the Office of Personnel Management may by regulation require; and

“(B) shall be computed with interest (in accordance with section 8334(e) of title 5, United States Code, and such requirements as the Office may by regulation prescribe).

“(4) NOTIFICATION AND ASSISTANCE REQUIREMENTS.—

“(A) IN GENERAL.—The Office of Personnel Management shall take such action as may be necessary and appropriate to inform individuals entitled to have any service credited under this section, or to have any annuity computed or recomputed under this section, of their entitlement to such credit, computation, or recomputation.

“(B) ASSISTANCE TO INDIVIDUALS.—The Office shall, on request, assist any individual referred to in subparagraph (A) in obtaining from any department, agency, or other instrumentality of the United States such information in the possession of such instrumentality as may be necessary to verify the entitlement of such individual to have any service credited, or to have any annuity computed or recomputed, pursuant to this section.

“(C) ASSISTANCE FROM INSTRUMENTALITIES.—Any department, agency, or other instrumentality of the United States that possesses any information with respect to any service described in subsection (a) shall, at the request of the Office, furnish such information to the Office.

“(c) DEFINITIONS.—In this section:

“(1) ABROAD.—The term ‘abroad’ has the meaning given such term under section 102 of the Foreign Service Act of 1980 (22 U.S.C. 3902).

“(2) BASIC PAY.—The term ‘basic pay’ has the meaning given such term under section 8401 of title 5, United States Code.

“(3) CIVIL SERVICE RETIREMENT AND DISABILITY FUND.—The term ‘Civil Service Retirement and Disability Fund’ or ‘Fund’ means the Civil Service Retirement and Disability Fund under section 8348 of title 5, United States Code.

“(4) TEMPORARY APPOINTMENT.—The term ‘temporary appointment’ means an appointment that is limited by its terms to a period of one year or less.

“(d) RULE OF CONSTRUCTION.—Nothing in this section shall be considered to permit or require the making of any contributions to the Thrift Savings Fund that would not otherwise have been permitted or required had this section not been enacted.

“(e) APPLICABILITY.—

“(1) ANNUITIES COMMENCING ON OR AFTER EFFECTIVE DATE OF IMPLEMENTING REGULATIONS.—An annuity or survivor annuity—

“(A) which is based on the service of an individual who performed service described in subsection (a), and

“(B) which commences on or after the effective date of the regulations prescribed to carry out this section (as determined under subsection (b)(1)(A)), shall (subject to subsection (b)(1)) be computed taking into account all service described in subsection (a) that was performed by such individual.

“(2) ANNUITIES WITH COMMENCEMENT DATE PRECEDING EFFECTIVE DATE OF IMPLEMENTING REGULATIONS.—

“(A) RECOMPUTATION CASES.—An annuity or survivor annuity—

“(i) which is based on the service of an individual who performed service described in subsection (a), and

“(ii) which commences before the effective date referred to in paragraph (1)(B), shall (subject to subsection (b)(1)) be recomputed taking into account all service described in subsection (a) that was performed by such individual.

“(B) OTHER CASES.—An annuity or survivor annuity—

“(i) which is based on the service of an individual who performed service described in subsection (a),

“(ii) the requirements for entitlement which could not be met without taking into account service described in subsection (a), and

“(iii) which (if service described in subsection (a) had been taken into account, and an appropriate application been submitted) would have commenced before the effective date referred to in paragraph (1)(B),

shall (subject to subsection (b)(1)) be computed taking into account all service described in subsection (a) that was performed by such individual.

“(C) RETROACTIVE EFFECT.—Any computation or recomputation of an annuity or survivor annuity pursuant to this paragraph shall—

“(i) if pursuant to subparagraph (A), be effective as of the commencement date of the annuity or survivor annuity involved; and

“(ii) if pursuant to subparagraph (B), be effective as of the commencement date that would have applied if application for the annuity or survivor annuity involved had been submitted on the earliest date possible in order for it to have been approved.

“(D) LUMP-SUM PAYMENT.—Any amounts which by virtue of subparagraph (C) are payable for any months preceding the first month (on or after the effective date referred to in paragraph (1)(B)) as of which annuity or survivor annuity payments become payable fully reflecting the computation or recomputation under subparagraph (A) or (B) (as the case may be) shall be payable in the form of a lump-sum payment.

“(E) ORDER OF PRECEDENCE.—Section 8424(d) of title 5, United States Code, shall apply in the case of any payment under subparagraph (D) payable to an individual who has died.

“(f) IMPLEMENTATION.—The Office of Personnel Management, in consultation with the Secretary, shall prescribe such regulations and take such action as may be necessary and appropriate to implement this section.”

[For definitions of “Department” and “Secretary” as used in section 321 of Pub. L. 107-228, set out above, see section 3 of Pub. L. 107-228, set out as a note under section 2651 of Title 22, Foreign Relations and Inter-course.]

§ 8412. Immediate retirement

(a) An employee or Member who is separated from the service after attaining the applicable minimum retirement age under subsection (h) and completing 30 years of service is entitled to an annuity.

(b) An employee or Member who is separated from the service after becoming 60 years of age and completing 20 years of service is entitled to an annuity.

(c) An employee or Member who is separated from the service after becoming 62 years of age and completing 5 years of service is entitled to an annuity.

(d) An employee who is separated from the service, except by removal for cause on charges of misconduct or delinquency—

(1) after completing 25 years of service as a law enforcement officer, member of the Capitol Police or Supreme Court Police, firefighter, nuclear materials courier, or customs and border protection officer, or any combination of such service totaling at least 25 years, or

(2) after becoming 50 years of age and completing 20 years of service as a law enforcement officer, member of the Capitol Police or Supreme Court Police, firefighter, nuclear materials courier, or customs and border protection officer, or any combination of such service totaling at least 20 years,

is entitled to an annuity.

(e) An employee who is separated from the service, except by removal for cause on charges of misconduct or delinquency—

- (1) after completing 25 years of service as an air traffic controller, or
- (2) after becoming 50 years of age and completing 20 years of service as an air traffic controller,

is entitled to an annuity.

(f) A Member who is separated from the service, except by resignation or expulsion—

- (1) after completing 25 years of service, or
- (2) after becoming 50 years of age and completing 20 years of service,

is entitled to an annuity.

(g)(1) An employee or Member who is separated from the service after attaining the applicable minimum retirement age under subsection (h) and completing 10 years of service is entitled to an annuity. This subsection shall not apply to an employee or Member who is entitled to an annuity under any other provision of this section.

(2) An employee or Member entitled to an annuity under this subsection may defer the commencement of such annuity by written election. The date to which the commencement of the annuity is deferred may not precede the 31st day after the date of filing the election, and must precede the date on which the employee or Member becomes 62 years of age.

(3) The Office shall prescribe regulations under which an election under paragraph (2) shall be made.

(h)(1) The applicable minimum retirement age under this subsection is—

(A) for an individual whose date of birth is before January 1, 1948, 55 years of age;

(B) for an individual whose date of birth is after December 31, 1947, and before January 1, 1953, 55 years of age plus the number of months in the age increase factor determined under paragraph (2)(A);

(C) for an individual whose date of birth is after December 31, 1952, and before January 1, 1965, 56 years of age;

(D) for an individual whose date of birth is after December 31, 1964, and before January 1, 1970, 56 years of age plus the number of months in the age increase factor determined under paragraph (2)(B); and

(E) for an individual whose date of birth is after December 31, 1969, 57 years of age.

(2)(A) For an individual whose date of birth occurs during the 5-year period consisting of calendar years 1948 through 1952, the age increase factor shall be equal to two-twelfths times the number of months in the period beginning with January 1948 and ending with December of the year in which the date of birth occurs.

(B) For an individual whose date of birth occurs during the 5-year period consisting of calendar years 1965 through 1969, the age increase factor shall be equal to two-twelfths times the number of months in the period beginning with January 1965 and ending with December of the year in which the date of birth occurs.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 524; amended Pub. L. 99-556, title

I, §105(a), Oct. 27, 1986, 100 Stat. 3131; Pub. L. 101-428, §3(a), Oct. 15, 1990, 104 Stat. 929; Pub. L. 105-261, div. C, title XXXI, §3154(g), Oct. 17, 1998, 112 Stat. 2255; Pub. L. 106-553, §1(a)(2) [title III, §308(c)(1)], Dec. 21, 2000, 114 Stat. 2762, 2762A-87; Pub. L. 110-161, div. E, title V, §535(b)(2), Dec. 26, 2007, 121 Stat. 2076.)

AMENDMENTS

2007—Subsec. (d)(1), (2). Pub. L. 110-161 substituted “nuclear materials courier, or customs and border protection officer,” for “or nuclear materials courier.”

2000—Subsec. (d). Pub. L. 106-553 inserted “or Supreme Court Police” after “Capitol Police” in pars. (1) and (2).

1998—Subsec. (d)(1), (2). Pub. L. 105-261 substituted “firefighter, or nuclear materials courier” for “or firefighter”.

1990—Subsec. (d)(1), (2). Pub. L. 101-428 substituted “officer, member of the Capitol Police,” for “officer”.

1986—Subsec. (g). Pub. L. 99-556 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110-161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110-161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-553 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 1(a)(2) [title III, §308(i), (j)] of Pub. L. 106-553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-261 effective at the beginning of the first pay period that begins after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105-261, set out as a note under section 8331 of this title.

§ 8413. Deferred retirement

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

(b)(1) An employee or Member who is separated from the service, or transferred to a position in which the employee or Member does not continue subject to this chapter, after completing 10 years of service but before attaining the applicable minimum retirement age under section 8412(h) is entitled to an annuity beginning on the date designated by the employee or Member in a written election under this subsection. The date designated under this subsection may not precede the date on which the employee or Member attains such minimum retirement age and must precede the date on which the employee or Member becomes 62 years of age.

(2) The election of an annuity under this subsection shall not be effective unless—

(A) it is made at such time and in such manner as the Office shall by regulation prescribe; and

(B) the employee or Member will not otherwise be eligible to receive an annuity within 31 days after filing the election.

(3) The election of an annuity under this subsection extinguishes the right of the employee or Member to receive any other annuity based on the service on which the annuity under this subsection is based.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 525; amended Pub. L. 99-556, title I, §105(b)(1), Oct. 27, 1986, 100 Stat. 3132.)

AMENDMENTS

1986—Subsec. (b)(1). Pub. L. 99-556 inserted “but before attaining the applicable minimum retirement age under section 8412(h)” in first sentence and substituted “such minimum retirement age” for “the applicable minimum retirement age under section 8412(h)” in second sentence.

§ 8414. Early retirement

(a)(1) A member of the Senior Executive Service who is removed from the Senior Executive Service for less than fully successful executive performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service, or after becoming 50 years of age and completing 20 years of service, is entitled to an annuity.

(2) A member of the Defense Intelligence Senior Executive Service or the Senior Cryptologic Executive Service who is removed from such service for failure to be recertified as a senior executive or for less than fully successful executive performance after completing 25 years of service, or after becoming 50 years of age and completing 20 years of service, is entitled to an annuity.

(3) A member of the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service who is removed from such service for failure to be recertified as a senior executive or for less than fully successful executive performance after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.

(b)(1) Except as provided in paragraphs (2) and (3), an employee who—

(A) is separated from the service involuntarily, except by removal for cause on charges of misconduct or delinquency; or

(B)(i) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in clause (iv);

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

(iii) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

(iv) is separate¹ from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

(I) such agency (or, if applicable, the component in which the employee is serving) is

undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

(II) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

(III) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

(v) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

(I) 1 or more organizational units;

(II) 1 or more occupational series or levels;

(III) 1 or more geographical locations;

(IV) specific periods;

(V) skills, knowledge, or other factors related to a position; or

(VI) any appropriate combination of such factors.²

after completing 25 years of service, or after becoming 50 years of age and completing 20 years of service, is entitled to an annuity.

(2) An employee under paragraph (1) who is separated as described in subparagraph (A) of such paragraph is not entitled to an annuity under this subsection if the employee has declined a reasonable offer of another position in the employee's agency for which the employee is qualified, and the offered position is not lower than 2 grades (or pay levels) below the employee's grade (or pay level) and is within the employee's commuting area.

(3) Paragraph (1) shall not apply to an employee entitled to an annuity under subsection (d) or (e) of section 8412.

(c)(1) An employee who was hired as a military reserve technician on or before February 10, 1996 (under the provisions of this title in effect before that date), and who is separated from technician service, after becoming 50 years of age and completing 25 years of service, by reason of being separated from the Selected Reserve of the employee's reserve component or ceasing to hold the military grade specified by the Secretary concerned for the position held by the employee is entitled to an annuity.

(2) An employee who is initially hired as a military technician (dual status) after February 10, 1996, and who is separated from the Selected Reserve or ceases to hold the military grade specified by the Secretary concerned for the position held by the technician—

(A) after completing 25 years of service as a military technician (dual status), or

(B) after becoming 50 years of age and completing 20 years of service as a military technician (dual status),

is entitled to an annuity.

(d)(1) The Secretary of Defense may, during fiscal years 2002 and 2003, carry out a program

¹ So in original. Probably should be “separated”.

² So in original. Probably should be a semicolon.

under which an employee of the Department of Defense may be separated from the service entitled to an immediate annuity under this subchapter if the employee—

(A) has—

- (i) completed 25 years of service; or
- (ii) become 50 years of age and completed 20 years of service; and

(B) is eligible for the annuity under paragraph (2) or (3).

(2)(A) For the purposes of paragraph (1), an employee referred to in that paragraph is eligible for an immediate annuity under this paragraph if the employee—

(i) is separated from the service involuntarily other than for cause; and

(ii) has not declined a reasonable offer of another position in the Department of Defense for which the employee is qualified, which is not lower than 2 grades (or pay levels) below the employee's grade (or pay level), and which is within the employee's commuting area.

(B) For the purposes of paragraph (2)(A)(i), a separation for failure to accept a directed reassignment to a position outside the commuting area of the employee concerned or to accompany a position outside of such area pursuant to a transfer of function may not be considered to be a removal for cause.

(3) For the purposes of paragraph (1), an employee referred to in that paragraph is eligible for an immediate annuity under this paragraph if the employee satisfies all of the following conditions:

(A) The employee is separated from the service voluntarily during a period in which the organization within the Department of Defense in which the employee is serving is undergoing a major organizational adjustment.

(B) The employee has been employed continuously by the Department of Defense for more than 30 days before the date on which the head of the employee's organization requests the determinations required under subparagraph (A).

(C) The employee is serving under an appointment that is not limited by time.

(D) The employee is not in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance.

(E) The employee is within the scope of an offer of voluntary early retirement, as defined on the basis of one or more of the following objective criteria:

- (i) One or more organizational units.
- (ii) One or more occupational groups, series, or levels.
- (iii) One or more geographical locations.
- (iv) Any other similar objective and non-personal criteria that the Office of Personnel Management determines appropriate.

(4) Under regulations prescribed by the Office of Personnel Management, the determinations of whether an employee meets—

(A) the requirements of subparagraph (A) of paragraph (3) shall be made by the Office upon the request of the Secretary of Defense; and

(B) the requirements of subparagraph (E) of such paragraph shall be made by the Secretary of Defense.

(5) A determination of which employees are within the scope of an offer of early retirement shall be made only on the basis of consistent and well-documented application of the relevant criteria.

(6) In this subsection, the term "major organizational adjustment" means any of the following:

- (A) A major reorganization.
- (B) A major reduction in force.
- (C) A major transfer of function.
- (D) A workforce restructuring—
 - (i) to meet mission needs;
 - (ii) to achieve one or more reductions in strength;
 - (iii) to correct skill imbalances; or
 - (iv) to reduce the number of high-grade, managerial, supervisory, or similar positions.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 526; amended Pub. L. 100-325, §2(m), May 30, 1988, 102 Stat. 583; Pub. L. 101-194, title V, §506(b)(9), Nov. 30, 1989, 103 Stat. 1759; Pub. L. 105-261, div. A, title XI, §1109(b), Oct. 17, 1998, 112 Stat. 2144; Pub. L. 106-58, title VI, §651(b), Sept. 29, 1999, 113 Stat. 480; Pub. L. 106-65, div. A, title V, §522(b), Oct. 5, 1999, 113 Stat. 597; Pub. L. 106-398, §1 [[div. A], title XI, §1152(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-321; Pub. L. 107-296, title XIII, §§1313(b)(2), 1321(a)(5)(A), Nov. 25, 2002, 116 Stat. 2295, 2297.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107-296, §1321(a)(5)(A), struck out "for failure to be recertified as a senior executive under section 3393a or" before "for less than fully".

Subsec. (b)(1)(B). Pub. L. 107-296, §1313(b)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: "except in the case of an employee who is separated from the service under a program carried out under subsection (d), while serving in a geographic area designated by the Director, is separated from the service voluntarily during a period in which (as determined by the Director)—

"(i) the agency in which the employee is serving is undergoing a major reorganization, a major reduction in force, or a major transfer of function; and

"(ii) a significant percentage of the total number of employees serving in such agency will be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53 of this title or comparable provisions);".

2000—Subsec. (b)(1)(B). Pub. L. 106-398, §1 [[div. A], title XI, §1152(b)(1)], inserted "except in the case of an employee who is separated from the service under a program carried out under subsection (d)," before "while serving" in introductory provisions.

Subsec. (d). Pub. L. 106-398, §1 [[div. A], title XI, §1152(b)(2)], added subsec. (d).

1999—Subsec. (b)(1)(B). Pub. L. 106-58 repealed Pub. L. 105-261, §1109(b)(1). See 1998 Amendment note below.

Subsec. (c). Pub. L. 106-65 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "A military reserve technician who is separated from technician service, after becoming 50 years of age and completing 25 years of service, by reason of ceasing to satisfy the condition described in section 8401(30)(B) is entitled to an annuity."

Subsec. (d). Pub. L. 106-58 repealed Pub. L. 105-261, §1109(b)(2). See 1998 Amendment note below.

1998—Subsec. (b)(1)(B). Pub. L. 105-261, §1109(b)(1), which directed insertion of "except in the case of an employee described in subsection (d)(1)," after "(B)", was repealed by Pub. L. 106-58.

Subsec. (d). Pub. L. 105-261, § 1109(b)(2), which directed addition of subsec. (d), relating to authority of Department of Defense to offer employees voluntary early retirement, was repealed by Pub. L. 106-58.

1989—Subsec. (a)(1). Pub. L. 101-194, § 506(b)(9)(A), substituted “for failure to be recertified as a senior executive under section 3393a or for” for “for”.

Subsec. (a)(2), (3). Pub. L. 101-194, § 506(b)(9)(B), (C), substituted “for failure to be recertified as a senior executive or for” for “for”.

1988—Subsec. (a)(3). Pub. L. 100-325 added par. (3).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101-194, set out as a note under section 3151 of this title.

GOVERNMENT ACCOUNTABILITY OFFICE: VOLUNTARY EARLY RETIREMENT

For provisions relating to the application of subsection (b)(1)(B) of this section to officers and employees of the Government Accountability Office effective Oct. 13, 2000, see section 1 of Pub. L. 106-303, set out as a note under section 8336 of this title.

APPLICATION OF SUBSECTION (b)(1)(B)

Pub. L. 105-174, title III, § 7001(b), May 1, 1998, 112 Stat. 91, as amended by Pub. L. 106-58, title VI, § 651(a), Sept. 29, 1999, 113 Stat. 480, which provided that, effective May 1, 1998, subsec. (b)(1)(B) of this section was to be applied as if it read as specified in Pub. L. 105-174, § 7001(b), was repealed by Pub. L. 107-296, title XIII, § 1313(b)(4), Nov. 25, 2002, 116 Stat. 2296.

§ 8415. Computation of basic annuity

(a) Except as otherwise provided in this section, the annuity of an employee retiring under this subchapter is 1 percent of that individual's average pay multiplied by such individual's total service.

(b) The annuity of a Member, or former Member with title to a Member annuity, retiring under this subchapter is computed under subsection (a), except that if the individual has had at least 5 years of service as a Member or Congressional employee, or any combination thereof, so much of the annuity as is computed with respect to either such type of service (or a combination thereof), not exceeding a total of 20 years, shall be computed by multiplying 1 $\frac{1}{10}$ percent of the individual's average pay by the years of such service.

(c) The annuity of a Congressional employee, or former Congressional employee, retiring under this subchapter is computed under subsection (a), except that if the individual has had at least 5 years of service as a Congressional employee or Member, or any combination thereof, so much of the annuity as is computed with respect to either such type of service (or a combination thereof), not exceeding a total of 20 years, shall be computed by multiplying 1 $\frac{1}{10}$ percent of the individual's average pay by the years of such service.

(d) The annuity of an employee retiring under subsection (d) or (e) of section 8412 or under subsection (a), (b), or (c) of section 8425 is—

(1) 1 $\frac{1}{10}$ percent of that individual's average pay multiplied by so much of such individual's total service as does not exceed 20 years; plus

(2) 1 percent of that individual's average pay multiplied by so much of such individual's total service as exceeds 20 years.

(e) The annuity of an air traffic controller or former air traffic controller retiring under section 8412(a) is computed under subsection (a), except that if the individual has had at least 5 years of service as an air traffic controller as defined by section 2109(1)(A)(i), so much of the annuity as is computed with respect to such type of service shall be computed by multiplying 1 $\frac{1}{10}$ percent of the individual's average pay by the years of such service.

(f)(1) In computing an annuity under this subchapter for an employee whose service includes service performed on a part-time basis—

(A) the average pay of the employee, to the extent that it includes pay for service performed in any position on a part-time basis, shall be determined by using the annual rate of basic pay that would be payable for full-time service in the position; and

(B) the benefit so computed shall then be multiplied by a fraction equal to the ratio which the employee's actual service, as determined by prorating the employee's total service to reflect the service that was performed on a part-time basis, bears to the total service that would be creditable for the employee if all of the service had been performed on a full-time basis.

(2) For the purpose of this subsection, employment on a part-time basis shall not be considered to include employment on a temporary or intermittent basis.

(g)(1) The annuity of an employee or Member retiring under section 8412(g) or 8413(b) is computed in accordance with applicable provisions of this section, except that the annuity shall be reduced by five-twelfths of 1 percent for each full month by which the commencement date of the annuity precedes the sixty-second anniversary of the birth of the employee or Member.

(2)(A) Paragraph (1) does not apply in the case of an employee or Member retiring under section 8412(g) or 8413(b) if the employee or Member would satisfy the age and service requirements for title to an annuity under section 8412(a), (b), (d)(2), (e)(2), or (f)(2), determined as if the employee or Member had, as of the date of separation, attained the age specified in subparagraph (B).

(B) A determination under subparagraph (A) shall be based on how old the employee or Member will be as of the date on which the annuity under section 8412(g) or 8413(b) is to commence.

(h)(1) In applying subsection (a) with respect to an employee under paragraph (2), the percentage applied under such subsection shall be 1.1 percent, rather than 1 percent.

(2) This subsection applies in the case of an employee who—

(A) retires entitled to an annuity under section 8412; and

(B) at the time of the separation on which entitlement to the annuity is based, is at least 62 years of age and has completed at least 20 years of service;

but does not apply in the case of a Congressional employee, military technician (dual status), law

enforcement officer, member of the Supreme Court Police, firefighter, nuclear materials courier, air traffic controller, or customs and border protection officer¹

(i) The annuity of a Member who has served in a position in the executive branch for which the rate of basic pay was reduced for the duration of the service of the Member in that position to remove the impediment to the appointment of the Member imposed by article I, section 6, clause 2 of the Constitution, shall, subject to a deposit in the Fund as provided under section 8422(g), be computed as though the rate of basic pay which would otherwise have been in effect during that period of service had been in effect.

(j)(1) For purposes of this subsection, the term “physicians comparability allowance” refers to an amount described in section 8331(3)(H).

(2) Except as otherwise provided in this subsection, no part of a physicians comparability allowance shall be treated as basic pay for purposes of any computation under this section unless, before the date of the separation on which entitlement to annuity is based, the separating individual has completed at least 15 years of service as a Government physician (whether performed before, on, or after the date of the enactment of this subsection).

(3) If the condition under paragraph (2) is met, then, any amounts received by the individual in the form of a physicians comparability allowance shall (for the purposes referred to in paragraph (2)) be treated as basic pay, but only to the extent that such amounts are attributable to service performed on or after the date of the enactment of this subsection, and only to the extent of the percentage allowable, which shall be determined as follows:

If the total amount of service

performed, on or after the date of the enactment of this subsection, as a Government physician is:	Then, the percent- age allowable is:
Less than 2 years	0
At least 2 but less than 4 years	25
At least 4 but less than 6 years	50
At least 6 but less than 8 years	75
At least 8 years	100.

(4) Notwithstanding any other provision of this subsection, 100 percent of all amounts received as a physicians comparability allowance shall, to the extent attributable to service performed on or after the date of the enactment of this subsection, be treated as basic pay (without regard to any of the preceding provisions of this subsection) for purposes of computing—

(A) an annuity under section 8452; and

(B) a survivor annuity under subchapter IV, if based on the service of an individual who dies before separating from service.

(k) The annuity of an employee retiring under this chapter with service credited under section 8411(b)(6) shall be reduced by the amount necessary to ensure that the present value of the annuity payable to the employee under this subchapter is actuarially equivalent to the present value of the annuity that would be payable to the employee under this subchapter if it were computed—

(1) on the basis of service that does not include service credited under section 8411(b)(6); and

(2) assuming the employee separated from service on the actual date of the separation of the employee.

The amount of the reduction shall be computed under regulations prescribed by the Office of Personnel Management for the administration of this subsection.

(l)(1) In computing an annuity under this subchapter, the total service of an employee who retires from the position of a registered nurse with the Veterans Health Administration on an immediate annuity, or dies while employed in that position leaving any survivor entitled to an annuity, includes the days of unused sick leave to the credit of that employee under a formal leave system, except that such days shall not be counted in determining average pay or annuity eligibility under this subchapter.

(2)(A) Except as provided in paragraph (1), in computing an annuity under this subchapter, the total service of an employee who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes the applicable percentage of the days of unused sick leave to his credit under a formal leave system and for which days the employee has not received payment, except that these days will not be counted in determining average pay or annuity eligibility under this subchapter. For purposes of this subsection, in the case of any such employee who is excepted from subchapter I of chapter 63 under section 6301(2)(x) through (xiii), the days of unused sick leave to his credit include any unused sick leave standing to his credit when he was excepted from such subchapter.

(B) For purposes of subparagraph (A), the term “applicable percentage” means—

(i) 50 percent in the case of an annuity, entitlement to which is based on a death or other separation occurring during the period beginning on the date of enactment of this paragraph and ending on December 31, 2013; and

(ii) 100 percent in the case of an annuity, entitlement to which is based on a death or other separation occurring after December 31, 2013.

(m) In the case of any annuity computation under this section that includes, in the aggregate, at least 2 months of credit under section 8411(d) for any period while receiving benefits under subchapter I of chapter 81, the percentage otherwise applicable under this section for that period so credited shall be increased by 1 percentage point.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 527; amended Pub. L. 99-556, title I, §105(b)(2), Oct. 27, 1986, 100 Stat. 3132; Pub. L. 103-283, title III, §307(b)(2), July 22, 1994, 108 Stat. 1442; Pub. L. 105-61, title V, §516(a)(7), Oct. 10, 1997, 111 Stat. 1306; Pub. L. 105-261, div. C, title XXXI, §3154(h), Oct. 17, 1998, 112 Stat. 2255; Pub. L. 106-65, div. A, title V, §522(c)(1), Oct. 5, 1999, 113 Stat. 597; Pub. L. 106-553, §1(a)(2) [title III, §308(c)(2)], Dec. 21, 2000, 114 Stat. 2762, 2762A-87; Pub. L. 106-571, §3(c)(1), Dec. 28, 2000, 114 Stat. 3055; Pub. L. 107-107, div. A, title XI,

¹ So in original. Probably should be followed by a period.

§ 1132(b)(3), Dec. 28, 2001, 115 Stat. 1244; Pub. L. 107-135, title I, § 122(a), Jan. 23, 2002, 115 Stat. 2451; Pub. L. 108-92, § 1(a), Oct. 3, 2003, 117 Stat. 1160; Pub. L. 108-176, title II, § 226(b)(1), Dec. 12, 2003, 117 Stat. 2530; Pub. L. 110-161, div. E, title V, § 535(b)(3), Dec. 26, 2007, 121 Stat. 2076; Pub. L. 111-84, div. A, title XIX, § 1901(a), Oct. 28, 2009, 123 Stat. 2615.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (j), is the date of enactment of Pub. L. 106-571, which was approved Dec. 28, 2000.

The date of enactment of this paragraph, referred to in subsec. (b)(2)(B)(i), is the date of enactment of Pub. L. 111-84, which was approved Oct. 28, 2009.

AMENDMENTS

2009—Subsecs. (k) to (m). Pub. L. 111-84 redesignated subsec. (k), relating to inclusion of unused sick leave in computing an annuity of a registered nurse with the Veterans Health Administration, as (l), designated existing provisions as par. (1), added par. (2), and redesignated former subsec. (l) as (m).

2007—Subsec. (h)(2). Pub. L. 110-161 substituted “air traffic controller, or customs and border protection officer” for “or air traffic controller.” in concluding provisions.

2003—Subsecs. (e) to (h). Pub. L. 108-176, § 226(b)(1), added subsec. (e) and redesignated former subsecs. (e) to (g) as (f) to (h), respectively. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 108-176, § 226(b)(1)(A), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Pub. L. 108-176, § 226(b)(1)(A), which directed the redesignation of the second subsec. (i) as (l), could not be executed because of the redesignation of the second subsec. (i) as (k) by Pub. L. 108-92, § 1(a)(1). See below.

Pub. L. 108-92, § 1(a)(1), redesignated second subsec. (i), relating to inclusion of unused sick leave in computing an annuity of a registered nurse with the Veterans Health Administration, as (k).

Subsec. (j). Pub. L. 108-176, § 226(b)(1)(A), redesignated subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 108-176, § 226(b)(1)(A), redesignated subsec. (j) as (k).

Pub. L. 108-92, § 1(a)(1), redesignated second subsec. (i), relating to inclusion of unused sick leave in computing an annuity of a registered nurse with the Veterans Health Administration, as (k).

Subsec. (l). Pub. L. 108-92, § 1(a)(2), added subsec. (l).

2002—Subsec. (i). Pub. L. 107-135 added subsec. (i) relating to inclusion of unused sick leave in computing an annuity of a registered nurse with the Veterans Health Administration.

2001—Subsec. (j). Pub. L. 107-107 added subsec. (j).

2000—Subsec. (g). Pub. L. 106-553 inserted “member of the Supreme Court Police,” after “law enforcement officer,” in concluding provisions.

Subsec. (i). Pub. L. 106-571 added subsec. (i).

1999—Subsec. (g)(2). Pub. L. 106-65 substituted “military technician (dual status)” for “military reserve technician” in concluding provisions.

1998—Subsec. (g)(2). Pub. L. 105-261 inserted “nuclear materials courier,” after “firefighter,” in concluding provisions.

1997—Subsec. (h). Pub. L. 105-61 added subsec. (h).

1994—Subsec. (d). Pub. L. 103-283 substituted “(a), (b), or (c)” for “(a) or (b)”.

1986—Subsec. (f)(2). Pub. L. 99-556 inserted “8412(g) or” in subpars. (A) and (B).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-84, div. A, title XIX, § 1901(c), Oct. 28, 2009, 123 Stat. 2615, provided that: “The amendments made by this section [amending this section and section 8422 of this title] shall apply with respect to any annuity, entitlement to which is based on a death or other separation from service occurring on or after the date of enactment of this Act [Oct. 28, 2009].”

ration from service occurring on or after the date of enactment of this Act [Oct. 28, 2009].”

EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110-161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110-161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2003 AMENDMENTS

Amendment by Pub. L. 108-176 effective on 60th day after Dec. 12, 2003, and applicable with respect to any annuity entitlement based on an individual’s separation from service occurring on or after such effective date, and any service performed by any such individual before, on, or after such effective date, subject to special rule relating to deposit requirement, see section 226(c) of Pub. L. 108-176, set out as a note under section 8401 of this title.

Pub. L. 108-92, § 2, Oct. 3, 2003, 117 Stat. 1160, provided that: “The amendments made by this Act [amending this section and section 8422 of this title] shall apply with respect to any annuity entitlement to which is based on a separation from service occurring on or after the date of enactment of this Act [Oct. 3, 2003].”

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-135, title I, § 122(c), Jan. 23, 2002, 115 Stat. 2451, provided that: “The amendments made by this section [amending this section and section 8422 of this title] shall take effect 60 days after the date of the enactment of this Act [Jan. 23, 2002] and shall apply to individuals who separate from service on or after that effective date.”

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-107 applicable only to separations from service as an employee of the United States on or after Dec. 28, 2001, see section 1132(c) of Pub. L. 107-107, set out as a note under section 8332 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-553 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 1(a)(2) [title III, § 308(i), (j)] of Pub. L. 106-553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-261 effective at the beginning of the first pay period that begins after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105-261, set out as a 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 8334 of this title.

CLARIFICATION RELATING TO CONSIDERATION OF PRE-1987 SERVICE AS AN AIR TRAFFIC CONTROLLER FOR RETIREMENT PURPOSES

See section 2 of Pub. L. 100-92, set out as a note under section 8332 of this title.

§ 8416. Survivor reduction for a current spouse

(a)(1) If an employee or Member is married at the time of retiring under this chapter, the re-

duction described in section 8419(a) shall be made unless the employee or Member and the spouse jointly waive, by written election, any right which the spouse may have to a survivor annuity under section 8442 based on the service of such employee or Member. A waiver under this paragraph shall be filed with the Office under procedures prescribed by the Office.

(2) Notwithstanding paragraph (1), an employee or Member who is married at the time of retiring under this chapter may waive the annuity for a surviving spouse without the spouse's consent if the employee or Member establishes to the satisfaction of the Office (in accordance with regulations prescribed by the Office)—

(A) that the spouse's whereabouts cannot be determined; or

(B) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's consent would otherwise be inappropriate.

(3) Except as provided in subsection (d), a waiver made under this subsection shall be irrevocable.

(b)(1) Upon remarriage, a retired employee or Member who was married at the time of retirement (including an employee or Member whose annuity was not reduced to provide a survivor annuity for the employee's or Member's spouse or former spouse as of the time of retirement) may irrevocably elect during such marriage, in a signed writing received by the Office within 2 years after such remarriage or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8445 (or of the last such surviving former spouse, if there was more than one), a reduction in the employee's or Member's annuity under section 8419(a) for the purpose of providing an annuity for such employee's or Member's spouse in the event such spouse survives the employee or Member.

(2) The election and reduction shall be effective the first day of the second month after the election is received by the Office, but not less than 9 months after the date of the remarriage.

(3) An election to provide a survivor annuity to an individual under this subsection—

(A) shall prospectively void any election made by the employee or Member under section 8420 with respect to such individual; or

(B) shall, if an election was made by the employee or Member under section 8420 with respect to a different individual, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subsection.

(4) Any election under this subsection made by an employee or Member on behalf of an individual after the retirement of such employee or Member shall not be effective if—

(A) the employee or Member was married to such individual at the time of retirement; and

(B) the annuity rights of such individual based on the service of such employee or Member were then waived under subsection (a).

(c)(1) An employee or Member who is unmarried at the time of retiring under this chapter

and who later marries may irrevocably elect, in a signed writing received by the Office within 2 years after such employee or Member marries or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8445 (or of the last such surviving former spouse, if there was more than one), a reduction in the current annuity of the retired employee or Member, in accordance with section 8419(a).

(2) The election and reduction shall take effect the first day of the first month beginning 9 months after the date of marriage. Any such election to provide a survivor annuity for an individual—

(A) shall prospectively void any election made by the employee or Member under section 8420 with respect to such individual; or

(B) shall, if an election was made by the employee or Member under section 8420 with respect to a different individual, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subsection.

(d)(1) An employee or Member—

(A) who is married on the date of retiring under this chapter, and

(B) with respect to whose spouse a waiver under subsection (a) has been made,

may, during the 18-month period beginning on such date, elect to have a reduction made under section 8419 in order to provide a survivor annuity under section 8442 for such spouse.

(2)(A) An election under this subsection shall not be effective unless the amount described in subparagraph (B) is deposited into the Fund before the expiration of the 18-month period referred to in paragraph (1).

(B) The amount to be deposited under this subparagraph is equal to the sum of—

(i) the difference (for the period between the date on which the annuity of the former employee or Member commences and the date on which reductions pursuant to the election under this subsection commence) between the amount paid to the former employee or Member from the Fund under this chapter and the amount which would have been paid if such election had been made at the time of retirement; and

(ii) the costs associated with providing for the election under this subsection.

The amount to be deposited under clause (i) shall include interest, computed at the rate of 6 percent a year.

(3) An annuity which is reduced pursuant to an election by a former employee or Member under this subsection shall be reduced by the same percentage as was in effect under section 8419 as of the date of the employee's or Member's retirement.

(4) Rights and obligations under this chapter resulting from an election under this subsection shall be the same as the rights and obligations which would have resulted had the election been made at the time of retirement.

(5) The Office shall inform each employee and Member who is eligible to make an election

under this subsection of the right to make such election and the procedures and deadlines applicable in making any such election.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 528.)

§ 8417. Survivor reduction for a former spouse

(a) If an employee or Member has a former spouse who is entitled to a survivor annuity as provided in section 8445, the reduction described in section 8419(a) shall be made.

(b)(1) An employee or Member who has a former spouse may elect, under procedures prescribed by the Office, a reduction in the annuity of the employee or Member under section 8419(a) in order to provide a survivor annuity for such former spouse under section 8445.

(2) An election under this subsection shall be made at the time of retirement or, if the marriage is dissolved after the date of retirement, within 2 years after the date on which the marriage of the former spouse to the employee or Member is so dissolved.

(3) An election under this subsection—

(A) shall not be effective to the extent that it—

(i) conflicts with—

(I) any court order or decree referred to in section 8445(a) which was issued before the date of such election; or

(II) any agreement referred to in such section 8445(a) which was entered into before such date; or

(ii) would cause the total of survivor annuities payable under sections 8442 and 8445, respectively, based on the service of the employee or Member to exceed the amount which would be payable to a widow or widower of such employee or Member under such section 8442 (determined without regard to any reduction to provide for an annuity under such section 8445); and

(B) shall not be effective, in the case of an employee or Member who is then married, unless it is made with the spouse's written consent.

The Office shall by regulation provide that subparagraph (B) may be waived for either of the reasons set forth in section 8416(a)(2).

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 530.)

§ 8418. Survivor elections; deposit; offsets

(a)(1) An individual who makes an election under subsection (b) or (c) of section 8416 or section 8417(b) which is required to be made within 2 years after the date of a prescribed event shall deposit into the Fund an amount determined by the Office (as nearly as may be administratively feasible) to reflect the amount by which the annuity of such individual would have been reduced if the election had been in effect since the date of retirement (or, if later, and in the case of an election under such section 8416(b), since the date the previous reduction in the annuity of such individual was terminated under paragraph (1) or (2) of section 8419(b)), plus interest.

(2) Interest under paragraph (1) shall be computed at the rate of 6 percent a year.

(b) The Office shall, by regulation, provide for payment of the deposit required under subsection (a) by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under subsection (a), except that the total reductions in the annuity of an employee or Member to pay deposits required by this section shall not exceed 25 percent of the annuity computed under section 8415 or section 8452, including adjustments under section 8462. The reduction required by this subsection, which shall be effective at the same time as the election under section 8416(b) and (c) or section 8417(b), shall be permanent and unaffected by any future termination of the marriage or the entitlement of the former spouse. Such reduction shall be independent of and in addition to the reduction required under section 8416(b) and (c) or section 8417(b).

(c) Subsections (a) and (b) shall not apply if—

(1) the employee or Member makes an election under section 8416(b) or (c) after having made an election under section 8420; and

(2) the election under such section 8420 becomes void under subsection (b)(3) or (c)(2) of such section 8416.

(d) The Office shall prescribe regulations under which the survivor of an employee or Member may make a deposit under this section.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 530; amended Pub. L. 103-66, title XI, §11004(b), Aug. 10, 1993, 107 Stat. 412.)

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103-66, §11004(b)(1), struck out “, before the expiration of the 2-year period involved,” after “into the Fund”.

Subsec. (b). Pub. L. 102-66, §11004(b)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “If the electing individual does not make the deposit required under subsection (a), the Office shall collect such amount by offset against such individual's annuity, up to a maximum of 25 percent of the net annuity otherwise payable, and the individual is deemed to consent to such offset.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 effective on first day of first month beginning at least 30 days after Aug. 10, 1993, and applicable to all deposits required under section 8339(j)(3) or (5), 8339(k)(2), or 8418 of this title, on which no payment has been made prior to such effective date, with provision for partial deposit, see section 11004(c) of Pub. L. 103-66, set out as a note under section 8339 of this title.

§ 8419. Survivor reductions; computation

(a)(1) Except as provided in paragraph (2), the annuity of an annuitant computed under section 8415, or under section 8452 (including subsection (a)(2) of such section, if applicable) or one-half of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management, shall be reduced by 10 percent if a survivor annuity, or a combination of survivor annuities, under section 8442 or 8445 (or both) are to be provided for.

(2)(A) If no survivor annuity under section 8442 is to be provided for, but one or more survivor

annuities under section 8445 involving a total of less than the entirety of the amount referred to in subsection (b)(2) of such section are to be provided for, the annuity of the annuitant involved (as computed under section 8415, or under section 8452 (including subsection (a)(2) of such section, if applicable)) or one-half of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management, shall be reduced by an appropriate percentage determined under subparagraph (B).

(B) The Office shall prescribe regulations under which an appropriate reduction under this paragraph, not to exceed a total of 10 percent, shall be made.

(b)(1) Any reduction in an annuity for the purpose of providing a survivor annuity for the current spouse of a retired employee or Member shall be terminated for each full month—

(A) after the death of the spouse; or

(B) after the dissolution of the spouse's marriage to the employee or Member, except that an appropriate reduction shall be made thereafter if the spouse is entitled, as a former spouse, to a survivor annuity under section 8445.

(2) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse of a retired employee or Member shall be terminated for each full month after the former spouse remarries before reaching age 55 or dies. This reduction shall be replaced by appropriate reductions under subsection (a) if the retired employee or Member has one or more of the following:

(A) another former spouse who is entitled to a survivor annuity under section 8445;

(B) a current spouse to whom the employee or Member was married at the time of retirement and with respect to whom a survivor annuity was not waived under section 8416(a) (or, if waived, with respect to whom an election under section 8416(d) has been made); or

(C) a current spouse whom the employee or Member married after retirement and with respect to whom an election has been made under subsection (b) or (c) of section 8416.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 531; amended Pub. L. 100-238, title I, §131(a), Jan. 8, 1988, 101 Stat. 1759.)

AMENDMENTS

1988—Subsec. (a)(1), (2)(A). Pub. L. 100-238 inserted “or one-half of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management” before “, shall be reduced”.

§ 8420. Insurable interest reductions

(a)(1) At the time of retiring under section 8412, 8413, or 8414, an employee or Member who is found to be in good health by the Office may elect to have such employee's or Member's annuity (as computed under section 8415) reduced under paragraph (2) in order to provide an annuity under section 8444 for an individual having an insurable interest in the employee or Mem-

ber. Such individual shall be designated by the employee or Member in writing.

(2) The annuity of the employee or Member making the election is reduced by 10 percent, and by 5 percent for each full 5 years the individual named is younger than the retiring employee or Member, except that the total reduction may not exceed 40 percent.

(3) An annuity which is reduced under this subsection shall, effective the first day of the month following the death of the individual named under this subsection, be recomputed and paid as if the annuity had not been so reduced.

(b)(1) In the case of a married employee or Member, an election under this section on behalf of the spouse may be made only if any right of such spouse to a survivor annuity based on the service of such employee or Member is waived in accordance with section 8416(a).

(2) Paragraph (1) does not apply in the case of an employee or Member if such employee or Member has a former spouse who would become entitled to an annuity under section 8445 as a survivor of such employee or Member.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 532.)

§ 8420a. Alternative forms of annuities

(a) The Office shall prescribe regulations under which any employee or Member who has a life-threatening affliction or other critical medical condition may, at the time of retiring under this subchapter, elect annuity benefits under this section instead of any other benefits under this subchapter, and any benefits under subchapter IV of this chapter, based on the service of the employee or Member.

(b) Subject to subsection (c), the Office shall by regulation provide for such alternative forms of annuities as the Office considers appropriate, except that among the alternatives offered shall be—

(1) an alternative which provides for—

(A) payment of the lump-sum credit (excluding interest) to the employee or Member; and

(B) payment of an annuity to the employee or Member for life; and

(2) in the case of an employee or Member who is married at the time of retirement, an alternative which provides for—

(A) payment of the lump-sum credit (excluding interest) to the employee or Member; and

(B) payment of an annuity to the employee or Member for life, with a survivor annuity payable for the life of a surviving spouse.

(c) Each alternative provided for under subsection (b) shall, to the extent practicable, be designed such that the present value of the benefits provided under such alternative (including any lump-sum credit) is actuarially equivalent to the sum of—

(1) the present value of the annuity which would otherwise be provided under this subchapter, as computed under section 8415; and

(2) the present value of the annuity supplement which would otherwise be provided (if any) under section 8421.

(d) An employee or Member who, at the time of retiring under this subchapter—

(1) is married, shall be ineligible to make an election under this section unless a waiver is made under section 8416(a); or

(2) has a former spouse, shall be ineligible to make an election under this section if the former spouse is entitled to benefits under section 8445 or 8467 (based on the service of the employee or Member) under the terms of a decree of divorce or annulment, or a court order or court-approved property settlement incident to any such decree, with respect to which the Office has been duly notified.

(e) An employee or Member who is married at the time of retiring under this subchapter and who makes an election under this section may, during the 18-month period beginning on the date of retirement, make the election provided for under section 8416(d), subject to the deposit requirement thereunder.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 532; amended Pub. L. 101-508, title VII, §7001(a)(1), Nov. 5, 1990, 104 Stat. 1388-327; Pub. L. 103-66, title XI, §11002(a), Aug. 10, 1993, 107 Stat. 409.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-66, §11002(a)(1), substituted “any employee or Member who has a life-threatening affliction or other critical medical condition” for “an employee or Member”.

Subsec. (f). Pub. L. 103-66, §11002(a)(2), struck out subsec. (f) which prohibited election of alternative form of annuity where commencement date would be after Dec. 1, 1990, with certain exceptions.

1990—Subsec. (f). Pub. L. 101-508 added subsec. (f).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 effective Oct. 1, 1994, and applicable with respect to any annuity commencing on or after that date, see section 11002(d) of Pub. L. 103-66, set out as a note under section 8343a of this title.

APPLICABILITY OF SECTIONS 8343a(f) AND 8420a(f) TO INDIVIDUALS CALLED TO OR PERFORMING DUTY IN CONNECTION WITH OPERATION DESERT SHIELD

For provisions relating to application of subsec. (f) of this section to certain members of Armed Forces who were called or ordered to active duty in connection with Operation Desert Shield and to certain employees of Department of Defense who are certified to have performed duties essential for support of Operation Desert Shield, see section 7001(a)(4) of Pub. L. 101-508, set out as a note under section 8343a of this title.

PARTIAL DEFERRED PAYMENT OF LUMP-SUM CREDIT FOR CERTAIN INDIVIDUALS ELECTING ALTERNATIVE FORMS OF ANNUITIES

For provisions relating to deferred payment of lump-sum credit for certain individuals electing alternative forms of annuities, see notes set out under section 8343a of this title.

§ 8421. Annuity supplement

(a)(1) Subject to paragraph (3), an individual shall, if and while entitled to an annuity under subsection (a), (b), (d), or (e) of section 8412, or under section 8414(c), also be entitled to an annuity supplement under this section.

(2) Subject to paragraph (3), an individual shall, if and while entitled to an annuity under section 8412(f), or under subsection (a) or (b) of

section 8414, also be entitled to an annuity supplement under this section if such individual is at least the applicable minimum retirement age under section 8412(h).

(3)(A) An individual whose entitlement to an annuity under section 8412 or 8414 does not commence before age 62 is not entitled to an annuity supplement under this section.

(B) An individual entitled to an annuity supplement under this section ceases to be so entitled after the last day of the month preceding the first month for which such individual would, on proper application, be entitled to old-age insurance benefits under title II of the Social Security Act, but not later than the last day of the month in which such individual attains age 62.

(b)(1) The amount of the annuity supplement of an annuitant under this section for any month shall be equal to the product of—

(A) an amount determined under paragraph

(2), multiplied by

(B) a fraction, as described in paragraph (3).

(2) The amount under this paragraph for an annuitant is an amount equal to the old-age insurance benefit which would be payable to such annuitant under title II of the Social Security Act (without regard to sections 203, 215(a)(7), and 215(d)(5) of such Act) upon attaining age 62 and filing application therefor, determined as if the annuitant had attained such age and filed application therefor, and were a fully insured individual (as defined in section 214(a) of such Act), on January 1 of the year in which such annuitant's entitlement to any payment under this section commences, except that the reduction of such old-age insurance benefit under section 202(q) of such Act shall be the maximum applicable for an individual born in the same year as the annuitant. In computing the primary insurance amount under section 215 of such Act for purposes of this paragraph, the number of elapsed years (referred to in section 215(b)(2)(B)(iii) of such Act and used to compute the number of benefit computation years) shall not include years beginning with the year in which such annuitant's entitlement to any payment under this section commences, and—

(A) only basic pay for service performed (if any) shall be taken into account in computing the total wages and self-employment income of the annuitant for a benefit computation year;

(B) for a benefit computation year which commences after the date of the separation with respect to which entitlement to the annuitant's annuity under this subchapter is based and before the date as of which such annuitant is treated, under the preceding sentence, to have attained age 62, the total wages and self-employment income of such annuitant for such year shall be deemed to be zero; and

(C) for a benefit computation year after age 21 which precedes the separation referred to in subparagraph (B), and during which the individual did not perform a full year of service, the total wages and self-employment income of such annuitant for such year shall be deemed to have been an amount equal to the product of—

(i) the average total wages of all workers for that year, multiplied by

(ii) a fraction—

(I) the numerator of which is the total basic pay of the individual for service performed in the first year thereafter in which such individual performed a full year of service; and

(II) the denominator of which is the average total wages of all workers for the year referred to in subclause (I).

(3) The fraction under this paragraph for any annuitant is a fraction—

(A) the numerator of which is the annuitant's total years of service (rounding a fraction to the nearest whole number, with $\frac{1}{2}$ being rounded to the next higher number), not to exceed the number under subparagraph (B); and

(B) the denominator of which is 40.

(4) For the purpose of this subsection—

(A) the term “benefit computation year” has the meaning provided in section 215(b)(2)(B)(i) of the Social Security Act;

(B) the term “average total wages of all workers”, for a year, means the average of the total wages, as defined and computed under section 215(b)(3)(A)(ii)(I) of the Social Security Act for such year; and

(C) the term “service” does not include military service.

(c) An amount under this section shall, for purposes of section 8467, be treated in the same way as an amount computed under section 8415.

(Added Pub. L. 99-335, title I, § 101(a), June 6, 1986, 100 Stat. 533; amended Pub. L. 101-194, title V, § 506(b)(10), Nov. 30, 1989, 103 Stat. 1759; Pub. L. 102-378, § 2(65), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 107-296, title XIII, § 1321(a)(5)(B), Nov. 25, 2002, 116 Stat. 2297.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(3)(B) and (b)(2), (4)(A), (B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 202, 203, 214, and 215 of the Social Security Act are classified to sections 402, 403, 414, and 415, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2002—Subsec. (a)(2). Pub. L. 107-296, which directed amendment of par. (2) by striking “, except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable retirement age”, was executed by striking out “, except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable minimum retirement age” before period at end, to reflect the probable intent of Congress.

1992—Subsec. (a)(2). Pub. L. 102-378 inserted period at end.

1989—Subsec. (a)(2). Pub. L. 101-194 substituted “, except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable minimum retirement age” for period at end.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101-194, set out as a note under section 3151 of this title.

§ 8421a. Reductions on account of earnings from work performed while entitled to an annuity supplement

(a) The amount of the annuity supplement to which an individual is entitled under section 8421 for any month (determined without regard to subsection (c) of such section) shall be reduced by the amount of any excess earnings of such individual which are required to be charged to such supplement for such month, as determined under subsection (b).

(b) The amount of an individual's excess earnings shall be charged to months as follows:

(1)(A) There shall be charged to each month of a year under subsection (a) an amount equal to the individual's excess earnings (as determined under paragraph (2) with respect to such year), divided by the number of the individual's supplement entitlement months for such year (as determined under paragraph (3)).

(B) Notwithstanding subparagraph (A), the amount charged to a month under subsection (a) may not exceed the amount of the annuity supplement to which the individual is entitled under section 8421 for such month (determined without regard to subsection (c) of such section).

(2) The excess earnings based on which reductions under subsection (a) shall be made with respect to an individual in a year—

(A) shall be equal to 50 percent of so much of such individual's earnings for the immediately preceding year as exceeds the applicable exempt amount for such preceding year; but

(B) may not exceed the total amount of the annuity supplement payments to which such individual was entitled for such preceding year under section 8421 (determined without regard to subsection (c) of such section, and without regard to this section).

(3)(A) Subject to subparagraph (B), the number of an individual's supplement entitlement months for a year shall be 12.

(B) The number determined under subparagraph (A) shall be reduced so as not to include any month after which such individual ceases to be entitled to an annuity supplement by reason of section 8421(a)(3)(B), relating to cessation of entitlement upon attaining age 62.

(4)(A) For purposes of this section, and except as provided in subparagraph (B), the “earnings” and the “applicable exempt amount” of an individual shall be determined in a manner consistent with applicable provisions of section 203 of the Social Security Act.

(B) For purposes of this section—

(i) in determining the excess earnings of any individual, only earnings attributable to periods during which such individual was en-

titled to an annuity supplement under section 8421 shall be considered; and

(ii) any earnings attributable to a period before attaining the applicable retirement age under section 8412(h) shall not be considered in determining the excess earnings of an individual who retires under section 8412(d) or (e), or section 8414(c).

(5) Notwithstanding paragraphs (1) through (4), the reduction required by subsection (a) shall be effective with respect to the annuity supplement payable for each month in the 12-month period beginning on the first day of the seventh month after the end of the calendar year in which the excess earnings were earned.

(c) The Office shall prescribe regulations under which this section shall be applied in the case of a reemployed annuitant.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 535; amended Pub. L. 99-556, title I, §121, Oct. 27, 1986, 100 Stat. 3134; Pub. L. 106-394, §3(a), Oct. 30, 2000, 114 Stat. 1630.)

REFERENCES IN TEXT

Section 203 of the Social Security Act, referred to in subsec. (b)(4)(A), is classified to section 403 of Title 42, The Public Health and Welfare.

AMENDMENTS

2000—Subsec. (b)(5). Pub. L. 106-394 added par. (5).
1986—Subsecs. (c), (d). Pub. L. 99-556 redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: "If, after an individual ceases to be entitled to an annuity supplement under section 8421 by reason of subsection (a)(3)(B) of such section, any portion of the individual's excess earnings remains outstanding, an amount not to exceed 25 percent of the amount otherwise payable to such individual under this chapter for each month shall be deducted from such monthly payment until the full amount of that outstanding portion has been accounted for. To the extent practicable, reductions under this subsection shall be made by a level percentage."

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-394, §3(b), Oct. 30, 2000, 114 Stat. 1630, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to reductions required to be made in calendar years beginning after the date of the enactment of this Act [Oct. 30, 2000]."

§ 8422. Deductions from pay; contributions for other service; deposits

(a)(1) The employing agency shall deduct and withhold from basic pay of each employee and Member a percentage of basic pay determined in accordance with paragraph (2).

(2) The percentage to be deducted and withheld from basic pay for any pay period shall be equal to—

(A) the applicable percentage under paragraph (3), minus

(B) the percentage then in effect under section 3101(a) of the Internal Revenue Code of 1986 (relating to rate of tax for old-age, survivors, and disability insurance).

(3) The applicable percentage under this paragraph for civilian service shall be as follows:

Employee	7	January 1, 1987, to December 31, 1998.
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	7.25	January 1, 1999, to December 31, 1999.
	7.4	January 1, 2000, to December 31, 2000.
	7	After December 31, 2000.
Congressional employee.	7.5	January 1, 1987, to December 31, 1998.
	7.75	January 1, 1999, to December 31, 1999.
	7.9	January 1, 2000, to December 31, 2000.
Member	7.5	After December 31, 2000.
	7.5	January 1, 1987, to December 31, 1998.
	7.75	January 1, 1999, to December 31, 1999.
	7.9	January 1, 2000, to December 31, 2000.
	8	January 1, 2001, to December 31, 2002.
	7.5	After December 31, 2002.
Law enforcement officer, firefighter, member of the Capitol Police, member of the Supreme Court Police, or air traffic controller.	7.5	January 1, 1987, to December 31, 1998.
	7.75	January 1, 1999, to December 31, 1999.
	7.9	January 1, 2000, to December 31, 2000.
	7.5	After December 31, 2000.
Nuclear materials courier.	7	January 1, 1987, to October 16, 1998.
	7.5	October 17, 1998, to December 31, 1998.
	7.75	January 1, 1999, to December 31, 1999.
	7.9	January 1, 2000, to December 31, 2000.
	7.5	After December 31, 2000.
Customs and border protection officer.	7.5	After June 29, 2008.

(b) Each employee or Member is deemed to consent and agree to the deductions under subsection (a). Notwithstanding any law or regulation affecting the pay of an employee or Member, payment less such deductions is a full and complete discharge and acquittance of all claims and demands for regular services during the period covered by the payment, except the right to any benefits under this subchapter, or under subchapter IV or V of this chapter, based on the service of the employee or Member.

(c) The amounts deducted and withheld under this section shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Secretary of the Treasury may prescribe. Deposits made by an employee, Member, or survivor also shall be credited to the Fund.

(d)(1) Under such regulations as the Office may prescribe, amounts deducted under subsection (a) shall be entered on individual retirement records.

(2) Deposit may not be required for days of unused sick leave credited under paragraph (1) or (2) of section 8415(l).

(e)(1)(A) Except as provided in subparagraph (B), and subject to paragraph (6), each employee or Member who has performed military service before the date of the separation on which the entitlement to any annuity under this subchapter, or subchapter V of this chapter, is based may pay, in accordance with such regulations as the Office shall issue, to the agency by which the employee is employed, or, in the case of a Member or a Congressional employee, to the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives,

as appropriate, an amount equal to 3 percent of the amount of the basic pay paid under section 204 of title 37 to the employee or Member for each period of military service after December 1956. The amount of such payments shall be based on such evidence of basic pay for military service as the employee or Member may provide, or if the Office determines sufficient evidence has not been so provided to adequately determine basic pay for military service, such payment shall be based on estimates of such basic pay provided to the Office under paragraph (4).

(B) In any case where military service interrupts creditable civilian service under this subchapter and reemployment pursuant to chapter 43 of title 38 occurs on or after August 1, 1990, the deposit payable under this paragraph may not exceed the amount that would have been deducted and withheld under subsection (a)(1) from basic pay during civilian service if the employee had not performed the period of military service.

(2) Any deposit made under paragraph (1) more than two years after the later of—

(A) January 1, 1987; or

(B) the date on which the employee or Member making the deposit first becomes an employee or Member following the period of military service for which such deposit is due,

shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the two-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under section 8334(e).

(3) Any payment received by an agency, the Secretary of the Senate, or the Chief Administrative Officer of the House of Representatives under this subsection shall be immediately remitted to the Office for deposit in the Treasury of the United States to the credit of the Fund.

(4) The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, as appropriate, shall furnish such information to the Office as the Office may determine to be necessary for the administration of this subsection.

(5) For the purpose of survivor annuities, deposits authorized by this subsection may also be made by a survivor of an employee or Member.

(6) The percentage of basic pay under section 204 of title 37 payable under paragraph (1), with respect to any period of military service performed during—

(A) January 1, 1999, through December 31, 1999, shall be 3.25 percent; and

(B) January 1, 2000, through December 31, 2000, shall be 3.4 percent.

(f)(1) Each employee or Member who has performed service as a volunteer or volunteer leader under part A of title VIII of the Economic Opportunity Act of 1964, as a full-time volunteer enrolled in a program of at least 1 year's duration under part A, B,¹ or C of title I of the Domestic Volunteer Service Act of 1973, or as a volunteer or volunteer leader under the Peace

Corps Act before the date of the separation on which the entitlement to any annuity under this subchapter, or subchapter V of this chapter, is based may pay, in accordance with such regulations as the Office of Personnel Management shall issue, an amount equal to 3 percent of the readjustment allowance paid to the employee or Member under title VIII of the Economic Opportunity Service Act of 1964 or section 5(c) or 6(1) of the Peace Corps Act or the stipend paid to the employee or Member under part A, B,¹ or C of title I of the Domestic Volunteer Service Act of 1973, for each period of service as such a volunteer or volunteer leader. This paragraph shall be subject to paragraph (4).

(2) Any deposit made under paragraph (1) more than 2 years after the later of—

(A) October 1, 1993, or

(B) the date on which the employee or Member making the deposit first becomes an employee or Member,

shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the 2-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under section 8334(e).

(3) The Director of the Peace Corps and the Chief Executive Officer of the Corporation for National and Community Service shall furnish such information to the Office of Personnel Management as the Office may determine to be necessary for the administration of this subsection.

(4) The percentage of the readjustment allowance or stipend (as the case may be) payable under paragraph (1), with respect to any period of volunteer service performed during—

(A) January 1, 1999, through December 31, 1999, shall be 3.25 percent; and

(B) January 1, 2000, through December 31, 2000, shall be 3.4 percent.

(g) A Member who has served in a position in the executive branch for which the rate of basic pay was reduced for the duration of the service of the Member to remove the impediment to the appointment of the Member imposed by article I, section 6, clause 2 of the Constitution, or the survivor of such a Member, may deposit to the credit of the Fund an amount equal to the difference between the amount deducted from the basic pay of the Member during that period of service and the amount that would have been deducted if the rate of basic pay which would otherwise have been in effect during that period had been in effect, plus interest computed under section 8334(e).

(h) No deposit may be made with respect to service credited under section 8411(b)(6).

(i)(1) Each employee or Member who has received a refund of retirement deductions under this or any other retirement system established for employees of the Government covering service for which such employee or Member may be allowed credit under this chapter may deposit the amount received, with interest. Credit may not be allowed for the service covered by the refund until the deposit is made.

(2) Interest under this subsection shall be computed in accordance with paragraphs (2) and (3)

¹ See References in Text note below.

of section 8334(e) and regulations prescribed by the Office. The option under the third sentence of section 8334(e)(2) to make a deposit in one or more installments shall apply to deposits under this subsection.

(3) For the purpose of survivor annuities, deposits authorized by this subsection may also be made by a survivor of an employee or Member.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 536; amended Pub. L. 100-238, title I, §104(a), Jan. 8, 1988, 101 Stat. 1746; Pub. L. 103-82, title III, §371(b)(2), Sept. 21, 1993, 107 Stat. 911; Pub. L. 103-353, §5(d), (e)(2), Oct. 13, 1994, 108 Stat. 3174; Pub. L. 104-186, title II, §215(14), Aug. 20, 1996, 110 Stat. 1746; Pub. L. 104-316, title I, §103(g), Oct. 19, 1996, 110 Stat. 3829; Pub. L. 105-33, title VII, §7001(b)(1), Aug. 5, 1997, 111 Stat. 657; Pub. L. 105-61, title V, §516(a)(8), Oct. 10, 1997, 111 Stat. 1307; Pub. L. 105-261, div. C, title XXXI, §3154(i)(1), Oct. 17, 1998, 112 Stat. 2255; Pub. L. 106-65, div. A, title X, §1066(d)(3), Oct. 5, 1999, 113 Stat. 773; Pub. L. 106-346, §101(a) [title V, §505(b)], Oct. 23, 2000, 114 Stat. 1356, 1356A-52; Pub. L. 106-553, §1(a)(2) [title III, §308(c)(3)], Dec. 21, 2000, 114 Stat. 2762, 2762A-87; Pub. L. 107-107, div. A, title XI, §1132(b)(2)(A), (B), Dec. 28, 2001, 115 Stat. 1243, 1244; Pub. L. 107-135, title I, §122(b), Jan. 23, 2002, 115 Stat. 2451; Pub. L. 108-92, §1(b), Oct. 3, 2003, 117 Stat. 1160; Pub. L. 108-176, title II, §226(b)(2)(A), Dec. 12, 2003, 117 Stat. 2530; Pub. L. 110-161, div. E, title V, §535(b)(4), Dec. 26, 2007, 121 Stat. 2076; Pub. L. 111-84, div. A, title XIX, §§1901(b), 1904(a), (b)(2), (3)(A), Oct. 28, 2009, 123 Stat. 2615, 2616.)

REFERENCES IN TEXT

Section 3101(a) of the Internal Revenue Code of 1986, referred to in subsec. (a)(2)(B), is classified to section 3101(a) of Title 26, Internal Revenue Code.

The Economic Opportunity Act of 1964, referred to in subsec. (f)(1), is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508. Title VIII of the Act probably means title VIII of Pub. L. 88-452 as added by Pub. L. 89-794, title VIII, §801, Nov. 8, 1966, 80 Stat. 1472, and generally revised and amended by Pub. L. 90-222, title I, §110, Dec. 23, 1967, 81 Stat. 722, which was classified generally to subchapter VIII (§2991 et seq.) of chapter 34 of Title 42, The Public Health and Welfare, prior to its repeal by Pub. L. 93-113, title VI, §603, Oct. 1, 1973, 87 Stat. 417. Part A of title VIII of the Act is part A of title VIII of Pub. L. 88-452 as added by Pub. L. 90-222, §110, which was classified generally to part A (§2992 et seq.) of subchapter VIII of chapter 34 of Title 42, prior to its repeal by Pub. L. 93-113, §603. See sections 4951 et seq. and 5055 of Title 42. For complete classification of this Act to the Code, see Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (f)(1), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394. Parts A and C of title I of the Act are classified generally to parts A (§4951 et seq.) and C (§4991 et seq.), respectively, of subchapter I of chapter 66 of Title 42, The Public Health and Welfare. Part B of title I of the Act, which was classified generally to part B (§4971 et seq.) of subchapter I of chapter 66 of Title 42, was repealed by Pub. L. 111-13, title II, §2121, Apr. 21, 2009, 123 Stat. 1584. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of Title 42 and Tables.

The Peace Corps Act, referred to in subsec. (f)(1), is Pub. L. 87-293, Sept. 22, 1961, 75 Stat. 612, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. Sections 5(c) and 6(1) of the Act are classified to sections 2504(c) and 2505(1), respectively, of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

AMENDMENTS

2009—Pub. L. 111-84, §1904(b)(3)(A), amended section catchline generally, inserting “; deposits” after “service”.

Subsec. (c). Pub. L. 111-84, §1904(b)(2), inserted at end “Deposits made by an employee, Member, or survivor also shall be credited to the Fund.”

Subsec. (d)(2). Pub. L. 111-84, §1901(b), substituted “paragraph (1) or (2) of section 8415(l)” for “section 8415(k)”.

Subsec. (i). Pub. L. 111-84, §1904(a), added subsec. (i). 2007—Subsec. (a)(3). Pub. L. 110-161 inserted table for customs and border protection officer.

2003—Subsec. (d)(2). Pub. L. 108-176, which directed the substitution of “8415(j)” for “8415(i)”, could not be executed because “8415(i)” did not appear subsequent to amendment by Pub. L. 108-92. See below.

Pub. L. 108-92 substituted “8415(k)” for “8415(i)”.

2002—Subsec. (d). Pub. L. 107-135 designated existing provisions as par. (1) and added par. (2).

2001—Pub. L. 107-107, §1132(b)(2)(B), substituted “other service” for “military service” in section catchline.

Subsec. (h). Pub. L. 107-107, §1132(b)(2)(A), added subsec. (h).

2000—Subsec. (a)(3). Pub. L. 106-553 inserted “member of the Supreme Court Police,” after “member of the Capitol Police,” in table for law enforcement officer, firefighter, member of the Capitol Police, or air traffic controller.

Pub. L. 106-346, §101(a) [title V, §505(b)(1)], added par. (3) and struck out former par. (3), which set out tables of applicable percentages for employee, Congressional employee, Member, law enforcement officer, firefighter, member of the Capitol Police, air traffic controller, and nuclear materials courier.

Subsec. (e)(6). Pub. L. 106-346, §101(a) [title V, §505(b)(2)], inserted “and” at end of subpar. (A), substituted a period for “; and” at end of subpar. (B), and struck out subpar. (C) which read as follows: “January 1, 2001, through December 31, 2002, shall be 3.5 percent.”

Subsec. (f)(4). Pub. L. 106-346, §101(a) [title V, §505(b)(3)], inserted “and” at end of subpar. (A), substituted a period for “; and” at end of subpar. (B), and struck out subpar. (C) which read as follows: “January 1, 2001, through December 31, 2002, shall be 3.5 percent.”

1999—Subsec. (a)(3). Pub. L. 106-65, in table for nuclear materials courier, substituted “October 16, 1998” for “the day before the date of the enactment of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999” and “October 17, 1998” for “The date of the enactment of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999”.

1998—Subsec. (a)(3). Pub. L. 105-261 inserted table for nuclear materials courier.

1997—Subsec. (a)(2), (3). Pub. L. 105-33, §7001(b)(1)(A), added pars. (2) and (3) and struck out former par. (2) which read as follows: “The applicable percentage under this subsection for any pay period shall be—

“(A) in the case of an employee (other than a law enforcement officer, firefighter, air traffic controller, or Congressional employee) a percentage equal to—

“(i) 7 percent, minus

“(ii) the percentage then in effect under section 3101(a) of the Internal Revenue Code of 1986 (relating to rate of tax for old-age, survivors, and disability insurance); and

“(B) in the case of a Member, law enforcement officer, firefighter, air traffic controller, or Congressional employee, a percentage equal to—

“(i) 7½ percent, minus

“(ii) the same percentage as would apply in the case of an employee under subparagraph (A)(ii).”

Subsec. (e)(1)(A). Pub. L. 105-33, §7001(b)(1)(B)(i), inserted “and subject to paragraph (6),” after “Except as provided in subparagraph (B),”.

Subsec. (e)(6). Pub. L. 105-33, §7001(b)(1)(B)(ii), added par. (6).

Subsec. (f)(1). Pub. L. 105-33, §7001(b)(1)(C)(i), inserted at end “This paragraph shall be subject to paragraph (4).”

Subsec. (f)(4). Pub. L. 105-33, § 7001(b)(1)(C)(ii), added par. (4).

Subsec. (g). Pub. L. 105-61 added subsec. (g).

1996—Subsec. (c). Pub. L. 104-316 substituted “Secretary of the Treasury” for “Comptroller General of the United States”.

Subsec. (e)(1)(A), (3). Pub. L. 104-186 substituted “Chief Administrative Officer” for “Clerk”.

1994—Subsec. (a)(2)(A)(ii). Pub. L. 103-353, § 5(e)(2), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

Subsec. (e)(1). Pub. L. 103-353, § 5(d)(1), designated existing provisions as subpar. (A) and substituted “Except as provided in subparagraph (B), each employee” for “Each employee” and added subpar. (B).

Subsec. (e)(2)(B). Pub. L. 103-353, § 5(d)(2), inserted before comma at end “following the period of military service for which such deposit is due”.

1993—Subsec. (f). Pub. L. 103-82 added subsec. (f).

1988—Subsec. (e)(5). Pub. L. 100-238 added par. (5).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1901(b) of Pub. L. 111-84 applicable with respect to any annuity, entitlement to which is based on a death or other separation from service occurring on or after Oct. 28, 2009, see section 1901(c) of Pub. L. 111-84, set out as a note under section 8415 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110-161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110-161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2003 AMENDMENTS

Amendment by Pub. L. 108-176 effective on 60th day after Dec. 12, 2003, and applicable with respect to any annuity entitlement based on an individual's separation from service occurring on or after such effective date, and any service performed by any such individual before, on, or after such effective date, subject to special rule relating to deposit requirement, see section 226(c) of Pub. L. 108-176, set out as a note under section 8401 of this title.

Amendment by Pub. L. 108-92 applicable with respect to any annuity entitlement which is based on a separation from service occurring on or after Oct. 3, 2003, see section 2 of Pub. L. 108-92, set out as a note under section 8415 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-135 effective 60 days after Jan. 23, 2002, and applicable to individuals who separate from service on or after that effective date, see section 122(c) of Pub. L. 107-135, set out as a note under section 8415 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-107 applicable only to separations from service as an employee of the United States on or after Dec. 28, 2001, see section 1132(c) of Pub. L. 107-107, set out as a note under section 8332 of this title.

EFFECTIVE DATE OF 2000 AMENDMENTS

Amendment by Pub. L. 106-553 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 1(a)(2) [title III, § 308(i), (j)] of Pub. L. 106-553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

Amendment by Pub. L. 106-346 effective upon the close of calendar year 2000 and applicable thereafter,

see section 101(a) [title V, § 505(i)] of Pub. L. 106-346, set out as a note under section 8334 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-261 effective at the beginning of the first pay period that begins after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105-261, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

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 8334 of this title.

Amendment by Pub. L. 105-33 effective Oct. 1, 1997, see section 7001(f) of Pub. L. 105-33, set out as a note under section 8334 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103-353, set out as an Effective Date note under section 4301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, and applicable with respect to any individual entitled to an annuity on the basis of a separation from service occurring before, on, or after Oct. 1, 1993, subject to rule relating to annuities based on earlier separations, see sections 371(c) and 392 of Pub. L. 103-82, set out as notes under section 8332 of this title and section 4951 of Title 42, The Public Health and Welfare, respectively.

NO REDUCTION IN AGENCY CONTRIBUTIONS

Pub. L. 105-261, div. C, title XXXI, § 3154(i)(2), Oct. 17, 1998, 112 Stat. 2256, provided that: “Contributions under subsections (a) and (b) of section 8423 of title 5, United States Code, shall not be reduced as a result of that portion of the amendment made by paragraph (1) [amending this section] requiring employee deductions at a rate in excess of 7.5 percent for the period beginning on January 1, 1999, and ending on December 31, 2002.”

Section 7001(b)(2) of Pub. L. 105-33 provided that: “Contributions under section 8423(a) and (b) of title 5, United States Code, shall not be reduced as a result of the amendments made under paragraph (1) [amending this section] of this subsection.”

§ 8423. Government contributions

(a)(1) Each employing agency having any employees or Members subject to section 8422(a) shall contribute to the Fund an amount equal to the sum of—

(A) the product of—

(i) the normal-cost percentage, as determined for employees (other than employees covered by subparagraph (B)), multiplied by

(ii) the aggregate amount of basic pay payable by the agency, for the period involved, to employees (under clause (i)) who are within such agency; and

(B) the product of—

(i) the normal-cost percentage, as determined for Members, Congressional employees, law enforcement officers, members of the Supreme Court Police, firefighters, nu-

clear materials couriers, customs and border protection officers, air traffic controllers, military reserve technicians, and employees under sections 302 and 303 of the Central Intelligence Agency Retirement Act, multiplied by

(ii) the aggregate amount of basic pay payable by the agency, for the period involved, to employees and Members (under clause (i)) who are within such agency.

(2) In determining any normal-cost percentage to be applied under this subsection, amounts provided for under section 8422 shall be taken into account.

(3) Contributions under this subsection shall be paid—

(A) in the case of law enforcement officers, members of the Supreme Court Police, firefighters, nuclear materials couriers, customs and border protection officers, air traffic controllers, military reserve technicians, and other employees, from the appropriation or fund used to pay such law enforcement officers, members of the Supreme Court Police, firefighters, nuclear materials couriers, customs and border protection officers, air traffic controllers, military reserve technicians, or other employees, respectively;

(B) in the case of elected officials, from an appropriation or fund available for payment of other salaries of the same office or establishment; and

(C) in the case of employees of the legislative branch paid by the Chief Administrative Officer of the House of Representatives, from the applicable accounts of the House of Representatives.

(4) A contribution to the Fund under this subsection shall be deposited under such procedures as the Comptroller General of the United States may prescribe.

(b)(1) The Office shall compute—

(A) the amount of the supplemental liability of the Fund with respect to individuals other than those to whom subparagraph (B) relates, and

(B) the amount of the supplemental liability of the Fund with respect to current or former employees of the United States Postal Service (and the Postal Regulatory Commission) and their survivors;

as of the close of each fiscal year beginning after September 30, 1987.

(2) The amount of any supplemental liability computed under paragraph (1)(A) or (1)(B) shall be amortized in 30 equal annual installments, with interest computed at the rate used in the most recent valuation of the System.

(3) At the end of each fiscal year, the Office shall notify—

(A) the Secretary of the Treasury of the amount of the installment computed under this subsection for such year with respect to individuals under paragraph (1)(A); and

(B) the Postmaster General of the United States of the amount of the installment computed under this subsection for such year with respect to individuals under paragraph (1)(B).

(4)(A) Before closing the accounts for a fiscal year, the Secretary of the Treasury shall credit

to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the amount under paragraph (3)(A) for such year.

(B) Upon receiving notification under paragraph (3)(B), the United States Postal Service shall pay the amount specified in such notification to the Fund.

(5) For the purpose of carrying out paragraph (1) with respect to any fiscal year, the Office may—

(A) require the Board of Actuaries of the Civil Service Retirement System to make actuarial determinations and valuations, make recommendations, and maintain records in the same manner as provided in section 8347(f); and

(B) use the latest actuarial determinations and valuations made by such Board of Actuaries.

(c) Under regulations prescribed by the Office, the head of an agency may request reconsideration of any amount determined to be payable with respect to such agency under subsection (a) or (b). Any such request shall be referred to the Board of Actuaries of the Civil Service Retirement System. The Board of Actuaries shall review the computations of the Office and may make any adjustment with respect to any such amount which the Board determines appropriate. A determination by the Board of Actuaries under this subsection shall be final.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 537; amended Pub. L. 102-378, §2(66), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 102-496, title VIII, §803(c), Oct. 24, 1992, 106 Stat. 3253; Pub. L. 104-186, title II, §215(15), Aug. 20, 1996, 110 Stat. 1746; Pub. L. 105-261, div. C, title XXXI, §3154(j), Oct. 17, 1998, 112 Stat. 2256; Pub. L. 106-553, §1(a)(2) [title III, §308(c)(4)], Dec. 21, 2000, 114 Stat. 2762, 2762A-87; Pub. L. 109-435, title VI, §604(b), Dec. 20, 2006, 120 Stat. 3241; Pub. L. 110-161, div. E, title V, §535(b)(5), Dec. 26, 2007, 121 Stat. 2076.)

REFERENCES IN TEXT

Sections 302 and 303 of the Central Intelligence Agency Retirement Act, referred to in subsec. (a)(1)(B)(i), are classified to sections 2152 and 2153, respectively, of Title 50, War and National Defense.

AMENDMENTS

2007—Subsec. (a)(1)(B)(i), (3)(A). Pub. L. 110-161 inserted “customs and border protection officers,” after “nuclear materials couriers,” wherever appearing.

2006—Subsec. (b)(1)(B). Pub. L. 109-435 substituted “Postal Regulatory Commission” for “Postal Rate Commission”.

2000—Subsec. (a). Pub. L. 106-553 inserted “members of the Supreme Court Police,” after “law enforcement officers,” wherever appearing.

1998—Subsec. (a)(1)(B)(i), (3)(A). Pub. L. 105-261 inserted “nuclear materials couriers,” after “firefighters,” wherever appearing.

1996—Subsec. (a)(3)(C). Pub. L. 104-186 substituted “Chief Administrative Officer of the House of Representatives, from the applicable accounts of the House of Representatives” for “Clerk of the House of Representatives, from the contingent fund of the House”.

1992—Subsec. (a)(1)(B)(i). Pub. L. 102-496 substituted “the Central Intelligence Agency Retirement Act” for “the Central Intelligence Agency Retirement Act of 1964 for Certain Employees”.

Pub. L. 102-378 substituted “multiplied” for “multiplied”.

EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110-161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110-161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-553 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 1(a)(2) [title III, §308(i), (j)] of Pub. L. 106-553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-261 effective at the beginning of the first pay period that begins after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105-261, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-496 effective first day of fourth month beginning after Oct. 24, 1992, see section 805 of Pub. L. 102-496, set out as an Effective Date note under section 2001 of Title 50, War and National Defense.

TRANSFER OF FUNCTIONS

Statutory functions, duties, or authority of Chief Administrative Officer of the House of Representatives or Secretary of the Senate as disbursing officers for the Capitol Police transferred to Chief of the Capitol Police, and references in any law or resolution before Feb. 20, 2003, to funds paid or disbursed by Chief Administrative Officer of the House of Representatives and Secretary of the Senate relating to pay and allowances of Capitol Police employees deemed to refer to Chief of the Capitol Police. See section 1907(a) of Title 2, The Congress.

§ 8424. Lump-sum benefits; designation of beneficiary; order of precedence

(a) Subject to subsection (b), an employee or Member who—

(1)(A) is separated from the service for at least 31 consecutive days; or

(B) is transferred to a position in which the individual is not subject to this chapter and remains in such a position for at least 31 consecutive days;

(2) files an application with the Office for payment of the lump-sum credit;

(3) is not reemployed in a position in which the individual is subject to this chapter at the time of filing the application; and

(4) will not become eligible to receive an annuity within 31 days after filing the application;

is entitled to be paid the lump-sum credit. Except as provided in section 8420a, payment of the lump-sum credit to an employee or Member voids all annuity rights under this subchapter, and subchapters IV and V of this chapter, based on the service on which the lump-sum credit is based, until the employee or Member is reemployed in the service subject to this chapter.

(b)(1)(A) Payment of the lump-sum credit under subsection (a) may be made only if the spouse, if any, and any former spouse of the employee or Member are notified of the employee or Member's application.

(B) The Office shall prescribe regulations under which the lump-sum credit shall not be paid without the consent of a spouse or former spouse of the employee or Member where the Office has received such additional information or documentation as the Office may require that—

(i) a court order bars payment of the lump-sum credit in order to preserve the court's ability to award an annuity under section 8445 or 8467; or

(ii) payment of the lump-sum credit would extinguish the entitlement of the spouse or former spouse, under a court order on file with the Office, to a survivor annuity under section 8445 or to any portion of an annuity under section 8467.

(2)(A) Notification of a spouse or former spouse under this subsection shall be made in accordance with such requirements as the Office shall by regulation prescribe.

(B) Under the regulations, the Office may provide that paragraph (1)(A) may be waived with respect to a spouse or former spouse if the employee or Member establishes to the satisfaction of the Office that the whereabouts of such spouse or former spouse cannot be determined.

(3) The Office shall prescribe regulations under which this subsection shall be applied in any case in which the Office receives two or more orders or decrees referred to in paragraph (1)(B)(i).

(c) Under regulations prescribed by the Office, an employee or Member, or a former employee or Member, may designate one or more beneficiaries under this section.

(d) Lump-sum benefits authorized by subsections (e) through (g) shall be paid to the individual or individuals surviving the employee or Member and alive at the date title to the payment arises in the following order of precedence, and the payment bars recovery by any other individual:

First, to the beneficiary or beneficiaries designated by the employee or Member in a signed and witnessed writing received in the Office before the death of such employee or Member. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee or Member.

Third, if none of the above, to the child or children of the employee or Member and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or Member or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee or Member.

Sixth, if none of the above, to such other next of kin of the employee or Member as the Office determines to be entitled under the laws of the domicile of the employee or Member at the date of death of the employee or Member.

For the purpose of this subsection, “child” includes a natural child and an adopted child, but does not include a stepchild.

(e) If an employee or Member, or former employee or Member, dies—

(1) without a survivor, or

(2) with a survivor or survivors and the right of all survivors under subchapter IV terminates before a claim for survivor annuity under such subchapter is filed,

the lump-sum credit shall be paid.

(f) If all annuity rights under this chapter (other than under subchapter III of this chapter) based on the service of a deceased employee or Member terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

(g) If an annuitant dies, annuity accrued and unpaid shall be paid.

(h) Annuity accrued and unpaid on the termination, except by death, of the annuity of an annuitant or survivor shall be paid to that individual. Annuity accrued and unpaid on the death of a survivor shall be paid in the following order of precedence, and the payment bars recovery by any other person:

First, to the duly appointed executor or administrator of the estate of the survivor.

Second, if there is no executor or administrator, payment may be made, after 30 days from the date of death of the survivor, to such next of kin of the survivor as the Office determines to be entitled under the laws of the domicile of the survivor at the date of death.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 539; amended Pub. L. 106-361, §3(b), Oct. 27, 2000, 114 Stat. 1402; Pub. L. 111-84, div. A, title XIX, §1904(b)(4), Oct. 28, 2009, 123 Stat. 2617.)

AMENDMENTS

2009—Subsec. (a). Pub. L. 111-84 substituted “based, until the employee or Member is reemployed in the service subject to this chapter.” for “based.” in concluding provisions.

2000—Subsec. (b)(1). Pub. L. 106-361 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Payment of the lump-sum credit under subsection (a)—

“(A) may be made only if any current spouse and any former spouse of the employee or Member are notified of the application by the employee or Member; and

“(B) in any case in which there is a former spouse, shall be subject to the terms of a court decree of divorce, annulment, or legal separation issued with respect to such former spouse if—

“(i) the decree expressly relates to any portion of the lump-sum credit involved; and

“(ii) payment of the lump-sum credit would affect any right or interest of the former spouse with respect to a survivor annuity under section 8445, or to any portion of an annuity under section 8467.”

§ 8425. Mandatory separation

(a) An air traffic controller who is otherwise eligible for immediate retirement under section 8412(e) shall be separated from the service on the last day of the month in which that air traffic controller becomes 56 years of age or completes 20 years of service if then over that age. The Secretary, under such regulations as the Secretary may prescribe, may exempt a controller

having exceptional skills and experience as a controller from the automatic separation provisions of this subsection until that controller becomes 61 years of age. The Secretary shall notify the controller in writing of the date of separation at least 60 days before that date. Action to separate the controller is not effective, without the consent of the controller, until the last day of the month in which the 60-day notice expires. For purposes of this subsection, the term “air traffic controller” or “controller” has the meaning given to it under section 8401(35)(A).

(b)(1) A law enforcement officer, firefighter, nuclear materials courier, or customs and border protection officer who is otherwise eligible for immediate retirement under section 8412(d) shall be separated from the service on the last day of the month in which that law enforcement officer, firefighter, nuclear materials courier, or customs and border protection officer¹ as the case may be, becomes 57 years of age or completes 20 years of service if then over that age. If the head of the agency judges that the public interest so requires, that agency head may exempt such an employee from automatic separation under this subsection until that employee becomes 60 years of age. The employing office shall notify the employee in writing of the date of separation at least 60 days before that date. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.

(2) In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting “65 years of age” for “60 years of age”. The authority to grant exemptions in accordance with the preceding sentence shall cease to be available after December 31, 2011.

(c) A member of the Capitol Police who is otherwise eligible for immediate retirement under section 8412(d) shall be separated from the service on the last day of the month in which such member becomes 57 years of age or completes 20 years of service if then over that age. The Capitol Police Board, when in its judgment the public interest so requires, may exempt such a member from automatic separation under this subsection until that member becomes 60 years of age. The Board shall notify the member in writing of the date of separation at least 60 days before that date. Action to separate the member is not effective, without the consent of the member, until the last day of the month in which the 60-day notice expires.

(d) A member of the Supreme Court Police who is otherwise eligible for immediate retirement under section 8412(d) shall be separated from the service on the last day of the month in which such member becomes 57 years of age or completes 20 years of service if then over that age. The Marshal of the Supreme Court of the United States, when in his judgment the public interest so requires, may exempt such a member from automatic separation under this subsection until that member becomes 60 years of age. The Marshal shall notify the member in writing of the date of separation at least 60 days

¹ So in original. Probably should be followed by a comma.

before the date. Action to separate the member is not effective, without the consent of the member, until the last day of the month in which the 60-day notice expires.

(e) The President, by Executive order, may exempt an employee (other than a member of the Capitol Police or Supreme Court Police) from automatic separation under this section if the President determines the public interest so requires.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 540; amended Pub. L. 101-428, §3(b)(1)(A), (2), Oct. 15, 1990, 104 Stat. 929, 930; Pub. L. 101-509, title V, §529 [title IV, §409(b)], Nov. 5, 1990, 104 Stat. 1427, 1468; Pub. L. 102-378, §2(67), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 103-283, title III, §307(b)(1), July 22, 1994, 108 Stat. 1441; Pub. L. 105-261, div. C, title XXXI, §3154(k), Oct. 17, 1998, 112 Stat. 2256; Pub. L. 106-553, §1(a)(2) [title III, §308(c)(5)], Dec. 21, 2000, 114 Stat. 2762, 2762A-87; Pub. L. 107-27, §2(b), Aug. 20, 2001, 115 Stat. 207; Pub. L. 108-176, title II, §226(a)(3)(B), Dec. 12, 2003, 117 Stat. 2529; Pub. L. 108-447, div. B, title I, §112(b), Dec. 8, 2004, 118 Stat. 2868; Pub. L. 108-458, title II, §2005(b), Dec. 17, 2004, 118 Stat. 3704; Pub. L. 110-161, div. E, title V, §535(b)(6), Dec. 26, 2007, 121 Stat. 2076; Pub. L. 111-259, title IV, §444(b), Oct. 7, 2010, 124 Stat. 2733.)

AMENDMENTS

2010—Subsec. (b)(2). Pub. L. 111-259, §444(b)(2), struck out par. (2) added by section 2005(b)(2) of Pub. L. 108-458 which read as follows: “In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting ‘65 years of age’ for ‘60 years of age’. The Federal Bureau of Investigation may not grant more than 50 exemptions in any fiscal year in accordance with the preceding sentence, and the authority to grant such exemptions shall cease to be available after September 30, 2007.”

Pub. L. 111-259, §444(b)(1), amended par. (2) relating to employees of the Federal Bureau of Investigation and providing that authority to grant exemptions shall cease to be available after Dec. 31, 2009, by substituting “2011” for “2009”.

2007—Subsec. (b)(1). Pub. L. 110-161 substituted “nuclear materials courier, or customs and border protection officer who” for “or nuclear materials courier who” and “nuclear materials courier, or customs and border protection officer” for “or nuclear materials courier”.

2004—Subsec. (b). Pub. L. 108-447, §112(b)(1), and Pub. L. 108-458, §2005(b)(1), amended subsec. (b) identically, designating existing provisions as par. (1).

Subsec. (b)(2). Pub. L. 108-458, §2005(b)(2), added par. (2) relating to employees of the Federal Bureau of Investigation, limiting number of exemptions to 50 per fiscal year, and providing that authority to grant such exemptions shall cease to be available after Sept. 30, 2007.

Pub. L. 108-447, §112(b)(2), added par. (2) relating to employees of the Federal Bureau of Investigation and providing that authority to grant exemptions shall cease to be available after Dec. 31, 2009.

2003—Subsec. (a). Pub. L. 108-176 inserted at end “For purposes of this subsection, the term ‘air traffic controller’ or ‘controller’ has the meaning given to it under section 8401(35)(A).”

2001—Subsec. (b). Pub. L. 107-27 struck out first sentence which read “A firefighter who is otherwise eligible for immediate retirement under section 8412(d) shall be separated from the service on the last day of the month in which such firefighter becomes 55 years of age or completes 20 years of service if then over that

age.” and, in second sentence, inserted “, firefighter,” after “law enforcement officer” in two places and substituted “courier, as the case may be, becomes 57 years of age” for “courier becomes 57 years of age”.

2000—Subsec. (d). Pub. L. 106-553, §1(a)(2) [title III, §308(c)(5)(A)], added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 106-553, §1(a)(2) [title III, §308(c)(5)], redesignated subsec. (d) as (e) and substituted “Police or Supreme Court Police” for “Police”.

1998—Subsec. (b). Pub. L. 105-261, in second sentence, inserted “or nuclear materials courier” after “law enforcement officer” in two places.

1994—Subsec. (b). Pub. L. 103-283, §307(b)(1)(A), struck out “member of the Capitol Police or” before “firefighter who is” and “member or” before “firefighter becomes” in first sentence.

Subsecs. (c), (d). Pub. L. 103-283, §307(b)(1)(B), (C), added subsec. (c) and redesignated former subsec. (c) as (d).

1992—Subsec. (b). Pub. L. 102-378 amended first sentence generally and, in second sentence, substituted “becomes” for “become”. Prior to amendment, first sentence read as follows: “A law enforcement officer, member of the Capitol Police, or firefighter who is otherwise eligible for immediate retirement under section 8412(d) shall be separated from the service on the last day of the month in which that law enforcement officer, member of the Capitol Police, or firefighter becomes 55 years of age or completes 20 years of service if then over that age.”

1990—Subsec. (b). Pub. L. 101-509, §529 [title IV, §409(b)(1)], which directed the amendment of subsec. (b) by striking out “law enforcement officer or” wherever appearing in first sentence, could not be executed because of a prior amendment by Pub. L. 101-428, §3(b)(1)(A), see below.

Pub. L. 101-509, §529 [title IV, §409(b)(2)], inserted after first sentence “A law enforcement officer who is otherwise eligible for immediate retirement under section 8412(d) shall be separated from the service on the last day of the month in which that law enforcement officer become 57 years of age or completes 20 years of service if then over that age.”

Pub. L. 101-428, §3(b)(1)(A), substituted “officer, member of the Capitol Police, or” for “officer or” in two places.

Subsec. (c). Pub. L. 101-428, §3(b)(2), inserted “(other than a member of the Capitol Police)” after “employee”.

EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110-161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110-161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-176 effective on 60th day after Dec. 12, 2003, and applicable with respect to any annuity entitlement based on an individual’s separation from service occurring on or after such effective date, and any service performed by any such individual before, on, or after such effective date, subject to special rule relating to deposit requirement, see section 226(c) of Pub. L. 108-176, set out as a note under section 8401 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-553 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 1(a)(2) [title III, §308(i), (j)] of Pub. L. 106-553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-261 effective 1 year after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105-261, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-378 effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102-378, set out as a note under section 6303 of this title.

EXCEPTION TO AUTOMATIC SEPARATION OF MEMBERS OF CAPITOL POLICE

Section 3(b)(1)(B) of Pub. L. 101-428 provided that: "Nothing in section 8425(b) of title 5, United States Code, as amended by subparagraph (A), shall require the automatic separation of any member of the Capitol Police before the end of the 2-year period beginning on the date of enactment of this Act [Oct. 15, 1990]."

SUBCHAPTER III—THRIFT SAVINGS PLAN

§ 8431. Certain transfers to be treated as a separation

(a) For purposes of this subchapter, separation from Government employment includes a transfer from a position that is subject to one of the retirement systems described in subsection (b) to a position that is not subject to any of them.

(b) The retirement systems described in this subsection are—

- (1) the retirement system under this chapter;
(2) the retirement system under subchapter III of chapter 83; and
(3) any other retirement system under which individuals may contribute to the Thrift Savings Fund through withholdings from pay.

(Added Pub. L. 106-168, title II, §203(a)(1), Dec. 12, 1999, 113 Stat. 1820.)

PRIOR PROVISIONS

A prior section 8431, added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 541; amended Pub. L. 101-509, title V, §529 [title I, §101(b)(6)(B)], Nov. 5, 1990, 104 Stat. 1427, 1440, provided a definition of "basic pay" for this subchapter, prior to repeal by Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title II, §§206(a)(2), 207]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-378, effective Sept. 30, 1996.

EFFECTIVE DATE

Pub. L. 106-168, title II, §203(c), Dec. 12, 1999, 113 Stat. 1820, provided that: "The amendments made by this section [enacting this section and amending section 8351 of this title] shall apply with respect to transfers occurring before, on, or after the date of the enactment of this Act [Dec. 12, 1999], except that, for purposes of applying such amendments with respect to any transfer occurring before such date of enactment, the date of such transfer shall be considered to be the date of the enactment of this Act. The Executive Director (within the meaning of section 8401(13) of title 5, United States Code) may prescribe any regulations necessary to carry out this subsection."

§ 8432. Contributions

(a)(1) An employee or Member may contribute to the Thrift Savings Fund in any pay period, pursuant to an election under subsection (b), an amount not to exceed the maximum percentage of such employee's or Member's basic pay for

such pay period allowable under paragraph (2). Contributions under this subsection pursuant to such an election shall, with respect to each pay period for which such election remains in effect, be made in accordance with a program of regular contributions provided in regulations prescribed by the Executive Director.

(2) The maximum percentage allowable under this paragraph shall be determined in accordance with the following table:

Table with 2 columns: 'In the case of a pay period beginning in fiscal year:' and 'The maximum percentage allowable is:'. Rows include years 2001 through 2006 or thereafter with corresponding percentages from 11 to 100.

(3) Notwithstanding any limitation under this subsection, an eligible participant (as defined by section 414(v) of the Internal Revenue Code of 1986) may make such additional contributions to the Thrift Savings Fund as are permitted by such section 414(v) and regulations of the Executive Director consistent therewith.

(b)(1)(A)(i) The Executive Director shall prescribe regulations under which employees and Members may make contributions under subsection (a), to modify the amount to be contributed under such subsection, or to terminate such contributions.

(ii) An election to make contributions under this paragraph—

- (I) may be made at any time;
(II) shall take effect on the earliest date after the election that is administratively feasible; and
(III) shall remain in effect until modified or terminated.

(B) The amount to be contributed pursuant to an election under subparagraph (A) shall be the percentage of basic pay or amount designated by the employee or Member.

(2)(A) The Executive Director shall by regulation provide for an eligible individual to be automatically enrolled to make contributions under subsection (a) at the default percentage of basic pay.

(B) For purposes of this paragraph, the default percentage shall be equal to 3 percent or such other percentage, not less than 2 percent nor more than 5 percent, as the Board may prescribe.

(C) The regulations shall include provisions under which any individual who would otherwise be automatically enrolled in accordance with subparagraph (A) may—

- (i) modify the percentage or amount to be contributed pursuant to automatic enrollment, effective not later than the first full pay period following receipt of the election by the appropriate processing entity; or
(ii) decline automatic enrollment altogether.

(D)(i) Except as provided in clause (ii), for purposes of this paragraph, the term "eligible individual" means any individual who, after any regulations under subparagraph (A) first take effect, is appointed, transferred, or reappointed to

a position in which that individual becomes eligible to contribute to the Thrift Savings Fund.

(ii) Members of the uniformed services shall not be eligible individuals for purposes of this paragraph.

(E) Sections 8351(a)(1), 8440a(a)(1), 8440b(a)(1), 8440c(a)(1), 8440d(a)(1), and 8440e(a)(1)¹ shall be applied in a manner consistent with the purposes of this paragraph.

(c)(1)(A) At the time prescribed by the Executive Director, but no later than 12 days after the end of the pay period that includes the first date on which an employee or Member may make contributions under subsection (a) (without regard to whether the employee or Member has elected to make such contributions during such pay period), and within such time as the Executive Director may prescribe with respect to succeeding pay periods (but no later than 12 days after the end of each such pay period), the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the basic pay of such employee or Member for such pay period.

(B) In the case of each employee or Member who is an employee or Member on January 1, 1987, and continues as an employee or Member without a break in service through April 1, 1987, the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the total basic pay paid to such employee or Member for that period of service.

(C) If an employee or Member—

(i) is an employee or Member on January 1, 1987;

(ii) separates from Government employment before April 1, 1987; and

(iii) before separation, completes the number of years of civilian service applicable to such employee or Member under subparagraph (A) or (B) of subsection (g)(2),

the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the total basic pay paid to such employee or Member for service performed on or after January 1, 1987, and before the date of the separation.

(2)(A) In addition to contributions made under paragraph (1), the employing agency of an employee or Member who contributes to the Thrift Savings Fund under subsection (a) for any pay period shall make a contribution to the Thrift Savings Fund for the benefit of such employee or Member. The employing agency's contribution shall be made within such time as the Executive Director may prescribe, but no later than 12 days after the end of each such pay period.

(B) The amount contributed under subparagraph (A) by an employing agency with respect to a contribution of an employee or Member during any pay period shall be the amount equal to the sum of—

(i) such portion of the total amount of the employee's or Member's contribution as does not exceed 3 percent of such employee's or Member's basic pay for such period; and

(ii) one-half of such portion of the amount of the employee's or Member's contribution as exceeds 3 percent, but does not exceed 5 percent, of such employee's or Member's basic pay for such pay period.

(C) Notwithstanding subparagraph (B), the amount contributed under subparagraph (A) by an employing agency with respect to any contribution made by an employee or Member during any pay period which begins after the date on which such employee or Member makes an election under subsection (b)(4)² and before July 1, 1987, shall be the amount equal to the sum of—

(i) two times such portion of the total amount of the employee's or Member's contribution as does not exceed 3 percent of such employee's or Member's basic pay for such pay period; and

(ii) such portion of the total amount of the employee's or Member's contributions as exceeds 3 percent, but does not exceed 5 percent, of such employee's or Member's basic pay for such pay period.

(3)(A) There shall be contributed to the Thrift Savings Fund on behalf of each employee or Member described in subparagraph (B) the amount determined under subparagraph (C).

(B) An employee or Member referred to in subparagraph (A) is an employee or Member who—

(i) is an employee or Member on January 1, 1987;

(ii) has creditable service described in section 8411(b)(2) of this title; and

(iii) has not received a refund of the amount of the retirement deductions made with respect to such service under section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983.

(C) The amount referred to in subparagraph (A) in the case of an employee or Member is equal to the sum of—

(i) 1 percent of the total basic pay paid to such employee or Member for service described in section 8411(b)(2) of this title; and

(ii) interest on such amount computed with respect to such service in the manner provided in paragraphs (2) and (3) of section 8334(e) of this title.

(D) The Secretary of the Treasury shall credit to the Thrift Savings Fund, out of any sums in the Treasury not otherwise appropriated, the amounts determined by the Director to be necessary to carry out this paragraph.

(d) Notwithstanding any other provision of this section, no contribution may be made under this section for any year to the extent that such contribution, when added to prior contributions for such year, exceeds any limitation under section 415 of the Internal Revenue Code of 1986. However, no contribution made under subsection (c)(3) shall be subject to, or taken into account, for purposes of the preceding sentence.

(e) The sums required to be contributed to the Thrift Savings Fund by an employing agency under subsection (c) for the benefit of an employee or Member shall be paid from the appro-

¹ So in original. Probably should be "8440e(b)(1)".

² See References in Text note below.

priation or fund available to such agency for payment of salaries of the employee's or Member's office or establishment. When an employee or Member in the legislative branch is paid by the Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may pay from the applicable accounts of the House of Representatives the contribution that otherwise would be contributed from the appropriation or fund used to pay the employee or Member.

(f) Amounts contributed by an employee or Member under subsection (a) and amounts contributed with respect to such employee or Member under subsection (c) shall be deposited in the Thrift Savings Fund to the credit of that employee's or Member's account in accordance with such procedures as the Secretary of the Treasury may, in consultation with the Executive Director, prescribe in regulations.

(g)(1) Except as otherwise provided in this subsection, all contributions made under this section shall be fully nonforfeitable when made.

(2) Contributions made for the benefit of an employee under subsection (c)(1) and all earnings attributable to such contributions shall be forfeited if the employee separates from Government employment before completing—

(A) 2 years of civilian service in the case of an employee who, at the time of separation, is serving in—

(i) a position in the Senior Executive Service as a noncareer appointee (as defined in section 3132(a)(7) of this title);

(ii) a position listed in section 5312, 5313, 5314, 5315, or 5316 of this title or a position placed in level IV or V of the Executive Schedule under section 5317 of this title; or

(iii) a position in the Executive branch which is excepted from the competitive service by the Office by reason of the confidential and policy-determining character of the position; or

(B) 3 years of civilian service in the case of an employee who is not serving in a position described in subparagraph (A) at the time of separation.

(3) Contributions made for the benefit of a Member or Congressional employee under subsection (c)(1) and all earnings attributable to such contributions shall be forfeited if the Member or Congressional employee separates from Government employment before completing 2 years of civilian service.

(4) Nothing in paragraph (2) or (3) shall cause the forfeiture of any contributions made for the benefit of an employee, Member, or Congressional employee under subsection (c)(1), or any earnings attributable thereto, if such employee, Member, or Congressional employee is not separated from Government employment as of date of death.

(5) Notwithstanding any other provision of law, contributions made by the Government for the benefit of an employee or Member under subsection (c), and all earnings attributable to such contributions, shall be forfeited if the annuity of the employee or Member, or that of a survivor or beneficiary, is forfeited under subchapter II of chapter 83.

(h) No transfers or contributions may be made to the Thrift Savings Fund except as provided in this chapter or section 8351 of this title.

(i)(1) This subsection applies to any employee—

(A) to whom section 8432b applies; and

(B) who, during the period of such employee's absence from civilian service (as referred to in section 8432b(b)(2)(B))—

(i) is eligible to make an election described in subsection (b)(1); or

(ii) would be so eligible but for having either elected to terminate individual contributions to the Thrift Savings Fund within 2 months before commencing military service or separated in order to perform military service.

(2) The Executive Director shall prescribe regulations to ensure that any employee to whom this subsection applies shall, within a reasonable time after being restored or reemployed (in the manner described in section 8432b(a)(2)), be afforded the opportunity to make, for purposes of this section, any election which would be allowable during a period described in subsection (b)(1)(A).

(j)(1) For the purpose of this subsection—

(A) the term "eligible rollover distribution" has the meaning given such term by section 402(c)(4) of the Internal Revenue Code of 1986; and

(B) the term "qualified trust" has the meaning given such term by section 402(c)(8) of the Internal Revenue Code of 1986.

(2) An employee or Member may contribute to the Thrift Savings Fund an eligible rollover that a qualified trust could accept under the Internal Revenue Code of 1986. A contribution made under this subsection shall be made in the form described in section 401(a)(31) of the Internal Revenue Code of 1986. In the case of an eligible rollover distribution, the maximum amount transferred to the Thrift Savings Fund shall not exceed the amount which would otherwise have been included in the employee's or Member's gross income for Federal income tax purposes.

(3) The Executive Director shall prescribe regulations to carry out this subsection.

(k)(1) Only those employees of the Central Intelligence Agency participating in the pilot project required by section 402(b) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107-306; 50 U.S.C. 403-4 note) and making contributions to the Thrift Savings Fund out of basic pay may also contribute (by direct transfer to the Fund) any part of bonus pay received by the employee as part of the pilot project.

(2) Contributions under this subsection are subject to subsection (d).

(3) For purposes of subsection (c), basic pay of an employee of the Central Intelligence Agency participating in the pilot project referred to in paragraph (1) shall include bonus pay received by the employee as part of the pilot project.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 541; amended Pub. L. 99-509, title VI, §6001(a)(1), (2), Oct. 21, 1986, 100 Stat. 1929, 1930; Pub. L. 100-20, §1(b), Apr. 7, 1987, 101 Stat. 265; Pub. L. 100-238, title I, §§114, 115, 121, Jan. 8,

1988, 101 Stat. 1751, 1752; Pub. L. 103-353, §§4(c), 5(e)(3), Oct. 13, 1994, 108 Stat. 3172, 3174; Pub. L. 104-93, title III, §304(a), Jan. 6, 1996, 109 Stat. 965; Pub. L. 104-186, title II, §215(16), Aug. 20, 1996, 110 Stat. 1746; Pub. L. 104-316, title I, §103(g), Oct. 19, 1996, 110 Stat. 3829; Pub. L. 106-361, §§1(a), 2(a), (b)(1)–(3), Oct. 27, 2000, 114 Stat. 1400, 1401; Pub. L. 106-554, §1(a)(4) [div. B, title I, §138(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–233; Pub. L. 107-304, §1(b)(1), Nov. 27, 2002, 116 Stat. 2363; Pub. L. 108-177, title IV, §405(b)(2), Dec. 13, 2003, 117 Stat. 2632; Pub. L. 108-469, §1(b), (c), (d)(2), Dec. 21, 2004, 118 Stat. 3891; Pub. L. 111-31, div. B, title I, §102, June 22, 2009, 123 Stat. 1853.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsections (a)(3), (d), and (j), is classified generally to Title 26, Internal Revenue Code.

Subsection (b)(4), referred to in subsection (c)(2)(C), was repealed by section 102(a) of Pub. L. 111-31. See 2009 Amendment note below.

Section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [Pub. L. 98-168], referred to in subsection (c)(3)(B)(iii), is set out as a note under section 8331 of this title.

AMENDMENTS

2009—Subsec. (b)(1)(B). Pub. L. 111-31, §102(b), which directed the amendment of par. (1) by “striking the parenthetical matter in subparagraph (B)” was executed by striking out “(or any election allowable by virtue of paragraph (4))” before “shall be the percentage”, but not striking out “(A)” after “subparagraph”, to reflect the probable intent of Congress.

Subsec. (b)(2) to (4). Pub. L. 111-31, §102(a), added par. (2) and struck out former pars. (2) to (4) which related to eligibility to make an election regarding contributions.

2004—Subsec. (b)(1)(A). Pub. L. 108-469, §1(b), designated existing provisions as cl. (i), substituted “may” for “shall be afforded a reasonable period every 6 months to elect to”, struck out second sentence which read “An election to make such contributions shall remain in effect until modified or terminated.”, and added cl. (ii).

Subsec. (b)(2)(A), (C). Pub. L. 108-469, §1(d)(2)(A), (B), substituted “until the date” for “until the second period”.

Subsec. (b)(2)(D). Pub. L. 108-469, §1(d)(2)(C), substituted “as provided” for “other than during a period afforded”.

Subsec. (b)(4)(C). Pub. L. 108-469, §1(c), designated existing provisions as cl. (i) and added cl. (ii).

2003—Subsec. (k). Pub. L. 108-177 added subsec. (k).

2002—Subsec. (a)(3). Pub. L. 107-304 added par. (3).

2000—Subsec. (a). Pub. L. 106-554 designated existing provisions as par. (1), substituted “the maximum percentage of such employee’s or Member’s basic pay for such pay period allowable under paragraph (2).” for “10 percent of such individual’s basic pay for such period.”, and added par. (2).

Pub. L. 106-361, §2(b)(1), substituted “(b)” for “(b)(1)” and “Contributions under this subsection pursuant to such an election shall, with respect to each pay period for which such election remains in effect, be made in accordance with a program of regular contributions provided in regulations prescribed by the Executive Director” for “Contributions made under this subsection during any 6-month period for which an election period is provided under subsection (b)(1) shall be made each pay period during such 6-month period pursuant to a program of regular contributions provided in regulations prescribed by the Executive Director”.

Subsec. (b)(1)(B). Pub. L. 106-361, §2(b)(2), inserted “(or any election allowable by virtue of paragraph (4))” after “subparagraph (A)”.

Subsec. (b)(3). Pub. L. 106-361, §2(b)(3), substituted “An” for “Notwithstanding paragraph (2)(A), an”.

Subsec. (b)(4). Pub. L. 106-361, §2(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows:

“(A) Notwithstanding paragraph (2)(A), an employee or Member who is an employee or Member on January 1, 1987, and continues as an employee or Member without a break in service through April 1, 1987, may make the first election for the purpose of subsection (a) during the election period prescribed for such purpose by the Executive Director. The Executive Director shall prescribe an election period for such purpose which shall commence on April 1, 1987. An election by such an employee or Member during that election period shall be effective on the first day of the employee’s or Member’s first pay period which begins after the date on which the employee or Member makes that election.

“(B) Notwithstanding subsection (a), the maximum amount that an employee or Member may contribute during any pay period which begins on or after April 1, 1987, and before October 1, 1987, pursuant to an election made during the election period provided under subparagraph (A) is the amount equal to 15 percent of such individual’s basic pay for such pay period.”

Subsec. (j). Pub. L. 106-361, §1(a), added subsec. (j).

1996—Subsec. (e). Pub. L. 104-186 substituted “Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may pay from the applicable accounts” for “Clerk of the House of Representatives, the Clerk may pay from the contingent fund”.

Subsec. (f). Pub. L. 104-316 substituted “Secretary of the Treasury” for “Comptroller General of the United States”.

Subsec. (g)(5). Pub. L. 104-93 added par. (5).

1994—Subsec. (d). Pub. L. 103-353, §5(e)(3), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

Subsec. (i). Pub. L. 103-353, §4(c), added subsec. (i).

1988—Subsec. (c)(1)(A). Pub. L. 100-238, §121(a), substituted “At the time prescribed by the Executive Director, but no later than 12 days after the end of” for “At the end of” and “within such time as the Executive Director may prescribe with respect to succeeding pay periods (but no later than 12 days after the end of each such pay period)” for “at the end of each succeeding pay period”.

Subsec. (c)(2)(A). Pub. L. 100-238, §121(b), substituted “within such time as the Executive Director may prescribe, but no later than 12 days after the end of each such pay period” for “at the end of such pay period”.

Subsec. (d). Pub. L. 100-238, §114, inserted at end “However, no contribution made under subsection (c)(3) shall be subject to, or taken into account, for purposes of the preceding sentence.”

Subsec. (g)(1). Pub. L. 100-238, §115(1), substituted “Except as otherwise provided in this subsection” for “Except as provided in paragraphs (2) and (3)”.

Subsec. (g)(4). Pub. L. 100-238, §115(2), added par. (4).
1987—Subsec. (b)(4)(A). Pub. L. 100-20 substituted “Notwithstanding paragraph (2)(A), an employee or Member who is an employee or Member on January 1, 1987, and continues as an employee or Member without a break in service through April 1, 1987, may make the first election for the purpose of subsection (a) during the election period prescribed for such purpose by the Executive Director” for “Notwithstanding paragraph (2)(A), an employee or Member who is an employee or Member on January 1, 1987, continues as an employee or Member without a break in service through April 1, 1987, and has creditable service described in section 8411(b)(2) of this title may make the first election for the purpose of subsection (a) during the election period prescribed for such purpose by the Executive Director”.

1986—Subsec. (b)(4). Pub. L. 99-509, §6001(a)(1), designated existing provisions as subpar. (A), inserted “continues as an employee or Member without a break in service through April 1, 1987,” substituted “April 1, 1987” for “January 1, 1987”, substituted “the date on which the employee or Member makes that election” for “the last day of that election period”, and added subpar. (B).

Subsec. (c)(1). Pub. L. 99-509, §6001(a)(2)(A), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (c)(2)(C). Pub. L. 99-509, §6001(a)(2)(B), added subpar. (C).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-304 effective as of the earliest practicable date determined by the Executive Director in regulations, see section 1(c) of Pub. L. 107-304, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-361, §1(b), Oct. 27, 2000, 114 Stat. 1400, provided that: "The amendment made by this section [amending this section] shall take effect at the earliest practicable date after September 30, 2000, as determined by the Executive Director in regulations." [Final regulations implementing the amendments became effective May 2, 2001. See 66 F.R. 22088.]

Pub. L. 106-361, §2(c)(1), Oct. 27, 2000, 114 Stat. 1401, provided that: "The amendments made by this section [amending this section and sections 8439, 8440a, and 8440d of this title] shall take effect at the earliest practicable date after September 30, 2000, as determined by the Executive Director in regulations." [Final regulations implementing the amendments became effective May 2, 2001. See 66 F.R. 22088.]

EFFECTIVE DATE OF 1996 AMENDMENT

Section 304(b) of Pub. L. 104-93 provided that: "The amendment made by subsection (a) [amending this section] shall apply to offenses upon which the requisite annuity forfeitures are based occurring on or after the date of the enactment of this Act [Jan. 6, 1996]."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 4(c) of Pub. L. 103-353 effective Oct. 13, 1994, and applicable to any employee whose release from military service, discharge from hospitalization, or other similar event making the individual eligible to seek restoration or reemployment under chapter 43 of Title 38, Veterans' Benefits, occurs on or after Aug. 2, 1990, with special rules for applying amendment to employees restored or reemployed before effective date, see section 4(e), (f) of Pub. L. 103-353, set out as an Effective Date note under section 8432b of this title.

Amendment by section 5(e)(3) of Pub. L. 103-353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103-353, set out as an Effective Date note under section 4301 of Title 38.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 6001(f) of Pub. L. 99-509 provided that: "This section [amending this section and section 8472 of this title, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 8351 of this title], other than subsection (d) [set out below], and the amendments made by this section shall take effect on January 1, 1987."

REGULATIONS

Section 6001(d) of Pub. L. 99-509 provided that: "The Executive Director of the Federal Retirement Thrift Investment Board may prescribe regulations to carry out subsections (a), (b), and (c) [amending this section, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 8351 of this title] and the amendments made by subsections (a) and (b)."

SAVINGS PROVISIONS

Pub. L. 106-361, §2(c)(2), Oct. 27, 2000, 114 Stat. 1401, provided that: "Notwithstanding any other provision of this section [amending this section and sections 8439, 8440a, and 8440d of this title and enacting provisions set

out as a note under this section], until the amendments made by this section take effect [see Effective Date of 2000 Amendment note above], title 5, United States Code, shall be applied as if this section had not been enacted."

ELIGIBILITY OF CERTAIN INDIVIDUALS TO PARTICIPATE IN THRIFT SAVINGS PLAN

Pub. L. 100-238, title I, §125, Jan. 8, 1988, 101 Stat. 1756, as amended by Pub. L. 107-347, title II, §209(g)(3), Dec. 17, 2002, 116 Stat. 2932; Pub. L. 110-234, title VII, §7101(b)(6), May 22, 2008, 122 Stat. 1214; Pub. L. 110-246, §4(a), title VII, §7101(b)(6), June 18, 2008, 122 Stat. 1664, 1975, provided that:

"(a) DEFINITIONS.—For purposes of this section—

"(1) the term 'Executive Director' means the Executive Director under section 8474 of title 5, United States Code; and

"(2) the term 'Thrift Savings Plan' refers to the program under subchapter III of chapter 84 of title 5, United States Code.

"(b) REGULATIONS.—

"(1) IN GENERAL.—The Executive Director shall prescribe regulations relating to participation in the Thrift Savings Plan by an individual described in subsection (c).

"(2) SPECIFIC MATTERS TO BE INCLUDED.—Under the regulations—

"(A) in computing a percentage of basic pay to determine an amount to be contributed to the Thrift Savings Fund, the rate of basic pay to be used shall be the same as that used in computing any amount which the individual involved is otherwise required, as a condition for participating in the Civil Service Retirement System or the Federal Employees' Retirement System (as the case may be), to contribute to the Civil Service Retirement and Disability Fund; and

"(B) an employing authority which would not otherwise make contributions to the Thrift Savings Fund shall be allowed, with respect to any individual under subsection (c) who is serving under such authority, and at the sole discretion of such authority, to make any contributions on behalf of such individual which would be permitted or required under the provisions of section 8432(c) of title 5, United States Code, if such authority were the individual's employing agency under such provisions.

"(c) APPLICABILITY.—This section applies with respect to—

"(1) any individual participating in the Civil Service Retirement System or the Federal Employees' Retirement System as—

"(A) an individual who has entered on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees (as defined by section 8331(1) or 8401(11) of title 5, United States Code);

"(B) an individual assigned from a Federal agency to a State or local government under subchapter VI of chapter 33 of title 5, United States Code;

"(C) an individual appointed or otherwise assigned to one of the cooperative extension services, as defined by section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103); or

"(D) an individual assigned from a Federal agency to a private sector organization under chapter 37 of title 5, United States Code; and

"(2) any individual who is participating in the Civil Service Retirement System as a result of a provision of law described in section 8347(o).

"(d) EFFECTIVE DATE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the regulations prescribed under this section shall become effective in accordance with the provisions of such regulations.

"(2) EXCEPTION.—The regulations prescribed under this section shall, with respect to individuals under

subsection (c)(1)(C), be effective as of January 1, 1987.”

CONTRIBUTIONS TO THRIFT SAVINGS FUND

Section 6001(a)(3) of Pub. L. 99-509 directed that contributions made to Thrift Savings Fund under 5 U.S.C. 8432(c)(1)(B), (C) and (3) be made as soon as practicable during the 15-day period which began on Apr. 1, 1987.

INAPPLICABILITY OF LIMITATION ON NUMBER OF ELECTIONS WITHIN A SIX-MONTH PERIOD

Pub. L. 99-509, title VI, §6001(c), Oct. 21, 1986, 100 Stat. 1931, provided that the requirement that contributions be made for a 6-month period after an election, as provided in 5 U.S.C. 8432(a), did not apply to contributions made pursuant to an election made during the period provided in former 5 U.S.C. 8432(b)(4) or section 206(b) of Pub. L. 99-335, formerly set out as a note under section 8351 of this title; that the first election period prescribed under 5 U.S.C. 8432(b)(1) commence on July 1, 1987; and that each employee or Member who made such an election could make an election under 5 U.S.C. 8432(b)(1) during the election period that began on July 1, 1987.

PLAN FOR DELAYED CONTRIBUTIONS TO THRIFT SAVINGS FUND

Section 312 of Pub. L. 99-335 directed Executive Director of Federal Retirement Thrift Investment Board to transmit to Congress, not later than Jan. 1, 1988, a plan to afford Federal employees and Members of Congress who make less than maximum amount of authorized contributions to Thrift Savings Fund in any period an opportunity to contribute to such Fund, in a later period, the excess of such amount over the amount contributed during such period, with plan to include such recommendations for legislation as Executive Director considered appropriate.

§ 8432a. Payment of lost earnings

(a)(1) The Executive Director shall prescribe regulations under which an employing agency shall be required to pay to the Thrift Savings Fund amounts representing lost earnings resulting from errors (including errors of omission) made by such agency in carrying out this subchapter, subject to paragraph (2).

(2) If the error involves an employing agency's failure to deduct from basic pay contributions (in whole or in part) on behalf of an individual in accordance with section 8432(a), the regulations shall not provide for the payment of any lost earnings which would be attributable to—

(A) the contributions that the agency failed to deduct from basic pay in accordance with section 8432(a); or

(B) any related contributions under section 8432(c)(2) that the employing agency is not required (by statute or otherwise) to make up.

(b) The regulations—

(1) shall include—

(A) procedures for computing lost earnings; and

(B) procedures under which amounts paid to the Thrift Savings Fund under this section shall be credited to appropriate accounts;

(2) may provide for exceptions from the requirements of this section to the extent that correction of an error is not administratively feasible;

(3) may require an employing agency to reimburse the Thrift Savings Fund for costs in-

curred by the Thrift Savings Fund in implementing corrections of employing agency errors under this section; and

(4) may include such other provisions as the Executive Director determines appropriate to carry out this section.

(c) Any amounts required to be paid by an employing agency under this section shall be paid from the appropriation or fund available to the employing agency for payment of salaries of the participant's office or establishment. If a participant in the legislative branch is paid by the Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may pay from the applicable accounts of the House of Representatives the amount required to be paid to correct errors relating to the Thrift Savings Fund that otherwise would be paid from the appropriation or fund used to pay the participant.

(Added Pub. L. 101-335, §2(a)(1), July 17, 1990, 104 Stat. 319; amended Pub. L. 104-186, title II, §215(17), Aug. 20, 1996, 110 Stat. 1746.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-186 substituted “Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may pay from the applicable accounts” for “Clerk of the House of Representatives, the Clerk may pay from the contingent fund”.

EFFECTIVE DATE

Section 2(b) of Pub. L. 101-335 provided that: “The amendments made by this section [enacting this section] shall apply with respect to lost earnings attributable to errors made before, on, or after the date of enactment of this Act [July 17, 1990].”

§ 8432b. Contributions of persons who perform military service

(a) This section applies to any employee who—
(1) separates or enters leave-without-pay status in order to perform military service; and

(2) is subsequently restored to or reemployed in a position which is subject to this chapter, pursuant to chapter 43 of title 38.

(b)(1) Each employee to whom this section applies may contribute to the Thrift Savings Fund, in accordance with this subsection, an amount not to exceed the amount described in paragraph (2).

(2) The maximum amount which an employee may contribute under this subsection is equal to—

(A) the contributions under section 8432(a) which would have been made, over the period beginning on date of separation or commencement of leave-without-pay status (as applicable) and ending on the day before the date of restoration or reemployment (as applicable); reduced by

(B) any contributions under section 8432(a) or 8440e actually made by such employee over the period described in subparagraph (A).

(3) Contributions under this subsection—

(A) shall be made at the same time and in the same manner as would any contributions under section 8432(a);

(B) shall be made over the period of time specified by the employee under paragraph (4)(B); and

(C) shall be in addition to any contributions then actually being made under section 8432(a).

(4) The Executive Director shall prescribe the time, form, and manner in which an employee may specify—

(A) the total amount such employee wishes to contribute under this subsection with respect to any particular period referred to in paragraph (2)(B); and

(B) the period of time over which the employee wishes to make contributions under this subsection.

The employing agency may place a maximum limit on the period of time referred to in subparagraph (B), which cannot be shorter than two times the period referred to in paragraph (2)(B) and not longer than four times such period.

(c)(1) If an employee makes contributions under subsection (b), the employing agency shall make contributions to the Thrift Savings Fund on such employee's behalf—

(A) in the same manner as would be required under section 8432(c)(2) if the employee contributions were being made under section 8432(a); and

(B) disregarding any contributions then actually being made under section 8432(a) and any agency contributions relating thereto.

(2) An employee to whom this section applies is entitled to have contributed to the Thrift Savings Fund on such employee's behalf an amount equal to—

(A) the total contributions to which that individual would have been entitled under section 8432(c)(2), based on the amounts contributed by such individual under section 8440e (other than under subsection (d)(2) thereof) with respect to the period referred to in subsection (b)(2)(B), if those amounts had been contributed by such individual under section 8432(a); reduced by

(B) any contributions actually made on such employee's behalf under section 8432(c)(2) (including pursuant to an agreement under section 211(d) of title 37) with respect to the period referred to in subsection (b)(2)(B).

(d) An employee to whom this section applies is entitled to have contributed to the Thrift Savings Fund on such employee's behalf an amount equal to—

(1) 1 percent of such employee's basic pay (as determined under subsection (e)) for the period referred to in subsection (b)(2)(B); reduced by

(2) any contributions actually made on such employee's behalf under section 8432(c)(1) with respect to the period referred to in subsection (b)(2)(B).

(e) For purposes of any computation under this section, an employee shall, with respect to the period referred to in subsection (b)(2)(B), be considered to have been paid at the rate which would have been payable over such period had such employee remained continuously employed in the position which such employee last held before separating or entering leave-without-pay status to perform military service.

(f)(1) The employing agency may be required to pay lost earnings on contributions made pursuant to subsections (c) and (d). Such earnings, if required, shall be calculated retroactively to the date the contribution would have been made had the employee not separated or entered leave without pay status to perform military service.

(2) Procedures for calculating and crediting the earnings payable pursuant to paragraph (1) shall be prescribed by the Executive Director.

(g) Amounts paid under subsection (c), (d), or (f) shall be paid—

(1) by the agency to which the employee is restored or in which such employee is reemployed;

(2) from the same source as would be the case under section 8432(e) with respect to sums required under section 8432(c); and

(3) within the time prescribed by the Executive Director.

(h)(1) For purposes of section 8432(g), in the case of an employee to whom this section applies—

(A) a separation from civilian service in order to perform the military service on which the employee's restoration or reemployment rights are based shall be disregarded; and

(B) such employee shall be credited with a period of civilian service equal to the period referred to in subsection (b)(2)(B).

(2)(A) An employee to whom this section applies may elect, for purposes of section 8433(d), or paragraph (1) or (2) of section 8433(h),¹ as the case may be, to have such employee's separation (described in subsection (a)(1)) treated as if it had never occurred.

(B) An election under this paragraph shall be made within such period of time after restoration or reemployment (as the case may be) and otherwise in such manner as the Executive Director prescribes.

(i) The Executive Director shall prescribe regulations to carry out this section.

(Added Pub. L. 103-353, §4(a)(1), Oct. 13, 1994, 108 Stat. 3170; amended Pub. L. 106-65, div. A, title VI, §661(a)(3)(A), (C), Oct. 5, 1999, 113 Stat. 671.)

REFERENCES IN TEXT

Section 8433(h), referred to in subsec. (h)(2)(A), was redesignated section 8433(f) by Pub. L. 103-226, §9(b)(2), Mar. 30, 1994, 108 Stat. 119.

AMENDMENTS

1999—Subsec. (b)(2)(B). Pub. L. 106-65, §661(a)(3)(A), inserted “or 8440e” after “section 8432(a)”.

Subsec. (c). Pub. L. 106-65, §661(a)(3)(C), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-65 effective 180 days after Oct. 30, 2000, unless postponed, see section 663 of Pub. L. 106-65, as amended, set out as an Effective Date note under section 8440e of this title.

EFFECTIVE DATE

Section 4(e), (f) of Pub. L. 103-353 provided that: “(e) EFFECTIVE DATE; APPLICABILITY.—This section [enacting this section and amending sections 8351, 8432,

¹ See References in Text note below.

and 8433 of this title] and the amendments made by this section—

“(1) shall take effect on the date of enactment of this Act [Oct. 13, 1994]; and

“(2) shall apply to any employee whose release from military service, discharge from hospitalization, or other similar event making the individual eligible to seek restoration or reemployment under chapter 43 of title 38, United States Code, occurs on or after August 2, 1990.

“(f) RULES FOR APPLYING AMENDMENTS TO EMPLOYEES RESTORED OR REEMPLOYED BEFORE EFFECTIVE DATE.—In the case of any employee (described in subsection (e)(2)) who is reemployed or restored (in the circumstances described in section 8432b(a) of title 5, United States Code, as amended by this section) before the date of enactment of this Act [Oct. 13, 1994], the amendments made by this section [enacting this section and amending sections 8351, 8432, and 8433 of this title] shall apply to such employee, in accordance with their terms, subject to the following:

“(1) The employee shall be deemed not to have been reemployed or restored until—

“(A) the date of enactment of this Act, or

“(B) the first day following such employee’s reemployment or restoration on which such employee is or was eligible to make an election relating to contributions to the Thrift Savings Fund, whichever occurs or occurred first.

“(2) If the employee changed agencies during the period between the date of actual reemployment or restoration and the date of enactment of this Act, the employing agency as of such date of enactment shall be considered the reemploying or restoring agency.

“(3)(A) For purposes of any computation under section 8432b of such title, pay shall be determined in accordance with subsection (e) of such section, except that, with respect to the period described in subparagraph (B), actual pay attributable to such period shall be used.

“(B) The period described in this subparagraph is the period beginning on the first day of the first applicable pay period beginning on or after the date of the employee’s actual reemployment or restoration and ending on the day before the date determined under paragraph (1).

“(4) Deem section 8432b(b)(2)(A) of such title to be amended by striking ‘ending on the day before the date of restoration or reemployment (as applicable)’ and inserting ‘ending on the date determined under section 4(f)(1) of the Uniformed Services Employment and Reemployment Rights Act of 1994.’”

§ 8432c. Contributions of certain persons reemployed after service with international organizations

(a) In this section, the term “covered person” means any person who—

(1) transfers from a position of employment covered by chapter 83 or 84 or subchapter I or II of chapter 8¹ of the Foreign Service Act of 1980 to a position of employment with an international organization pursuant to section 3582;

(2) pursuant to section 3582 elects to retain coverage, rights, and benefits under any system established by law for the retirement of persons during the period of employment with the international organization and currently deposits the necessary deductions in payment for such coverage, rights, and benefits in the system’s fund; and

(3) is reemployed pursuant to section 3582(b) to a position covered by chapter 83 or 84 or

subchapter I or II of chapter 8¹ of the Foreign Service Act of 1980 after separation from the international organization.

(b)(1) Each covered person may contribute to the Thrift Savings Fund, in accordance with this subsection, an amount not to exceed the amount described in paragraph (2).

(2) The maximum amount which a covered person may contribute under paragraph (1) is equal to—

(A) the total amount of all contributions under section 8351(b)(2) or 8432(a), as applicable, which the person would have made over the period beginning on the date of transfer of the person (as described in subsection (a)(1)) and ending on the day before the date of reemployment of the person (as described in subsection (a)(3)), minus

(B) the total amount of all contributions, if any, under section 8351(b)(2) or 8432(a), as applicable, actually made by the person over the period described in subparagraph (A).

(3) Contributions under paragraph (1)—

(A) shall be made at the same time and in the same manner as would any contributions under section 8351(b)(2) or 8432(a), as applicable;

(B) shall be made over the period of time specified by the person under paragraph (4)(B); and

(C) shall be in addition to any contributions actually being made by the person during that period under section 8351(b)(2) or 8432(a), as applicable.

(4) The Executive Director shall prescribe the time, form, and manner in which a covered person may specify—

(A) the total amount the person wishes to contribute with respect to any period described in paragraph (2)(A); and

(B) the period of time over which the covered person wishes to make contributions under this subsection.

(c) If a covered person who makes contributions under section 8432(a) makes contributions under subsection (b), the agency employing the person shall make those contributions to the Thrift Savings Fund on the person’s behalf in the same manner as contributions are made for an employee described in section 8432b(a) under sections 8432b(c), 8432b(d), and 8432b(f). Amounts paid under this subsection shall be paid in the same manner as amounts are paid under section 8432b(g).

(d) For purposes of any computation under this section, a covered person shall, with respect to the period described in subsection (b)(2)(A), be considered to have been paid at the rate which would have been payable over such period had the person remained continuously employed in the position that the person last held before transferring to the international organization.

(e) For purposes of section 8432(g), a covered person shall be credited with a period of civilian service equal to the period beginning on the date of transfer of the person (as described in subsection (a)(1)) and ending on the day before the date of reemployment of the person (as described in subsection (a)(3)).

¹ See References in Text note below.

(f) The Executive Director shall prescribe regulations to carry out this section.

(Added Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title III, §334(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-440.)

REFERENCES IN TEXT

The Foreign Service Act of 1980, referred to in subsec. (a)(1), (3), is Pub. L. 96-465, Oct. 17, 1980, 94 Stat. 2071, as amended. Subchapters I and II of chapter 8 of the Act probably mean subchapters I and II of chapter 8 of title I of the Act which are classified generally to parts I (§401 et seq.) and II (§4071 et seq.), respectively, of subchapter VIII of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

EFFECTIVE DATE

Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title III, §334(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A-441, provided that: "The amendment made by subsection (a) [enacting this section] shall apply to persons reemployed on or after the date of enactment of this Act [Nov. 29, 1999]."

§ 8432d. Qualified Roth contribution program

(a) DEFINITIONS.—For purposes of this section—

(1) the term "qualified Roth contribution program" means a program described in paragraph (1) of section 402A(b) of the Internal Revenue Code of 1986 which meets the requirements of paragraph (2) of such section; and

(2) the terms "designated Roth contribution" and "elective deferral" have the meanings given such terms in section 402A of the Internal Revenue Code of 1986.

(b) AUTHORITY TO ESTABLISH.—The Executive Director shall by regulation provide for the inclusion in the Thrift Savings Plan of a qualified Roth contribution program, under such terms and conditions as the Board may prescribe.

(c) REQUIRED PROVISIONS.—The regulations under subsection (b) shall include—

(1) provisions under which an election to make designated Roth contributions may be made—

(A) by any individual who is eligible to make contributions under section 8351, 8432(a), 8440a, 8440b, 8440c, 8440d, or 8440e; and

(B) by any individual, not described in subparagraph (A), who is otherwise eligible to make elective deferrals under the Thrift Savings Plan;

(2) any provisions which may, as a result of enactment of this section, be necessary in order to clarify the meaning of any reference to an "account" made in section 8432(f), 8433, 8434(d), 8435, 8437, or any other provision of law; and

(3) any other provisions which may be necessary to carry out this section.

(Added Pub. L. 111-31, div. B, title I, §103(a), June 22, 2009, 123 Stat. 1853.)

REFERENCES IN TEXT

Section 402A of the Internal Revenue Code of 1986, referred to in subsec. (a), is classified to section 402A of Title 26, Internal Revenue Code.

§ 8433. Benefits and election of benefits

(a) An employee or Member who separates from Government employment is entitled to the amount of the balance in the employee's or Member's account (except for the portion of such amount forfeited under section 8432(g) of this title, if any) as provided in this section.

(b) Subject to section 8435 of this title, any employee or Member who separates from Government employment is entitled and may elect to withdraw from the Thrift Savings Fund the balance of the employee's or Member's account as—

(1) an annuity;

(2) a single payment;

(3) 2 or more substantially equal payments to be made not less frequently than annually; or

(4) any combination of payments as provided under paragraphs (1) through (3) as the Executive Director may prescribe by regulation.

(c)(1) In addition to the right provided under subsection (b) to withdraw the balance of the account, an employee or Member who separates from Government service and who has not made a withdrawal under subsection (h)(1)(A) may make one withdrawal of any amount as a single payment in accordance with subsection (b)(2) from the employee's or Member's account.

(2) An employee or Member may request that the amount withdrawn from the Thrift Savings Fund in accordance with subsection (b)(2) be transferred to an eligible retirement plan.

(3) The Executive Director shall make each transfer elected under paragraph (2) directly to an eligible retirement plan or plans (as defined in section 402(c)(8) of the Internal Revenue Code of 1986) identified by the employee, Member, former employee, or former Member for whom the transfer is made.

(4) A transfer may not be made for an employee, Member, former employee, or former Member under paragraph (2) until the Executive Director receives from that individual the information required by the Executive Director specifically to identify the eligible retirement plan or plans to which the transfer is to be made.

(d)(1) Subject to paragraph (2) and subsections (a) and (c) of section 8435 of this title, an employee or Member may change an election previously made under this subchapter.

(2) A former employee or Member may not change an election under this section on or after the date on which a payment is made in accordance with such election or, in the case of an election to receive an annuity, the date on which an annuity contract is purchased to provide for the annuity elected by the former employee or Member.

(e)(1) If an employee or Member (or former employee or Member) dies without having made an election under this section or after having elected an annuity under this section but before making an election under section 8434 of this title, an amount equal to the value of that individual's account (as of death) shall, subject to any decree, order, or agreement referred to in section 8435(c)(2) of this title be paid in a manner consistent with section 8424(d) of this title.

(2) Notwithstanding section 8424(d), if an employee, Member, former employee, or former

Member dies and has designated as sole or partial beneficiary his or her spouse at the time of death, or, if an employee, Member, former employee, or former Member, dies with no designated beneficiary and is survived by a spouse, the spouse may maintain the portion of the employee's or Member's account to which the spouse is entitled in accordance with the following terms:

(A) Subject to the limitations of subparagraph (B), the spouse shall have the same withdrawal options under subsection (b) as the employee or Member were the employee or Member living.

(B) The spouse may not make withdrawals under subsection (g) or (h).

(C) The spouse may not make contributions or transfers to the account.

(D) The account shall be disbursed upon the death of the surviving spouse. A beneficiary or surviving spouse of a deceased spouse who has inherited an account is ineligible to maintain the inherited spousal account.

(3) The Executive Director shall prescribe regulations to carry out this subsection.

(f)(1) Notwithstanding subsection (b), if an employee or Member separates from Government employment, and such employee's or Member's nonforfeitable account balance is less than an amount that the Executive Director prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment, unless an election under section 8432b(h)(2) is made to treat such separation for purposes of this paragraph as if it had never occurred.

(2) Unless otherwise elected under this section, and subject to paragraph (1), benefits under this subchapter shall be paid as an annuity commencing for an employee, Member, former employee, or former Member on April 1 of the year following the latest of the year in which—

(A) the employee, Member, former employee, or former Member becomes 70½ years of age; or

(B) the employee, Member, former employee, or former Member separates from Government employment.

(g)(1) At any time before separation, an employee or Member may apply to the Board for permission to borrow from the employee's or Member's account an amount not exceeding the value of that portion of such account which is attributable to contributions made by the employee or Member. Before a loan is issued, the Executive Director shall provide in writing the employee or Member with appropriate information concerning the cost of the loan relative to other sources of financing, as well as the lifetime cost of the loan, including the difference in interest rates between the funds offered by the Thrift Savings Fund, and any other effect of such loan on the employee's or Member's final account balance.

(2) Loans under this subsection shall be available to all employees and Members on a reasonably equivalent basis, and shall be subject to such other conditions as the Board may by regulation prescribe. The restrictions of section 8477(c)(1) of this title shall not apply to loans made under this subsection.

(3) A loan may not be made under this subsection to the extent that the loan would be treated as a taxable distribution under section 72(p) of the Internal Revenue Code of 1986.

(4) A loan may not be made under this subsection unless the requirements of section 8435(e) of this title are satisfied.

(h)(1) An employee or Member may apply, before separation, to the Board for permission to withdraw an amount from the employee's or Member's account based upon—

(A) the employee or Member having attained age 59½; or

(B) financial hardship.

(2) A withdrawal under paragraph (1)(A) shall be available to each eligible participant one time only.

(3) A withdrawal under paragraph (1)(B) shall be available only for an amount not exceeding the value of that portion of such account which is attributable to contributions made by the employee or Member.

(4) Withdrawals under paragraph (1) shall be subject to such other conditions as the Executive Director may prescribe by regulation.

(5) A withdrawal may not be made under this subsection unless the requirements of section 8435(e) of this title are satisfied.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 544; amended Pub. L. 100-238, title I, §132, Jan. 8, 1988, 101 Stat. 1760; Pub. L. 101-335, §§5(a), 6(a)(2), July 17, 1990, 104 Stat. 321, 322; Pub. L. 102-484, div. D, title XLIV, §4437(a), Oct. 23, 1992, 106 Stat. 2724; Pub. L. 103-226, §9(b), (i)(3)-(7), Mar. 30, 1994, 108 Stat. 119, 121, 122; Pub. L. 103-353, §§4(b), 5(e)(4), Oct. 13, 1994, 108 Stat. 3172, 3174; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title II, §203(a)]]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-374; Pub. L. 106-65, div. A, title VI, §661(a)(4), Oct. 5, 1999, 113 Stat. 672; Pub. L. 108-469, §3(1), Dec. 21, 2004, 118 Stat. 3893; Pub. L. 111-31, div. B, title I, §109, June 22, 2009, 123 Stat. 1856.)

REFERENCES IN TEXT

Sections 72(p) and 402(c)(8) of the Internal Revenue Code of 1986, referred to in subsecs. (c)(3) and (g)(3), are classified to sections 72(p) and 402(c)(8), respectively, of Title 26, Internal Revenue Code.

AMENDMENTS

2009—Subsec. (e). Pub. L. 111-31 designated existing provisions as par. (1) and added pars. (2) and (3).

2004—Subsec. (d)(1). Pub. L. 108-469 substituted "paragraph (2)" for "paragraph (3)".

1999—Subsecs. (g)(1), (h)(3). Pub. L. 106-65 struck out "under section 8432(a) of this title" after "by the employee or Member".

1996—Subsec. (b). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(1)]]], added subsec. (b) and struck out former subsec. (b) which read as follows: "Subject to section 8435 of this title, any employee or Member who separates from Government employment is entitled and may elect—

"(1) to receive an immediate annuity from the Thrift Savings Fund;

"(2) to defer the commencement of the payment of an annuity from the Thrift Savings Fund until such date as the employee or Member specifies, but not later than April 1 of the year following the year in which the employee or Member becomes 70½ years of age;

"(3) to withdraw the amount of the balance in the employee's or Member's account in the Thrift Sav-

ings Fund in one or more substantially equal payments to be made not less frequently than annually and to commence before April 1 of the year following the year in which the employee or Member becomes 70½ years of age; or

“(4) to transfer the amount of the balance in the employee’s or Member’s account to an eligible retirement plan as provided in subsection (c).”

Subsec. (c). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(1)]], added subsec. (c) and struck out former subsec. (c) which read as follows:

“(1) The Executive Director shall make each transfer elected under subsection (b)(4) directly to an eligible retirement plan or plans (as defined in section 402(c)(8) of the Internal Revenue Code of 1986) identified by the employee, Member, former employee, or former Member for whom the transfer is made.

“(2) A transfer may not be made for an employee, Member, former employee, or former Member under paragraph (1) until the Executive Director receives from that individual the information required by the Executive Director specifically to identify the eligible retirement plan or plans to which the transfer is to be made.”

Subsec. (d)(1). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(2)(A)]], substituted “(3)” for “(3)(A)” after “Subject to paragraph”.

Subsec. (d)(2). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(2)(C)]], struck out subpar. (A) designation before “A former employee” and struck out subpar. (B) which read as follows: “A modification of a date may not be made under paragraph (2) on or after the date on which an annuity contract is purchased to provide for the annuity involved, and may not specify a date for the commencement of an annuity earlier than 90 days after the date on which the modification is submitted to the Executive Director (or such period shorter than 90 days as the Executive Director may by regulation prescribe).”

Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(2)(B)]], redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “Subject to paragraph (3)(B) and section 8435(c) of this title, a former employee or Member who has made an election pursuant to subsection (b)(2) may modify the date specified in such election or in a previous modification under this paragraph.”

Subsec. (d)(3). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(2)(B)]], redesignated par. (3) as (2).

Subsec. (f)(1). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(3)]], substituted “less than an amount that the Executive Director prescribes by regulation” for “\$3,500 or less” and substituted a comma for “unless the employee or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under subsection (b), or”.

Subsec. (f)(2). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(4)]], in introductory provisions substituted “April 1” for “February 1”, in subpar. (A) substituted “70½” for “65” and inserted “or” after semicolon, redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: “occurs the tenth anniversary of the year in which the employee, Member, former employee, or former Member became subject to this subchapter; or”.

Subsec. (g)(1). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(5)(A)]], struck out “after December 31, 1987, and” after “At any time”, and inserted at end “Before a loan is issued, the Executive Director shall provide in writing the employee or Member with appropriate information concerning the cost of the loan relative to other sources of financing, as well as the lifetime cost of the loan, including the difference in interest rates between the funds offered by the Thrift Savings Fund, and any other effect of such loan on the employee’s or Member’s final account balance.”

Subsec. (g)(2) to (5). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(5)(B)]], redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2)

which read as follows: “An application under this subsection may be approved only for—

“(A) the purchase of a primary residence;

“(B) educational expenses;

“(C) medical expenses; or

“(D) financial hardship.”

Subsec. (h). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(6)]], added subsec. (h).

1994—Subsec. (b). Pub. L. 103-226, §9(b)(1), amended introductory provisions generally, substituting “Subject to section 8435 of this title, any employee or Member who separates from Government employment is entitled and may elect—” for “Subject to section 8435 of this title, any employee or Member who separates from Government employment entitled to an immediate annuity under subchapter II of this chapter, any employee or Member who separates from Government employment entitled to benefits under subchapter I of chapter 81 of this title, any employee who separates from Government employment pursuant to regulations under section 3502(a) of this title or procedures under section 3595(a) of this title in a reduction in force, and any employee or Member who is entitled to receive disability benefits under subchapter V of this chapter is entitled and may elect—”.

Subsec. (b)(4). Pub. L. 103-226, §9(i)(3), substituted “subsection (c)” for “subsection (e)”.

Subsec. (c). Pub. L. 103-226, §9(b)(2), redesignated subsec. (e) as (c) and struck out former subsec. (c) which related to permissible elections by employees separating from Government who are entitled to a deferred annuity.

Subsec. (c)(1). Pub. L. 103-226, §9(b)(3), substituted “directly to an eligible retirement plan or plans (as defined in section 402(c)(8) of the Internal Revenue Code of 1986)” for “or (c)(4) or required under subsection (d) directly to an eligible retirement plan or plans (as defined in section 402(a)(5)(E) of the Internal Revenue Code of 1954)”.

Subsec. (d). Pub. L. 103-353, §4(b)(1), inserted before period at end “, unless an election under section 8432b(h)(2) is made to treat such separation for purposes of this subsection as if it had never occurred”.

Pub. L. 103-226, §9(b)(2), redesignated subsec. (f) as (d) and struck out former subsec. (d) which read as follows: “Subject to section 8435 of this title, any employee or Member who separates from Government employment before becoming entitled to a deferred annuity under subchapter II of this chapter shall transfer the amount of the balance in the employee’s or Member’s account to an eligible retirement plan as provided in subsection (e), unless an election under section 8432b(h)(2) is made to treat such separation for purposes of this subsection as if it had never occurred.”

Subsec. (d)(1). Pub. L. 103-226, §9(i)(4), substituted “(c) of section 8435” for “(d) of section 8435”.

Subsec. (d)(2). Pub. L. 103-226, §9(b)(4), (i)(5), substituted “section 8435(c)” for “section 8435(d)” and struck out “or (c)(2)” after “subsection (b)(2)”.

Subsec. (e). Pub. L. 103-226, §9(b)(2), (i)(6), redesignated subsec. (g) as (e) and substituted “section 8435(c)(2)” for “section 8435(d)(2)”. Former subsec. (e) redesignated (c).

Subsec. (f). Pub. L. 103-226, §9(b)(2), redesignated subsec. (h) as (f). Former subsec. (f) redesignated (d).

Subsec. (f)(1). Pub. L. 103-226, §9(b)(5)(A), (B), redesignated par. (2) as (1), substituted “Notwithstanding subsection (b), if an employee or Member separates from Government employment, and such employee’s or Member’s” for “Notwithstanding subsections (b) and (c), if an employee or Member separates from Government employment under circumstances making such employee or Member eligible to make an election under either of those subsections, and such employee’s or Member’s”, struck out “or (c), as applicable” before period at end, and struck out former par. (1) which read as follows: “Notwithstanding subsection (d), if an employee or Member separates from Government employment before becoming entitled to a deferred annuity under subchapter II, and such employee’s or Member’s

nonforfeitable account balance is \$3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the employee or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, to have the nonforfeitable account balance transferred to an eligible retirement plan as provided in subsection (e), or unless an election under section 8432b(h)(2) is made to treat such separation for purposes of this paragraph as if it had never occurred.”

Subsec. (f)(2). Pub. L. 103-226, §9(b)(5)(A), (C), redesignated par. (3) as (2) and substituted “paragraph (1)” for “paragraphs (1) and (2)” before “, benefits under this chapter”. Former par. (2) redesignated (1).

Subsec. (f)(3). Pub. L. 103-226, §9(b)(5)(A), redesignated par. (3) as (2).

Subsec. (g). Pub. L. 103-226, §9(b)(2), redesignated subsec. (i) as (g). Former subsec. (g) redesignated (e).

Subsec. (g)(5). Pub. L. 103-226, §9(i)(7), substituted “section 8435(e)” for “section 8435(f)”.

Subsec. (h). Pub. L. 103-226, §9(b)(2), redesignated subsec. (h) as (f).

Subsec. (h)(1), (2). Pub. L. 103-353, §4(b)(2), inserted before period at end “, or unless an election under section 8432b(h)(2) is made to treat such separation for purposes of this paragraph as if it had never occurred”.

Subsec. (i). Pub. L. 103-226, §9(b)(2), redesignated subsec. (i) as (g).

Subsec. (i)(4). Pub. L. 103-353, §5(e)(4), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1992—Subsec. (b). Pub. L. 102-484 inserted “any employee who separates from Government employment pursuant to regulations under section 3502(a) of this title or procedures under section 3595(a) of this title in a reduction in force,” after “chapter 81 of this title.”.

1990—Subsec. (f)(3)(A). Pub. L. 101-335, §5(a)(1), substituted “an annuity contract is purchased to provide for the annuity elected by the former employee or Member” for “an annuity elected by the former employee or Member commences”.

Subsec. (f)(3)(B). Pub. L. 101-335, §5(a)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “A modification of a date may not be made under paragraph (2) on or after such date and may not specify a date for the commencement of an annuity earlier than 1 month after the date on which the modification is submitted to the Executive Director.”

Subsec. (h). Pub. L. 101-335, §6(a)(2), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: “Unless otherwise elected under this section, benefits under this subchapter shall be paid as an annuity commencing for an employee, Member, former employee, or former Member on February 1 of the year following the latest of the year in which—

“(1) the employee, Member, former employee, or former Member becomes 65 years of age;

“(2) occurs the tenth anniversary of the year in which the employee, Member, former employee, or former Member became subject to this subchapter; or

“(3) the employee, Member, former employee, or former Member separates from Government employment.”

1988—Subsec. (i)(3). Pub. L. 100-238 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “Loans under this subsection shall be subject to such conditions as the Board may prescribe consistent with section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)). The conditions shall be included in regulations issued by the Executive Director.”

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-65 effective 180 days after Oct. 30, 2000, unless postponed, see section 663 of Pub. L. 106-65, as amended, set out as an Effective Date note under section 8440e of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective Sept. 30, 1996, and withdrawals and elections as provided under such

amendment to be made at earliest practicable date as determined by Executive Director in regulations, see section 101(f) [title VI, §659 [title II, §207]] of Pub. L. 104-208, set out as a note under section 5545a of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by section 4(b) of Pub. L. 103-353 effective Oct. 13, 1994, and applicable to any employee whose release from military service, discharge from hospitalization, or other similar event making the individual eligible to seek restoration or reemployment under chapter 43 of Title 38, Veterans' Benefits, occurs on or after Aug. 2, 1990, with special rules for applying amendment to employees restored or reemployed before effective date, see section 4(e), (f) of Pub. L. 103-353, set out as an Effective Date note under section 8432b of this title.

Amendment by section 5(e)(4) of Pub. L. 103-353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103-353, set out as an Effective Date note under section 4301 of Title 38.

Amendment by Pub. L. 103-226 effective Mar. 10, 1995, see section 9(j) of Pub. L. 103-226, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-484 applicable with respect to separations occurring after Dec. 31, 1993, or such earlier date as Executive Director (appointed under section 8474 of this title) may by regulation prescribe, see section 4437(d) of Pub. L. 102-484, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5(d) of Pub. L. 101-335 provided that: “The amendments made by this section [amending this section and sections 8434, and 8435 of this title] shall be effective as of April 1, 1987.”

Amendment by section 6(a)(2) of Pub. L. 101-335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or such earlier date as Executive Director may by regulation prescribe, and applicable with respect to separations occurring before, on, or after that effective date, see section 6(c) of Pub. L. 101-335, set out as a note under section 8351 of this title.

REGULATIONS

Section 6(b)(4) of Pub. L. 101-335 provided that: “The Executive Director (as appointed under section 8474(a) of title 5, United States Code) shall prescribe regulations under which the purposes of the amendments made by this section [amending this section and sections 8351, 8401, 8435, 8440a, and 8440b of this title] shall be carried out with respect to any individuals participating in the Thrift Savings Plan who would not otherwise be affected by this section.”

INVALIDITY OF CERTAIN PRIOR ELECTIONS

Section 101(f) [title VI, §659 [title II, §203(b)]] of Pub. L. 104-208 provided that: “Any election made under section 8433(b)(2) of title 5, United States Code (as in effect before the effective date of this title [Sept. 30, 1996]), with respect to an annuity which has not commenced before the implementation date of this title as provided by regulation by the Executive Director in accordance with section 207 of this title [5 U.S.C. 5545a note], shall be invalid.”

§ 8434. Annuities: methods of payment; election; purchase

(a)(1) The Board shall prescribe methods of payment of annuities under this subchapter.

(2) The methods of payment prescribed under paragraph (1) shall include, but not be limited to—

(A) a method which provides for the payment of a monthly annuity only to an annuitant during the life of the annuitant;

(B) a method which provides for the payment of a monthly annuity to an annuitant for the joint lives of the annuitant and the spouse of the annuitant and an appropriate monthly annuity to the one of them who survives the other of them for the life of the survivor;

(C) a method described in subparagraph (A) which provides for automatic adjustments in the amount of the annuity payable so long as the amount of the annuity payable in any one year shall not be less than the amount payable in the previous year;

(D) a method described in subparagraph (B) which provides for automatic adjustments in the amount of the annuity payable so long as the amount of the annuity payable in any one year shall not be less than the amount payable in the previous year; and

(E) a method which provides for the payment of a monthly annuity—

(i) to the annuitant for the joint lives of the annuitant and an individual who is designated by the annuitant under regulations prescribed by the Executive Director and (I) is a former spouse of the annuitant, or (II) has an insurable interest in the annuitant; and

(ii) to the one of them who survives the other of them for the life of the survivor.

(b) Subject to section 8435(b) of this title, under such regulations as the Executive Director shall prescribe, an employee, Member, former employee, or former Member who elects under section 8433 of this title to receive an annuity under this subchapter shall elect, on or before the date on which an annuity contract is purchased to provide for that annuity, one of the methods of payment prescribed under subsection (a).

(c) Notwithstanding the elimination of a method of payment by the Board, an employee, Member, former employee, or former Member may elect the eliminated method if the elimination of such method becomes effective less than 5 years before the date on which that individual's annuity commences.

(d)(1) Not earlier than 90 days (or such shorter period as the Executive Director may by regulation prescribe) before an annuity is to commence under this subchapter, the Executive Director shall expend the balance in the annuitant's account to purchase an annuity contract from any entity which, in the normal course of its business, sells and provides annuities.

(2) The Executive Director shall assure, by contract entered into with each entity from which an annuity contract is purchased under paragraph (1), that the annuity shall be provided in accordance with the provisions of this subchapter and subchapter VII of this chapter.

(3) An annuity contract purchased under paragraph (1) shall include such terms and conditions as the Executive Director requires for the protection of the annuitant.

(4) The Executive Director shall require, from each entity from which an annuity contract is purchased under paragraph (1), a bond or proof

of financial responsibility sufficient to protect the annuitant.

(e)(1) No tax, fee, or other monetary payment may be imposed or collected by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority thereof, on, or with respect to, any amount paid to purchase an annuity contract under this section.

(2) Paragraph (1) shall not be construed to exempt any company or other entity issuing an annuity contract under this section from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by that entity from the sale of an annuity contract under this section if that tax, fee, or payment is applicable to a broad range of business activity.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 546; amended Pub. L. 100-238, title I, §129, Jan. 8, 1988, 101 Stat. 1759; Pub. L. 101-335, §§4(a), 5(b), July 17, 1990, 104 Stat. 321; Pub. L. 103-226, §9(c), (i)(8), Mar. 30, 1994, 108 Stat. 120, 122.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-226, §9(i)(8), substituted “section 8435(b)” for “section 8435(c)”.

Subsec. (c). Pub. L. 103-226, §9(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Notwithstanding an elimination of a method of payment by the Board—

“(1) an employee, Member, former employee, or former Member who is entitled under section 8412 of this title to an immediate annuity not reduced under section 8415(f) of this title may elect the eliminated method if the elimination of such method became effective less than 5 years before the date on which the annuity commences; and

“(2) any other employee, Member, former employee, or former Member may elect such method of payment for amounts contributed by or on behalf of the employee, Member, former employee, or former Member under section 8432 of this title before such effective date and for earnings attributable to such amounts.” 1990—Subsec. (b). Pub. L. 101-335, §5(b)(1), substituted “an annuity contract is purchased to provide for that annuity,” for “the annuity commences.”

Subsec. (d)(1). Pub. L. 101-335, §5(b)(2), substituted “Not earlier than 90 days (or such shorter period as the Executive Director may by regulation prescribe) before an annuity” for “At the time an annuity”.

Subsec. (e). Pub. L. 101-335, §4(a), added subsec. (e).

1988—Subsec. (a)(2)(C), (D). Pub. L. 100-238 amended subpars. (C) and (D) generally. Prior to amendment, subpars. (C) and (D) read as follows:

“(C) a method described in subparagraph (A) which provides annual increases in the amount of the annuity payable;

“(D) a method described in subparagraph (B) which provides annual increases in the amount of the annuity payable; and”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-226 effective Mar. 10, 1995, see section 9(j) of Pub. L. 103-226, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4(b) of Pub. L. 101-335 provided that: “The amendment made by subsection (a) [amending this section] shall take effect 30 days after the date of enactment of this Act [July 17, 1990].”

Amendment by section 5(b) of Pub. L. 101-335 effective Apr. 1, 1987, see section 5(d) of Pub. L. 101-335, set out as a note under section 8433 of this title.

§ 8435. Protections for spouses and former spouses

(a)(1)(A) A married employee or Member (or former employee or Member) may withdraw all or part of a Thrift Savings Fund account under subsection (b)(2), (3), or (4) of section 8433 of this title or change a withdrawal election only if the employee or Member (or former employee or Member) satisfies the requirements of subparagraph (B). A married employee or Member (or former employee or Member) may make a withdrawal from a Thrift Savings Fund account under subsection (c)(1) of section 8433 of this title only if the employee or Member (or former employee or Member) satisfies the requirements of subparagraph (B).

(B) An employee or Member (or former employee or Member) may make an election or change referred to in subparagraph (A) if the employee or Member and the employee's or Member's spouse (or the former employee or Member and the former employee's or Member's spouse) jointly waive, by written election, any right which the spouse may have to a survivor annuity with respect to such employee or Member (or former employee or Member) under section 8434 of this title or subsection (b).

(2) Paragraph (1) shall not apply to an election or change of election by an employee or Member (or former employee or Member) who establishes to the satisfaction of the Executive Director (at the time of the election or change and in accordance with regulations prescribed by the Executive Director)—

(A) that the spouse's whereabouts cannot be determined; or

(B) that, due to exceptional circumstances, requiring the spouse's waiver would otherwise be inappropriate.

(b)(1) Notwithstanding any election under subsection (b) of section 8434 of this title, the method described in subsection (a)(2)(B) of such section (or, if more than one form of such method is available, the form which the Board determines to be the one which provides for a surviving spouse a survivor annuity most closely approximating the annuity of a surviving spouse under section 8442 of this title) shall be deemed the applicable method under such subsection (b) in the case of an employee, Member, former employee, or former Member who is married on the date on which an annuity contract is purchased to provide for the employee's, Member's, former employee's, or former Member's annuity under this subchapter.

(2) Paragraph (1) shall not apply if—

(A) a joint waiver of such method is made, in writing, by the employee or Member and the spouse; or

(B) the employee or Member waives such method, in writing, after establishing to the satisfaction of the Executive Director that circumstances described under subsection (a)(2)(A) or (B) make the requirement of a joint waiver inappropriate.

(c)(1) An election or change of election shall not be effective under this subchapter to the extent that the election, change, or transfer conflicts with any court decree, order, or agreement described in paragraph (2).

(2) A court decree, order, or agreement referred to in paragraph (1) is, with respect to an employee or Member (or former employee or Member), a court decree of divorce, annulment, or legal separation issued in the case of such employee or Member (or former employee or Member) and any former spouse of the employee or Member (or former employee or Member) or any court order or court-approved property settlement agreement incident to such decree if—

(A) the decree, order, or agreement expressly relates to any portion of the balance in the employee's or Member's (or former employee's or Member's) account; and

(B) notice of the decree, order, or agreement was received by the Executive Director before—

(i) the date on which payment is made, or

(ii) in the case of an annuity, the date on which an annuity contract is purchased to provide for the annuity,

in accordance with the election, change, or contribution referred to in paragraph (1).

(3) The Executive Director shall prescribe regulations under which this subsection shall be applied in any case in which the Executive Director receives two or more decrees, orders, or agreements referred to in paragraph (1).

(d)(1) Subject to paragraphs (2) through (7), a former spouse of a deceased employee or Member (or a deceased former employee or Member) who died after performing 18 or more months of service and a former spouse of a deceased former employee or Member who died entitled to an immediate or deferred annuity under subchapter II of this chapter is entitled to a survivor annuity under this subsection if and to the extent that—

(A) an election under section 8434(a)(2)(E) of this title, or

(B) any court decree, order, or agreement (described in subsection (c)(2), without regard to subparagraph (B) of such subsection) which relates to such deceased individual and such former spouse,

expressly provides for such survivor annuity.

(2) Paragraph (1) shall apply only to payments made by the Executive Director after the date on which the Executive Director receives written notice of the election, decree, order, or agreement, and such additional information and documentation as the Executive Director may require.

(3) The amount of the survivor annuity payable from the Thrift Savings Fund to a former spouse of a deceased employee, Member, former employee, or former Member under this section may not exceed the excess, if any, of—

(A) the amount of the survivor annuity determined for a surviving spouse of the deceased employee, Member, former employee, or former Member under the method described in subsection (b)(1), over

(B) the total amount of all other survivor annuities payable under this subchapter to other former spouses of such deceased employee, Member, former employee, or former Member based on the order of precedence provided in paragraph (4).

(4) If more than one former spouse of a deceased employee, Member, former employee, or

former Member is entitled to a survivor annuity pursuant to this subsection, the amount of each such survivor annuity shall be limited appropriately to carry out paragraph (3) in the order of precedence established for the entitlements by the chronological order of the dates on which elections are properly made pursuant to section 8434(a)(2)(E) of this title and the dates on which the court decrees, orders, or agreements applicable to the entitlement were issued, as the case may be.

(5) Subsections (c) and (d) of section 8445 of this title shall apply to an entitlement of a former spouse to a survivor annuity under this subsection.

(6) For the purposes of this section, a court decree, order, or agreement or an election referred to in subsection (a) of this section shall not be effective, in the case of a former spouse, to the extent that the election is inconsistent with any joint waiver previously executed with respect to such former spouse under subsection (a)(2) or (b)(2).

(7) Any payment under this subsection to any individual bars recovery by any other individual.

(e)(1)(A) A loan or withdrawal may be made to a married employee or Member under section 8433(g) and (h) of this title only if the employee's or Member's spouse consents to such loan or withdrawal in writing.

(B) A consent under subparagraph (A) shall be irrevocable with respect to the loan or withdrawal to which the consent relates.

(C) Subparagraph (A) shall not apply to a loan or withdrawal to an employee or Member who establishes to the satisfaction of the Executive Director (at the time the employee or Member applies for such loan or withdrawal and in accordance with regulations prescribed by the Executive Director)—

(i) that the spouse's whereabouts cannot be determined; or

(ii) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's consent would otherwise be inappropriate.

(2) An application for a loan or withdrawal under section 8433(g) and (h) of this title shall not be approved if approval would have the result described under subsection (c)(1).

(f) Waivers and notifications required by this section and waivers of the requirements for such waivers and notifications (as authorized by this section) may be made only in accordance with procedures prescribed by the Executive Director.

(g) Except with respect to the making of loans or withdrawals under section 8433(g) and (h), none of the provisions of this section requiring notification to, or the consent or waiver of, a spouse or former spouse of an employee, Member, former employee, or former Member shall apply in any case in which the nonforfeitable account balance of the employee, Member, former employee, or former Member is \$3,500 or less.

(h) The protections provided by this section are in addition to the protections provided by section 8467 of this title.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 547; amended Pub. L. 101-335,

§§5(c), 6(a)(3), July 17, 1990, 104 Stat. 322, 323; Pub. L. 102-484, div. D, title XLIV, §4437(b), Oct. 23, 1992, 106 Stat. 2724; Pub. L. 103-226, §9(d), (i)(9)-(15), Mar. 30, 1994, 108 Stat. 120, 122; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title II, §204]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-376.)

AMENDMENTS

1996—Subsec. (a)(1)(A). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §204(1)]], substituted “may withdraw all or part of a Thrift Savings Fund account under subsection (b)(2), (3), or (4) of section 8433 of this title or change a withdrawal election” for “may make an election under subsection (b)(3) or (b)(4) of section 8433 of this title or change an election previously made under subsection (b)(1) or (b)(2) of such section” and inserted at end “A married employee or Member (or former employee or Member) may make a withdrawal from a Thrift Savings Fund account under subsection (c)(1) of section 8433 of this title only if the employee or Member (or former employee or Member) satisfies the requirements of subparagraph (B).”

Subsec. (c)(1). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §204(2)(A)]], substituted “An election or change of election” for “An election, change of election, or modification of the commencement date of a deferred annuity” and “or transfer” for “modification, or transfer”.

Subsec. (c)(2)(B). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §204(2)(B)]], struck out “modification,” after “change,” in closing provisions.

Subsec. (e)(1). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §204(3)(A)]], in subpar. (A) inserted “or withdrawal” after “A loan”, “and (h)” after “8433(g)”, and “or withdrawal” after “such loan”, in subpar. (B) inserted “or withdrawal” after “loan”, and in subpar. (C) inserted “or withdrawal” after “to a loan” and after “for such loan”.

Subsec. (e)(2). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §204(3)(B)(i)]], inserted “or withdrawal” after “loan”.

Pub. L. 104-208, §101(f) [title VI, §659 [title II, §204(3)(B)(ii)]], which directed insertion of “and (h)” after “8344(g)”, was executed by making the insertion after “8433(g)” to reflect the probable intent of Congress.

Subsec. (g). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §204(4)(A)]], inserted “or withdrawals” after “loans”.

Pub. L. 104-208, §101(f) [title VI, §659 [title II, §204(4)(B)]], which directed insertion of “and (h)” after “8344(g)” was executed by making the insertion after “8433(g)” to reflect the probable intent of Congress.

1994—Subsec. (a)(1)(A). Pub. L. 103-226, §9(d)(1), substituted “subsection (b)(3) or (b)(4) of section 8433 of this title or change an election previously made under subsection (b)(1) or (b)(2)” for “subsection (b)(3), (b)(4), (c)(3), or (c)(4) of section 8433 of this title or change an election previously made under subsection (b)(1), (b)(2), (c)(1), or (c)(2)”.

Subsec. (a)(1)(B). Pub. L. 103-226, §9(i)(9), substituted “subsection (b)” for “subsection (c)”.

Subsec. (b). Pub. L. 103-226, §9(d)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Paragraph (1) shall not apply—

“(A) in the case of an employee or Member retiring under section 8412, 8413, 8414, or 8451 of this title, or who separates from Government employment pursuant to regulations under section 3502(a) of this title or procedures under section 3595(a) of this title in a reduction in force, if—

“(i) a joint waiver of such method is made, in writing, by the employee or Member and the spouse; or

“(ii) the employee or Member waives such method, in writing, after establishing to the satisfaction of the Executive Director that circumstances described in subsection (a)(2)(A) or (a)(2)(B) make the requirement of a joint waiver inappropriate; or

“(B) in the case of an employee or Member not covered by subparagraph (A), if the employee or Member waives such method after—

“(i) having provided notification to the spouse of intent to waive; or

“(ii) establishing to the satisfaction of the Executive Director that the whereabouts of such spouse cannot be determined.”

Pub. L. 103-226, §9(d)(2), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “(b)(1) Except as provided in paragraph (2), a transfer may be made by an employee or Member (or former employee or Member) under section 8433(d) of this title only after the Executive Director notifies any current spouse and each former spouse of the employee or Member (or former employee or Member), if any, that the transfer is to be made.

“(2) Paragraph (1) may be waived with respect to a spouse or former spouse if the employee or Member (or former employee or Member) establishes to the satisfaction of the Executive Director that the whereabouts of such spouse or former spouse cannot be determined.”

Subsec. (c). Pub. L. 103-226, §9(d)(3), (5), redesignated subsec. (d) as (c) and, in par. (1), struck out “and a transfer may not be made under section 8433(d) of this title” after “effective under this subchapter”. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 103-226, §9(d)(3), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(1)(B). Pub. L. 103-226, §9(i)(10), substituted “subsection (c)(2)” for “subsection (d)(2)”.

Subsec. (d)(3)(A). Pub. L. 103-226, §9(i)(11), substituted “subsection (b)(1)” for “subsection (c)(1)”.

Subsec. (d)(6). Pub. L. 103-226, §9(i)(12), substituted “or (b)(2)” for “or (c)(2)”.

Subsec. (e). Pub. L. 103-226, §9(d)(3), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (e)(1)(A). Pub. L. 103-226, §9(i)(13), substituted “section 8433(g)” for “section 8433(i)”.

Subsec. (e)(2). Pub. L. 103-226, §9(i)(14), substituted “section 8433(g) of this title shall not be approved if approval would have the result described under subsection (c)(1)” for “section 8433(i) of this title shall not be approved if approval would have the result described in subsection (d)(1)”.

Subsec. (f). Pub. L. 103-226, §9(d)(3), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 103-226, §9(d)(3), (i)(15), redesignated subsec. (h) as (g) and substituted “section 8433(g)” for “section 8433(i)”. Former subsec. (g) redesignated (f).

Subsecs. (h), (i). Pub. L. 103-226, §9(d)(3), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

1992—Subsec. (c)(2)(A). Pub. L. 102-484 inserted “, or who separates from Government employment pursuant to regulations under section 3502(a) of this title or procedures under section 3595(a) of this title in a reduction in force,” after “8451 of this title”.

1990—Subsec. (c)(1). Pub. L. 101-335, §5(c)(1), inserted “an annuity contract is purchased to provide for” after “the date on which” and struck out “commences” after “former Member’s annuity”.

Subsec. (d)(2)(B)(ii). Pub. L. 101-335, §5(c)(2), substituted “an annuity contract is purchased to provide for the annuity” for “the annuity commences”.

Subsecs. (h), (i). Pub. L. 101-335, §6(a)(3), added subsec. (h) and redesignated former subsec. (h) as (i).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective Sept. 30, 1996, and withdrawals and elections as provided under such amendment to be made at earliest practicable date as determined by Executive Director in regulations, see section 101(f) [title VI, §659 [title II, §207]] of Pub. L. 104-208, set out as a note under section 5545a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-226 effective Mar. 10, 1995, see section 9(j) of Pub. L. 103-226, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-484 applicable with respect to separations occurring after Dec. 31, 1993, or such earlier date as Executive Director (appointed under section 8474 of this title) may by regulation prescribe, see section 4437(d) of Pub. L. 102-484, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5(c) of Pub. L. 101-335 effective Apr. 1, 1987, see section 5(d) of Pub. L. 101-335, set out as a note under section 8433 of this title.

Amendment by section 6(a)(3) of Pub. L. 101-335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or such earlier date as Executive Director may by regulation prescribe, and applicable with respect to separations occurring before, on, or after that effective date, see section 6(c) of Pub. L. 101-335, set out as a note under section 8351 of this title.

§ 8436. Administrative provisions

(a) The Executive Director shall make or provide for payments and transfers in accordance with an election of an employee or Member under section 8433 or 8434(b) of this title or, if applicable, in accordance with section 8435 of this title.

(b) Any election, change of election, or modification of a deferred annuity commencement date made under this subchapter shall be in writing and shall be filed with the Executive Director in accordance with regulations prescribed by the Executive Director.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 550.)

§ 8437. Thrift Savings Fund

(a) There is established in the Treasury of the United States a Thrift Savings Fund.

(b) The Thrift Savings Fund consists of the sum of all amounts contributed under section 8432 of this title and all amounts deposited under section 8479(b) of this title, increased by the total net earnings from investments of sums in the Thrift Savings Fund or reduced by the total net losses from investments of the Thrift Savings Fund, and reduced by the total amount of payments made from the Thrift Savings Fund (including payments for administrative expenses).

(c) The sums in the Thrift Savings Fund are appropriated and shall remain available without fiscal year limitation—

(1) to invest under section 8438 of this title;

(2) to pay benefits or purchase annuity contracts under this subchapter;

(3) to pay the administrative expenses of the Federal Retirement Thrift Investment Management System prescribed in subchapter VII of this chapter;

(4) to make distributions for the purposes of section 8440(b) of this title;

(5) to make loans to employees and Members as authorized under section 8433(g) of this title; and

(6) to purchase insurance as provided in section 8479(b)(2) of this title.

(d) Administrative expenses incurred to carry out this subchapter and subchapter VII of this chapter shall be paid first out of any sums in the

Thrift Savings Fund forfeited under section 8432(g) of this title and then out of net earnings in such Fund.

(e)(1) Subject to subsection (d) and paragraphs (2) and (3), sums in the Thrift Savings Fund credited to the account of an employee, Member, former employee, or former Member may not be used for, or diverted to, purposes other than for the exclusive benefit of the employee, Member, former employee, or former Member or his beneficiaries under this subchapter.

(2) Except as provided in paragraph (3), sums in the Thrift Savings Fund may not be assigned or alienated and are not subject to execution, levy, attachment, garnishment, or other legal process. For the purposes of this paragraph, a loan made from such Fund to an employee or Member shall not be considered to be an assignment or alienation.

(3) Moneys due or payable from the Thrift Savings Fund to any individual and, in the case of an individual who is an employee or Member (or former employee or Member), the balance in the account of the employee or Member (or former employee or Member) shall be subject to legal process for the enforcement of the individual's legal obligations to provide child support or make alimony payments as provided in section 459 of the Social Security Act (42 U.S.C. 659) the¹ enforcement of an order for restitution under section 3663A of title 18, forfeiture under section 8432(g)(5) of this title, or an obligation of the Executive Director to make a payment to another person under section 8467 of this title. For the purposes of this paragraph, an amount contributed for the benefit of an individual under section 8432(c)(1) (including any earnings attributable thereto) shall not be considered part of the balance in such individual's account unless such amount is nonforfeitable, as determined under applicable provisions of section 8432(g).

(f) The sums in the Thrift Savings Fund shall not be appropriated for any purpose other than the purposes specified in this section and may not be used for any other purpose.

(g) All sums contributed to the Thrift Savings Fund by an employee or Member or by an employing agency for the benefit of such employee or Member and all net earnings in such Fund attributable to investment of such sums are held in such Fund in trust for such employee or Member.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 550; amended Pub. L. 100-238, title I, §§116, 117(a), Jan. 8, 1988, 101 Stat. 1751; Pub. L. 103-226, §9(i)(16), Mar. 30, 1994, 108 Stat. 122; Pub. L. 103-358, §2(b)(4), Oct. 14, 1994, 108 Stat. 3421; Pub. L. 111-31, div. B, title I, §108, June 22, 2009, 123 Stat. 1856.)

AMENDMENTS

2009—Subsec. (e)(3). Pub. L. 111-31 which directed substitution of “the enforcement of an order for restitution under section 3663A of title 18, forfeiture under section 8432(g)(5) of this title, or an obligation of the Executive Director to make a payment to another person under section 8467 of this title” for “or relating to the enforcement of a judgment for the physically, sexually, or emotionally abusing a child as provided under

section 8467(a)” in the first sentence, was executed by making the substitution for “or relating to the enforcement of a judgment for physically, sexually, or emotionally abusing a child as provided under section 8467(a)”, to reflect the probable intent of Congress.

1994—Subsec. (c)(5). Pub. L. 103-226 substituted “section 8433(g)” for “section 8433(i)”.

Subsec. (e)(3). Pub. L. 103-358 substituted “or relating to the enforcement of a judgment for physically, sexually, or emotionally abusing a child as provided under section 8467(a).” for period at end of first sentence.

1988—Subsec. (d). Pub. L. 100-238, §117(a)(1), struck out “attributable to sums contributed to such Fund under section 8432(c) of this title” after “such Fund”.

Subsec. (e)(1). Pub. L. 100-238, §117(a)(2), inserted “subsection (d) and” after “Subject to”.

Subsec. (e)(3). Pub. L. 100-238, §116, inserted at end “For the purposes of this paragraph, an amount contributed for the benefit of an individual under section 8432(c)(1) (including any earnings attributable thereto) shall not be considered part of the balance in such individual's account unless such amount is nonforfeitable, as determined under applicable provisions of section 8432(g).”

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103-358 effective Oct. 14, 1994, and applicable with respect to any decree, order, or other legal process, or notice of agreement received by Office of Personnel Management or Executive Director of Federal Retirement Thrift Investment Board on or after Oct. 14, 1994, see section 3 of Pub. L. 103-358, set out as a note under section 8345 of this title.

Amendment by Pub. L. 103-226 effective Mar. 10, 1995, see section 9(j) of Pub. L. 103-226, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 117(b) of Pub. L. 100-238 provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the first day of the first month beginning on or after the date of the enactment of this Act [Jan. 8, 1988].”

§ 8438. Investment of Thrift Savings Fund

(a) For the purposes of this section—

(1) the term “Common Stock Index Investment Fund” means the Common Stock Index Investment Fund established under subsection (b)(1)(C);

(2) the term “equity capital” means common and preferred stock, surplus, undivided profits, contingency reserves, and other capital reserves;

(3) the term “Fixed Income Investment Fund” means the Fixed Income Investment Fund established under subsection (b)(1)(B);

(4) the term “Government Securities Investment Fund” means the Government Securities Investment Fund established under subsection (b)(1)(A);

(5) the term “International Stock Index Investment Fund” means the International Stock Index Investment Fund established under subsection (b)(1)(E);

(6) the term “net worth” means capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves;

(7) the term “plan” means an employee benefit plan, as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3));

(8) the term “qualified professional asset manager” means—

¹ So in original.

(A) a bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(2)) which—

(i) has the power to manage, acquire, or dispose of assets of a plan; and

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, equity capital in excess of \$1,000,000;

(B) a savings and loan association, the accounts of which are insured by the Federal Deposit Insurance Corporation, which—

(i) has applied for and been granted trust powers to manage, acquire, or dispose of assets of a plan by a State or Government authority having supervision over savings and loan associations; and

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, equity capital or net worth in excess of \$1,000,000;

(C) an insurance company which—

(i) is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a plan;

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, net worth in excess of \$1,000,000; and

(iii) is subject to supervision and examination by a State authority having supervision over insurance companies; or

(D) an investment adviser registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) if the investment adviser has, on the last day of its latest fiscal year ending before the date of a determination for the purpose of this subparagraph, total client assets under its management and control in excess of \$50,000,000, and—

(i) the investment adviser has, on such day, shareholder's or partner's equity in excess of \$750,000; or

(ii) payment of all of the investment adviser's liabilities, including any liabilities which may arise by reason of a breach or violation of a duty described in section 8477 of this title, is unconditionally guaranteed by—

(I) a person (as defined in section 8471(4) of this title) who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the investment adviser and who has, on the last day of the person's latest fiscal year ending before the date of a determination for the purpose of this clause, shareholder's or partner's equity in an amount which, when added to the amount of the shareholder's or partner's equity of the investment adviser on such day, exceeds \$750,000;

(II) a qualified professional asset manager described in subparagraph (A), (B), or (C); or

(III) a broker or dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) that

has, on the last day of the broker's or dealer's latest fiscal year ending before the date of a determination for the purpose of this clause, net worth in excess of \$750,000;

(9) the term "shareholder's or partner's equity", as used in paragraph (8)(D) with respect to an investment adviser or a person (as defined in section 8471(4) of this title) who is affiliated with the investment adviser in a manner described in clause (ii)(I) of such paragraph (8)(D), means the equity shown in the most recent balance sheet prepared for such investment adviser or affiliated person, in accordance with generally accepted accounting principles, within 2 years before the date on which the investment adviser's status as a qualified professional asset manager is determined for the purposes of this section; and

(10) the term "Small Capitalization Stock Index Investment Fund" means the Small Capitalization Stock Index Investment Fund established under subsection (b)(1)(D).

(b)(1) The Board shall establish—

(A) a Government Securities Investment Fund under which sums in the Thrift Savings Fund are invested in securities of the United States Government issued as provided in subsection (e);

(B) a Fixed Income Investment Fund under which sums in the Thrift Savings Fund are invested in—

(i) insurance contracts;

(ii) certificates of deposits; or

(iii) other instruments or obligations selected by qualified professional asset managers,

which return the amount invested and pay interest, at a specified rate or rates, on that amount during a specified period of time;

(C) a Common Stock Index Investment Fund as provided in paragraph (2);

(D) a Small Capitalization Stock Index Investment Fund as provided in paragraph (3);

(E) an International Stock Index Investment Fund as provided in paragraph (4); and

(F) a service that enables participants to invest in mutual funds, if the Board authorizes the mutual fund window under paragraph (5).

(2)(A) The Board shall select an index which is a commonly recognized index comprised of common stock the aggregate market value of which is a reasonably complete representation of the United States equity markets.

(B) The Common Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index selected under subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the Common Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

(3)(A) The Board shall select an index which is a commonly recognized index comprised of common stock the aggregate market value of which represents the United States equity markets ex-

cluding the common stocks included in the Common Stock Index Investment Fund.

(B) The Small Capitalization Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index in subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the Small Capitalization Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

(4)(A) The Board shall select an index which is a commonly recognized index comprised of stock the aggregate market value of which is a reasonably complete representation of the international equity markets excluding the United States equity markets.

(B) The International Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index in subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the International Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

(5)(A) The Board may authorize the addition of a mutual fund window under the Thrift Savings Plan if the Board determines that such addition would be in the best interests of participants.

(B) The Board shall ensure that any expenses charged for use of the mutual fund window are borne solely by the participants who use such window.

(C) The Board may establish such other terms and conditions for the mutual fund window as the Board considers appropriate to protect the interests of participants, including requirements relating to risk disclosure.

(D) The Board shall consult with the Employee Thrift Advisory Council (established under section 8473) before authorizing the addition of a mutual fund window or establishing a service that enables participants to invest in mutual funds.

(c)(1) The Executive Director shall invest the sums available in the Thrift Savings Fund for investment as provided in elections made under subsection (d).

(2) If an election has not been made with respect to any sums in the Thrift Savings Fund available for investment, the Executive Director shall invest such sums in the Government Securities Investment Fund.

(d)(1) At least twice each year, an employee or Member (or former employee or Member) may elect the investment funds and options referred to in subsection (b) into which the sums in the Thrift Savings Fund credited to such individual's account are to be invested or reinvested.

(2) An election may be made under paragraph (1) only in accordance with regulations prescribed by the Executive Director and within such period as the Executive Director shall provide in such regulations.

(e)(1) The Secretary of the Treasury is authorized to issue special interest-bearing obligations

of the United States for purchase by the Thrift Savings Fund for the Government Securities Investment Fund.

(2)(A) Obligations issued for the purpose of this subsection shall have maturities fixed with due regard to the needs of such Fund as determined by the Executive Director, and shall bear interest at a rate equal to the average market yield (computed by the Secretary of the Treasury on the basis of market quotations as of the end of the calendar month next preceding the date of issue of such obligations) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable earlier than 4 years after the end of such calendar month.

(B) Any average market yield computed under subparagraph (A) which is not a multiple of one-eighth of 1 percent, shall be rounded to the nearest multiple of one-eighth of 1 percent.

(f) The Board, other Government agencies, the Executive Director, an employee, a Member, a former employee, and a former Member may not exercise voting rights associated with the ownership of securities by the Thrift Savings Fund.

(g)(1) Notwithstanding subsection (e) of this section, the Secretary of the Treasury may suspend the issuance of additional amounts of obligations of the United States, if such issuances could not be made without causing the public debt of the United States to exceed the public debt limit, as determined by the Secretary of the Treasury.

(2) Any issuances of obligations to the Government Securities Investment Fund which, solely by reason of the public debt limit are not issued, shall be issued under subsection (e) by the Secretary of the Treasury as soon as such issuances can be issued without exceeding the public debt limit.

(3) Upon expiration of the debt issuance suspension period, the Secretary of the Treasury shall immediately issue to the Government Securities Investment Fund obligations under chapter 31 of title 31 that (notwithstanding subsection (e)(2) of this section) bear such interest rates and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of obligations of the United States by the Government Securities Investment Fund will replicate the obligations that would then be held by the Government Securities Investment Fund under the procedure set forth in paragraph (5), if the suspension of issuances under paragraph (1) of this subsection had not occurred.

(4) On the first business day after the expiration of any debt issuance suspension period, the Secretary of the Treasury shall pay to the Government Securities Investment Fund, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount equal to the excess of the net amount of interest that would have been earned by the Government Securities Investment Fund from obligations of the United States during such debt issuance suspension period if—

(A) amounts in the Government Securities Investment Fund that were available for investment in obligations of the United States and were not invested during such debt issuance suspension period solely by reason of the

public debt limit had been invested under the procedure set forth in paragraph (5), over

(B) the net amount of interest actually earned by the Government Securities Investment Fund from obligations of the United States during such debt issuance suspension period.

(5) On each business day during the debt limit suspension period, the Executive Director shall notify the Secretary of the Treasury of the amounts, by maturity, that would have been invested or redeemed each day had the debt issuance suspension period not occurred.

(6) For purposes of this subsection and subsection (h) of this section—

(A) the term “public debt limit” means the limitation imposed by section 3101(b) of title 31; and

(B) the term “debt issuance suspension period” means any period for which the Secretary of the Treasury determines for purposes of this subsection that the issuance of obligations of the United States may not be made without exceeding the public debt limit.

(h)(1) The Secretary of the Treasury shall report to Congress on the operation and status of the Thrift Savings Fund during each debt issuance suspension period for which the Secretary is required to take action under paragraph (3) or (4) of subsection (g) of this section. The report shall be submitted as soon as possible after the expiration of such period, but not later than 30 days after the first business day after the expiration of such period. The Secretary shall concurrently transmit a copy of such report to the Executive Director.

(2) Whenever the Secretary of the Treasury determines that, by reason of the public debt limit, the Secretary will be unable to fully comply with the requirements of subsection (e) of this section, the Secretary shall immediately notify Congress and the Executive Director of the determination. The notification shall be made in writing.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 551; amended Pub. L. 100-43, §2, May 22, 1987, 101 Stat. 315; Pub. L. 100-366, §2(a), July 13, 1988, 102 Stat. 826; Pub. L. 101-335, §3(a), July 17, 1990, 104 Stat. 320; Pub. L. 102-378, §2(68), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title I, §102]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372; Pub. L. 104-316, title I, §103(i), Oct. 19, 1996, 110 Stat. 3829; Pub. L. 111-31, div. B, title I, §104, June 22, 2009, 123 Stat. 1854.)

AMENDMENTS

2009—Subsec. (b)(1)(F). Pub. L. 111-31, §104(a), added subpar. (F).

Subsec. (b)(5). Pub. L. 111-31, §104(b), added par. (5).

Subsec. (d)(1). Pub. L. 111-31, §104(c), inserted “and options” after “investment funds”.

1996—Subsec. (a). Pub. L. 104-208, §101(f) [title VI, §659 [title I, §102(1)]], added par. (5), redesignated former pars. (5) to (8) as (6) to (9), respectively, in par. (9) substituted “paragraph (8)(D)” for “paragraph (7)(D)” in two places, and added par. (10).

Subsec. (b). Pub. L. 104-208, §101(f) [title VI, §659 [title I, §102(2)]], in par. (1) added subpars. (D) and (E) and added pars. (3) and (4).

Subsec. (h)(1). Pub. L. 104-316 struck out “and the Comptroller General of the United States” before period at end.

1992—Subsec. (a)(7)(B). Pub. L. 102-378 substituted “Deposit” for “Savings and Loan”.

1990—Subsec. (b)(1)(A). Pub. L. 101-335, §3(a)(2), substituted “subsection (e)” for “subsection (f)”.

Subsec. (c)(1). Pub. L. 101-335, §3(a)(3), substituted “The” for “Subject to subsection (e), the”.

Subsec. (d)(1). Pub. L. 101-335, §3(a)(4), struck out “and not subject to subsection (e)” after “individual’s account”.

Subsec. (e). Pub. L. 101-335, §3(a)(1), redesignated subsec. (f) as (e) and struck out former subsec. (e) which related to minimum percentages to be invested in Government Securities Investment Fund and limitations on reinvestment of sums invested in Government Securities Investment Fund prior to years 1992 and 1997.

Subsec. (f). Pub. L. 101-335, §3(a)(1), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 101-335, §3(a)(1), (5), (6), redesignated subsec. (h) as (g) and substituted “subsection (e)” for “subsection (f)” in pars. (1) and (2), “subsection (e)(2)” for “subsection (f)(2)” in par. (3), and “subsection (h)” for “subsection (i)” in par. (6). Former subsec. (g) redesignated (f).

Subsecs. (h), (i). Pub. L. 101-335, §3(a)(1), (7), redesignated subsec. (i) as (h) and substituted “subsection (g)” for “subsection (h)” in par. (1) and “subsection (e)” for “subsection (f)” in par. (2). Former subsec. (h) redesignated (g).

1988—Subsec. (e)(3)(A). Pub. L. 100-366 struck out “and the earnings attributable to the investment of such sums” after “paragraph (1)”.

1987—Subsecs. (h), (i). Pub. L. 100-43 added subsecs. (h) and (i).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(f) [title VI, §659 [title I, §104]] provided that: “This title [title I (§§101-104) of section 659 of section 101(f) of Pub. L. 104-208, amending this section and section 8439 of this title and enacting provisions set out as a note under section 8401 of this title] shall take effect on the date of enactment of this Act [Sept. 30, 1996], and the Funds established under this title shall be offered for investment at the earliest practicable election period (described in section 8432(b) of title 5, United States Code) as determined by the Executive Director in regulations.”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or as of such earlier date as Executive Director may by regulation prescribe, see section 3(c) of Pub. L. 101-335, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 2(b) of Pub. L. 100-366 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to earnings attributable to contributions made to the Thrift Savings Fund on or after April 1, 1987.”

REMOVAL OF INVESTMENT RESTRICTIONS

Section 3(b)(4) of Pub. L. 101-335 provided that: “Any other provision of law, in effect on the date of enactment of this Act [July 17, 1990], which provides that any amounts contributed to the Thrift Savings Fund, or earnings thereon, may be invested or reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of title 5, United States Code, shall cease to be effective.”

§ 8439. Accounting and information

(a)(1) The Executive Director shall establish and maintain an account for each individual who makes contributions or for whom contributions are made under section 8432 of this title or who makes contributions to the Thrift Savings Fund.

(2) The balance in an individual's account at any time is the excess of—

(A) the sum of—

- (i) all contributions made to the Thrift Savings Fund by the individual;
- (ii) all contributions made to such Fund for the benefit of the individual; and
- (iii) the total amount of the allocations made to and reductions made in the account pursuant to paragraph (3), over

(B) the amounts paid out of the Thrift Savings Fund with respect to such individual under this subchapter.

(3) Pursuant to regulations prescribed by the Executive Director, the Executive Director shall allocate to each account an amount equal to a pro rata share of the net earnings and net losses from each investment of sums in the Thrift Savings Fund attributable to sums credited to such account, reduced by an appropriate share of the administrative expenses paid out of the net earnings under section 8437(d) of this title, as determined by the Executive Director.

(b)(1) For the purposes of this subsection, the term "qualified public accountant" shall have the same meaning as provided in section 103(a)(3)(D) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023(a)(3)(D)).

(2) The Executive Director shall annually engage, on behalf of all individuals for whom an account is maintained, an independent qualified public accountant, who shall conduct an examination of all accounts and other books and records maintained in the administration of this subchapter and subchapter VII as the public accountant considers necessary to enable the public accountant to make the determination required by paragraph (3). The examination shall be conducted in accordance with generally accepted auditing standards and shall involve such tests of the accounts, books, and records as the public accountant considers necessary.

(3) The public accountant conducting an examination under paragraph (2) shall determine whether the accounts, books, and records referred to in such paragraph have been maintained in conformity with generally accepted accounting principles applied on a basis consistent with the manner in which such principles were applied during the examination conducted under such paragraph during the preceding year. The public accountant shall transmit to the Board a report on his examination, including his determination under this paragraph.

(4) In making a determination under paragraph (3), a public accountant may rely on the correctness of any actuarial matter certified by an enrolled actuary if the public accountant states his reliance in the report transmitted to the Board under such paragraph.

(c)(1) The Board shall prescribe regulations under which each individual for whom an account is maintained shall be furnished with—

(A) a periodic statement relating to the individual's account; and

(B) a summary description of the investment options under section 8438 of this title covering, and an evaluation of, each such option the 5-year period preceding the date as of which such evaluation is made.

(2) Information under this subsection shall be provided on a regular basis, and in a manner designed to facilitate informed decisionmaking with respect to elections under sections 8432 and 8438 of this title. Nothing in this paragraph shall be considered to limit the dissemination of information only to the times required under the preceding sentence.

(d) Each employee, Member, former employee, or former Member who elects to invest in any investment fund or option under this chapter, other than the Government Securities Investment Fund, shall sign an acknowledgement prescribed by the Executive Director which states that the employee, Member, former employee, or former Member understands that an investment in any such fund or option is made at the employee's, Member's, former employee's, or former Member's risk, that the employee, Member, former employee, or former Member is not protected by the Government against any loss on such investment, and that a return on such investment is not guaranteed by the Government.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 555; amended Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title I, §103]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-373; Pub. L. 104-316, title I, §103(j), Oct. 19, 1996, 110 Stat. 3829; Pub. L. 106-65, div. A, title VI, §661(a)(5), Oct. 5, 1999, 113 Stat. 672; Pub. L. 106-361, §2(b)(4), (5), Oct. 27, 2000, 114 Stat. 1401; Pub. L. 108-469, §1(d)(3), Dec. 21, 2004, 118 Stat. 3892; Pub. L. 111-31, div. B, title I, §106(a), June 22, 2009, 123 Stat. 1855.)

AMENDMENTS

2009—Subsec. (d). Pub. L. 111-31, §106(a)(2), substituted "any such fund or option" for "either such Fund".

Pub. L. 111-31, §106(a)(1), which directed substitution of "any investment fund or option under this chapter, other than the Government Securities Investment Fund," for "the matter after 'who elects to invest in' and before 'shall sign an acknowledgement'", was executed by making the substitution for "the Common Stock Index Investment Fund, the Fixed Income Investment Fund, the International Stock Index Investment Fund, or the Small Capitalization Stock Index Investment Fund, defined in paragraphs (1), (3), (5), and (10), respectively, of section 8438(a) of this title", before "shall sign an acknowledgement", to reflect the probable intent of Congress.

2004—Subsec. (c)(2). Pub. L. 108-469 substituted "on a regular basis" for "at least 30 calendar days before the beginning of each election period under section 8432(b)(1)(A) of this title".

2000—Subsec. (a)(1). Pub. L. 106-361, §2(b)(4), inserted "who makes contributions or" after "for each individual" and substituted "section 8432" for "section 8432(c)(1)".

Subsec. (c)(2). Pub. L. 106-361, §2(b)(5), inserted at end "Nothing in this paragraph shall be considered to limit the dissemination of information only to the times required under the preceding sentence."

1999—Subsec. (a)(1). Pub. L. 106-65, §661(a)(5)(A), in so far as it directed amendment of par. (1) by striking out "under section 8432(c)(1) of this title", could not be executed because the words "under section 8432(c)(1) of this title" did not appear subsequent to amendment by Pub. L. 106-361, §2(b)(4). See 2000 Amendment note above.

Pub. L. 106-65, §661(a)(5)(A), struck out "under section 8351 of this title" after "Thrift Savings Fund".

Subsec. (a)(2)(A)(i). Pub. L. 106-65, §661(a)(5)(B), struck out "under section 8432(a) or 8351 of this title" after "individual".

Subsec. (a)(2)(A)(ii). Pub. L. 106-65, §661(a)(5)(C), struck out “under section 8432(c) of this title” after “individual”.

1996—Subsec. (b)(3). Pub. L. 104-316 struck out “and the Comptroller General of the United States” after “to the Board”.

Subsec. (d). Pub. L. 104-208 substituted “Each employee, Member, former employee, or former Member who elects to invest in the Common Stock Index Investment Fund, the Fixed Income Investment Fund, the International Stock Index Investment Fund, or the Small Capitalization Stock Index Investment Fund, defined in paragraphs (1), (3), (5), and (10),” for “Each employee, Member, former employee, or former Member who elects to invest in the Common Stock Index Investment Fund or the Fixed Income Investment Fund described in paragraphs (1) and (3).”.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-361 effective at the earliest practicable date after Sept. 30, 2000, as determined by the Executive Director in regulations, see section 2(c)(1) of Pub. L. 106-361, set out as a note under section 8432 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-65 effective 180 days after Oct. 30, 2000, unless postponed, see section 663 of Pub. L. 106-65, as amended, set out as an Effective Date note under section 8440e of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective Sept. 30, 1996, with provisions for certain funds to be offered for investment at earliest practicable election period, see section 101(f) [title VI, §659 [title I, §104]] of Pub. L. 104-208, set out as a note under section 8438 of this title.

REPORTING REQUIREMENTS

Pub. L. 111-31, div. B, title I, §105, June 22, 2009, 123 Stat. 1855, provided that:

“(a) ANNUAL REPORT.—The Board shall, not later than June 30 of each year, submit to Congress an annual report on the operations of the Thrift Savings Plan. Such report shall include, for the prior calendar year, information on the number of participants as of the last day of such prior calendar year, the median balance in participants’ accounts as of such last day, demographic information on participants, the percentage allocation of amounts among investment funds or options, the status of the development and implementation of the mutual fund window, the diversity demographics of any company, investment adviser, or other entity retained to invest and manage the assets of the Thrift Savings Fund, and such other information as the Board considers appropriate. A copy of each annual report under this subsection shall be made available to the public through an Internet website.

“(b) REPORTING OF FEES AND OTHER INFORMATION.—

“(1) IN GENERAL.—The Board shall include in the periodic statements provided to participants under section 8439(c) of title 5, United States Code, the amount of the investment management fees, administrative expenses, and any other fees or expenses paid with respect to each investment fund and option under the Thrift Savings Plan. Any such statement shall also provide a statement notifying participants as to how they may access the annual report described in subsection (a), as well as any other information concerning the Thrift Savings Plan that might be useful.

“(2) USE OF ESTIMATES.—For purposes of providing the information required under this subsection, the Board may provide a reasonable and representative estimate of any fees or expenses described in paragraph (1) and shall indicate any such estimate as being such an estimate. Any such estimate shall be based on the previous year’s experience.

“(c) DEFINITIONS.—For purposes of this section—

“(1) the term ‘Board’ has the meaning given such term by 8401(5) of title 5, United States Code;

“(2) the term ‘participant’ has the meaning given such term by section 8471(3) of title 5, United States Code; and

“(3) the term ‘account’ means an account established under section 8439 of title 5, United States Code.”

§ 8440. Tax treatment of the Thrift Savings Fund

(a) For purposes of the Internal Revenue Code of 1986—

(1) the Thrift Savings Fund shall be treated as a trust described in section 401(a) of such Code which is exempt from taxation under section 501(a) of such Code;

(2) any contribution to, or distribution from, the Thrift Savings Fund shall be treated in the same manner as contributions to or distributions from such a trust; and

(3) subject to section 401(k)(4)(B) of such Code and any dollar limitation on the application of section 402(a)(8) of such Code, contributions to the Thrift Savings Fund shall not be treated as distributed or made available to an employee or Member nor as a contribution made to the Fund by an employee or Member merely because the employee or Member has, under the provisions of this subchapter and section 8351 of this title, an election whether the contribution will be made to the Thrift Savings Fund or received by the employee or Member in cash.

(b) NONDISCRIMINATION REQUIREMENTS.—Notwithstanding any other provision of law, the Thrift Savings Fund is not subject to the non-discrimination requirements applicable to arrangements described in section 401(k) of title 26, United States Code, or to matching contributions (as described in section 401(m) of title 26, United States Code), so long as it meets the requirements of this section.

(c) Subsection (a) shall not be construed to provide that any amount of the employee’s or Member’s basic pay which is contributed to the Thrift Savings Fund shall not be included in the term “wages” for the purposes of section 209 of the Social Security Act or section 3121(a) of the Internal Revenue Code of 1986.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 557; amended Pub. L. 100-202, §101(m) [title VI, §624(b)], Dec. 22, 1987, 101 Stat. 1329-390, 1329-430; Pub. L. 100-647, title I, §1011A(m)(2), Nov. 10, 1988, 102 Stat. 3483; Pub. L. 102-378, §2(69), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 103-353, §5(e)(5), Oct. 13, 1994, 108 Stat. 3174.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subssecs. (a) and (c), is classified generally to Title 26, Internal Revenue Code.

Section 209 of the Social Security Act, referred to in subsec. (c), is classified to section 409 of Title 42, The Public Health and Welfare.

AMENDMENTS

1994—Subsecs. (a), (c). Pub. L. 103-353 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1992—Subsec. (a)(3). Pub. L. 102-378 inserted “section 401(k)(4)(B) of such Code and” after “subject to”.

1988—Subsec. (a)(3). Pub. L. 100-647, which directed the insertion of “, 401(k)(4)(B) of such Code,” after

“subsection (b)”, could not be executed because of previous amendment by Pub. L. 100-202, §101(m) [title VI, §624(b)(1)] which struck out “subsection (b)”. See 1987 Amendment note below.

1987—Subsec. (a)(3). Pub. L. 100-202, §101(m) [title VI, §624(b)(1)], struck out “the provisions of subsection (b) and” after “subject to”.

Subsec. (b). Pub. L. 100-202, §101(m) [title VI, §624(b)(2)], added subsec. (b) and struck out former subsec. (b) which consisted of pars. (1) and (2) providing that subsec. (a)(3) not apply to the Thrift Savings Fund unless the Fund meets the antidiscrimination requirements applicable to arrangements described in section 401(k) of title 26 and to matching contributions.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103-353, set out as an Effective Date note under section 4301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-378 effective Nov. 10, 1988, see section 9(b)(8) of Pub. L. 102-378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of Title 26, Internal Revenue Code.

§ 8440a. Justices and judges

(a)(1) A justice or judge of the United States as defined by section 451 of title 28 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund. Basic pay does not include an annuity or salary received by a justice or judge who has retired under section 371(a) or (b) or section 372(a) of title 28, United States Code.

(2) An election may be made under paragraph (1) as provided under section 8432(b) for individuals subject to this chapter.

(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to justices and judges making contributions to the Thrift Savings Fund.

(2) The amount contributed by a justice or judge for any pay period shall not exceed the maximum percentage of such justice's or judge's basic pay for such pay period allowable under section 8440f.

(3) No contributions shall be made for the benefit of a justice or judge under section 8432(c) of this title.

(4) Section 8433(b) of this title applies with respect to elections available to any justice or judge who retires under section 371(a) or (b) or section 372(a) of title 28. Retirement under section 371(a) or (b) or section 372(a) of title 28 is a separation from service for the purposes of subchapters III and VII of chapter 84 of this title.

(5) Section 8433(b) of this title applies to any justice or judge who resigns without having met the age and service requirements set forth in section 371(c) of title 28.

(6) The provisions of section 8351(b)(5) of this title shall govern the rights of spouses of justices or judges contributing to the Thrift Savings Fund under this section.

(7) Notwithstanding paragraphs (4) and (5), if any justice or judge retires under subsection (a) or (b) of section 371 or section 372(a) of title 28, or resigns without having met the age and service requirements set forth under section 371(c) of title 28, and such justice's or judge's nonforfeitable account balance is less than an amount that the Executive Director prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.

(Added Pub. L. 100-654, title IV, §401(a), Nov. 14, 1988, 102 Stat. 3847; amended Pub. L. 101-335, §§3(b)(2), 6(b)(2), July 17, 1990, 104 Stat. 320, 323; Pub. L. 102-378, §2(70), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 103-226, §9(e), (i)(17), Mar. 30, 1994, 108 Stat. 120, 122; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title II, §205(a)]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-377; Pub. L. 106-361, §2(b)(6), Oct. 27, 2000, 114 Stat. 1401; Pub. L. 106-554, §1(a)(4) [div. B, title I, §138(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-233; Pub. L. 108-469, §1(d)(4), Dec. 21, 2004, 118 Stat. 3892.)

CODIFICATION

Another section 8440a was renumbered section 8440b of this title.

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108-469 substituted “as” for “only during a period”.

2000—Subsec. (a)(2). Pub. L. 106-361 substituted “this chapter” for “chapter 84 of this title: *Provided, however*, That a justice or judge may make the first such election within 60 days of the effective date of this section”.

Subsec. (b)(2). Pub. L. 106-554 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The amount contributed by a justice or judge shall not exceed 5 percent of basic pay.”

1996—Subsec. (b)(7). Pub. L. 104-208 substituted “less than an amount that the Executive Director prescribes by regulation” for “\$3,500 or less” and struck out “unless the justice or judge elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under section 8433(b)” before period at end.

1994—Subsec. (b)(5). Pub. L. 103-226, §9(e)(1), substituted “Section 8433(b)” for “Section 8433(d)”.

Subsec. (b)(6). Pub. L. 103-226, §9(i)(17), substituted “section 8351(b)(5)” for “section 8351(b)(7)”.

Subsec. (b)(7), (8). Pub. L. 103-226, §9(e)(2), added par. (7) and struck out former pars. (7) and (8) which read as follows:

“(7) Notwithstanding paragraph (5), if any justice or judge who elects to make contributions to the Thrift Savings Fund under subsection (a) resigns without having met the age and service requirements set forth in section 371(c) of title 28, and such justice's or judge's nonforfeitable account balance is \$3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the justice or judge elects, at such time and otherwise in such manner as the Executive Director prescribes, to have the nonforfeitable account balance transferred to an eligible retirement plan as provided in section 8433(e).

“(8) Notwithstanding paragraph (4), if any justice or judge retires under subsection (a) or (b) of section 371 or section 372(a) of title 28, and such justice's or judge's nonforfeitable account balance is \$3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the justice or judge elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under section 8433(b).”

1992—Subsec. (b)(1). Pub. L. 102-378 substituted “this subchapter and subchapter VII” for “subchapters III and VII of chapter 84 of this title”.

1990—Subsec. (b)(6). Pub. L. 101-335, §3(b)(2), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: “Sums contributed under this section and earnings attributable to such sums may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.”

Subsec. (b)(7), (8). Pub. L. 101-335, §6(b)(2), added pars. (7) and (8). Former par. (7) redesignated (6).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-361 effective at the earliest practicable date after Sept. 30, 2000, as determined by the Executive Director in regulations, see section 2(c)(1) of Pub. L. 106-361, set out as a note under section 8432 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective Sept. 30, 1996, and withdrawals and elections as provided under such amendment to be made at earliest practicable date as determined by Executive Director in regulations, see section 101(f) [title VI, §659 [title II, §207]] of Pub. L. 104-208, set out as a note under section 5545a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-226 effective Mar. 10, 1995, see section 9(j) of Pub. L. 103-226, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 3(b)(2) of Pub. L. 101-335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or as of such earlier date as Executive Director may by regulation prescribe, see section 3(c) of Pub. L. 101-335, set out as a note under section 8351 of this title.

Amendment by section 6(b)(2) of Pub. L. 101-335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or such earlier date as Executive Director may by regulation prescribe, and applicable with respect to separations occurring before, on, or after that effective date, see section 6(c) of Pub. L. 101-335, set out as a note under section 8351 of this title.

§ 8440b. Bankruptcy judges and magistrate judges

(a)(1) A bankruptcy judge or magistrate judge who is covered by section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund.

(2) An election may be made under paragraph (1) as provided under section 8432(b) for individuals subject to this chapter.

(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to bankruptcy judges and magistrate judges who make contributions to the Thrift Savings Fund under subsection (a) of this section.

(2) The amount contributed by a bankruptcy judge or magistrate judge for any pay period shall not exceed the maximum percentage of such bankruptcy judge's or magistrate judge's basic pay for such pay period allowable under section 8440f.

(3) No contributions shall be made under section 8432(c) of this title for the benefit of a bank-

ruptcy judge or magistrate judge making contributions under subsection (a) of this section.

(4)(A) Section 8433(b) of this title applies to a bankruptcy judge or magistrate judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires entitled to an immediate annuity under section 377 of title 28 (including a disability annuity under subsection (d) of such section) or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988.

(B) Section 8433(b) of this title applies to any bankruptcy judge or magistrate judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988.

(C) Section 8433(b) of this title applies to any bankruptcy judge or magistrate judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before becoming entitled to an immediate annuity, or an annuity upon attaining age 65, under section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988.

(5) With respect to bankruptcy judges and magistrate judges to whom this section applies, any of the actions described under paragraph (4)(A), (B), or (C) shall be considered a separation from service for purposes of this subchapter and subchapter VII.

(6) For purposes of this section, the terms “retirement” and “retire” include removal from office under section 377(d) of title 28 on the sole ground of mental or physical disability.

(7) In the case of a bankruptcy judge or magistrate judge who receives a distribution from the Thrift Savings Plan and who later receives an annuity under section 377 of title 28, that annuity shall be offset by an amount equal to the amount of the distribution which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.

(8) Notwithstanding paragraph (4), if any bankruptcy judge or magistrate judge retires under circumstances making such bankruptcy judge or magistrate judge eligible to make an election under subsection (b) of section 8433, and such bankruptcy judge's or magistrate judge's nonforfeitable account balance is less than an amount that the Executive Director prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.

(Added Pub. L. 100-659, §7(a), Nov. 15, 1988, 102 Stat. 3919, §8440a; renumbered §8440b and amended Pub. L. 101-335, §§3(b)(3), 6(b)(3), 9(a), July 17, 1990, 104 Stat. 320, 324, 326; Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 103-226, §9(f), Mar. 30, 1994, 108 Stat. 120; Pub. L.

104-208, div. A, title I, §101(f) [title VI, §659 [title II, §205(b)]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-377; Pub. L. 106-554, §1(a)(4) [div. B, title I, §138(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-233; Pub. L. 108-469, §§1(d)(5), 3(2), Dec. 21, 2004, 118 Stat. 3892, 3893.)

REFERENCES IN TEXT

Section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, referred to in subsecs. (a)(1) and (b)(4), is section 2(c) of Pub. L. 100-659, which is set out as a note under section 377 of Title 28, Judiciary and Judicial Procedure.

CODIFICATION

Another section 8440b was renumbered section 8440c of this title.

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108-469, §1(d)(5), substituted “as” for “only during a period”.

Subsec. (b)(2). Pub. L. 108-469, §3(2)(A), substituted “bankruptcy judge’s or magistrate judge’s” for “bankruptcy judge’s or magistrate’s”.

Subsec. (b)(4)(B). Pub. L. 108-469, §3(2)(B), substituted “bankruptcy judge or magistrate judge” for “bankruptcy judge or magistrate”.

Subsec. (b)(8). Pub. L. 108-469, §3(2)(B), substituted “bankruptcy judge or magistrate judge” for “bankruptcy judge or magistrate” in two places.

2000—Subsec. (b)(2). Pub. L. 106-554 substituted “the maximum percentage of such bankruptcy judge’s or magistrate’s basic pay for such pay period allowable under section 8440f.” for “5 percent of basic pay for such pay period.”

1996—Subsec. (b)(7). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §205(b)(1)]], inserted “of the distribution” after “equal to the amount” in first sentence.

Subsec. (b)(8). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §205(b)(2)(A)]], substituted “less than an amount that the Executive Director prescribes by regulation” for “\$3,500 or less”.

Pub. L. 104-208, §101(f) [title VI, §659 [title II, §205(b)(2)(B)]], which directed that par. (8) be amended by striking out “unless the bankruptcy judge or magistrate elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under subsection (b)”, was executed by striking out “unless the bankruptcy judge or magistrate elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under such subsection (b)” before period at end, to reflect the probable intent of Congress.

1994—Subsec. (b)(4)(B). Pub. L. 103-226, §9(f)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “Section 8433(c) of this title applies to any bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988; except that the period described in paragraph (3) of section 8433(c) commences on or after the date on which payment of the bankruptcy judge’s or magistrate’s annuity under section 377 of title 28 commences.”

Subsec. (b)(4)(C). Pub. L. 103-226, §9(f)(2), substituted “Section 8433(b)” for “Section 8433(d)”.

Subsec. (b)(5). Pub. L. 103-226, §9(f)(3), substituted “any of the actions described under paragraph (4)(A), (B), or (C) shall be considered” for “retirement under section 377 of title 28 is”.

Subsec. (b)(8). Pub. L. 103-226, §9(f)(5)(B), which directed striking out “and (c), as applicable”, was executed by striking out “or (c), as applicable” before period at end to reflect the probable intent of Congress.

Pub. L. 103-226, §9(f)(5)(A), substituted “Notwithstanding paragraph (4), if any bankruptcy judge or magistrate retires under circumstances making such bankruptcy judge or magistrate eligible to make an election under subsection (b)” for “Notwithstanding subparagraphs (A) and (B) of paragraph (4), if any bankruptcy judge or magistrate retires under circumstances making such bankruptcy judge or magistrate eligible to make an election under subsection (b) or (c)”.

Pub. L. 103-226, §9(f)(4), redesignated par. (9) as (8) and struck out former par. (8) which read as follows: “Notwithstanding paragraph (4)(C), if any bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) retires before becoming entitled to an immediate annuity, or an annuity upon attaining age 65, under section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, and such bankruptcy judge’s or magistrate’s nonforfeitable account balance is \$3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the bankruptcy judge or magistrate elects, at such time and otherwise in such manner as the Executive Director prescribes, to have the nonforfeitable account balance transferred to an eligible retirement plan as provided in section 8433(e).”

Subsec. (b)(9). Pub. L. 103-226, §9(f)(4), redesignated par. (9) as (8).

1990—Pub. L. 101-335, §9(a), renumbered section 8440a of this title as this section.

Subsec. (b)(7). Pub. L. 101-335, §3(b)(3), redesignated par. (8) as (7) and struck out former par. (7) which read as follows: “Sums contributed pursuant to this section by bankruptcy judges or magistrates, as well as all previous contributions to the Thrift Savings Fund by those bankruptcy judges and magistrates, and earnings attributable to such sums and contributions, may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.”

Subsec. (b)(8), (9). Pub. L. 101-335, §6(b)(3), added pars. (8) and (9). Former par. (8) redesignated (7).

CHANGE OF NAME

Words “magistrate judge”, “magistrate judges”, and “magistrate judge’s” substituted for “magistrate”, “magistrates”, and “magistrate’s”, respectively, in section catchline and in subsecs. (a)(1) and (b)(1)–(3), (4)(A), (C), (5), (7), and (8), pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective Sept. 30, 1996, and withdrawals and elections as provided under such amendment to be made at earliest practicable date as determined by Executive Director in regulations, see section 101(f) [title VI, §659 [title II, §207]] of Pub. L. 104-208, set out as a note under section 5545a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-226 effective Mar. 10, 1995, see section 9(j) of Pub. L. 103-226, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 3(b)(3) of Pub. L. 101-335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or as of such earlier date as Executive Director may by regulation prescribe, see section 3(c) of Pub. L. 101-335, set out as a note under section 8351 of this title.

Amendment by section 6(b)(3) of Pub. L. 101-335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or such earlier date as Executive Director may by regulation prescribe, and applicable with respect to separations

occurring before, on, or after that effective date, see section 6(c) of Pub. L. 101-335, set out as a note under section 8351 of this title.

EFFECTIVE DATE

Section effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrate judges who retire on or after Nov. 15, 1988, with exception for judges and magistrate judges retiring on or after July 31, 1987, see section 9 of Pub. L. 100-659, as amended, set out as a note under section 377 of Title 28, Judiciary and Judicial Procedure.

§ 8440c. Court of Federal Claims judges

(a)(1) A judge of the United States Court of Federal Claims who is covered by section 178 of title 28 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund.

(2) An election may be made under paragraph (1) as provided under section 8432(b) for individuals subject to this chapter.

(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to Court of Federal Claims judges who make contributions to the Thrift Savings Fund under subsection (a) of this section.

(2) The amount contributed by a Court of Federal Claims judge for any pay period shall not exceed the maximum percentage of such judge's basic pay for such pay period allowable under section 8440f.

(3) No contributions shall be made under section 8432(c) of this title for the benefit of a Court of Federal Claims judge making contributions under subsection (a) of this section.

(4)(A) Section 8433(b) of this title applies to a Court of Federal Claims judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires entitled to an annuity under section 178 of title 28 (including a disability annuity under subsection (c) of such section).

(B) Section 8433(b) of this title applies to any Court of Federal Claims judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before becoming entitled to an annuity under section 178 of title 28.

(5) With respect to Court of Federal Claims judges to whom this section applies, any of the actions described in paragraph (4)(A) or (B) shall be considered a separation from service for purposes of this subchapter and subchapter VII.

(6) For purposes of this section, the terms "retirement" and "retire" include removal from office under section 178(c) of title 28 on the sole ground of mental or physical disability.

(7) In the case of a Court of Federal Claims judge who receives a distribution from the Thrift Savings Plan and who later receives an annuity under section 178 of title 28, such annuity shall be offset by an amount equal to the amount of the distribution which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.

(8) Notwithstanding paragraph (4), if any Court of Federal Claims judge retires under circumstances making such judge eligible to make an election under section 8433(b), and such judge's nonforfeitable account balance is less than an amount that the Executive Director prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.

(Added Pub. L. 101-650, title III, § 306(d)(1), Dec. 1, 1990, 104 Stat. 5110, § 8440b; renumbered § 8440c and amended Pub. L. 102-198, § 7(c)(1), Dec. 9, 1991, 105 Stat. 1624; Pub. L. 102-572, title IX, § 902(b), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103-226, § 9(g), Mar. 30, 1994, 108 Stat. 121; Pub. L. 104-208, div. A, title I, § 101(f) [title VI, § 659 [title II, § 205(c)]]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-378; Pub. L. 106-554, § 1(a)(4) [div. B, title I, § 138(a)(4)], Dec. 21, 2000, 114 Stat. 2763, 2763A-233; Pub. L. 108-469, § 1(d)(6), Dec. 21, 2004, 118 Stat. 3892.)

CODIFICATION

Another section 8440c was renumbered section 8440d of this title.

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108-469 substituted "as" for "only during a period".

2000—Subsec. (b)(2). Pub. L. 106-554 substituted "the maximum percentage of such judge's basic pay for such pay period allowable under section 8440f." for "5 percent of basic pay for such pay period."

1996—Subsec. (b)(7). Pub. L. 104-208, § 101(f) [title VI, § 659 [title II, § 205(c)(1)]]], inserted "of the distribution" after "equal to the amount".

Subsec. (b)(8). Pub. L. 104-208, § 101(f) [title VI, § 659 [title II, § 205(c)(2)]]], substituted "less than an amount that the Executive Director prescribes by regulation" for "\$3,500 or less" and struck out "unless the judge elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under section 8433(b)" before period at end.

1994—Subsec. (b)(4)(B). Pub. L. 103-226, § 9(g)(1), substituted "Section 8433(b)" for "Section 8433(d)".

Subsec. (b)(5). Pub. L. 103-226, § 9(g)(2), substituted "any of the actions described in paragraph (4)(A) or (B) shall be considered" for "retirement under section 178 of title 28 is".

Subsec. (b)(8), (9). Pub. L. 103-226, § 9(g)(3), (4), redesignated par. (9) as (8), substituted "Notwithstanding paragraph (4)" for "Notwithstanding paragraph (4)(A)", and struck out former par. (8) which read as follows: "Notwithstanding paragraph (4)(B), if any Court of Federal Claims judge who elects to make contributions to the Thrift Savings Fund under subsection (a) retires before becoming entitled to an annuity under section 178 of title 28, and such judge's nonforfeitable account balance is \$3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the judge elects, at such time and otherwise in such manner as the Executive Director prescribes, to have the nonforfeitable account balance transferred to an eligible retirement plan as provided in section 8433(e)."

1992—Pub. L. 102-572, § 902(b)(2), substituted "Court of Federal Claims" for "Claims Court" in section catchline.

Subsec. (a)(1). Pub. L. 102-572, § 902(b)(1), substituted "United States Court of Federal Claims" for "United States Claims Court".

Subsec. (b)(1) to (5), (7) to (9). Pub. L. 102-572, § 902(b)(2), substituted "Court of Federal Claims" for "Claims Court" wherever appearing.

1991—Pub. L. 102-198, § 7(c)(1)(A), renumbered section 8440b of this title as this section.

Subsec. (b)(4)(A). Pub. L. 102-198, §7(c)(1)(B)(i), substituted “subsection (c)” for “subsection (d)”.

Subsec. (b)(7). Pub. L. 102-198, §7(c)(1)(B)(ii), redesignated par. (8) as (7) and struck out former par. (7) which read as follows: “Sums contributed pursuant to this section by Claims Court judges, as well as all previous contributions to the Thrift Savings Fund by those judges, and earnings attributable to such sums and contributions, may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.”

Subsec. (b)(8). Pub. L. 102-198, §7(c)(1)(B)(ii), (iii) added par. (8) and redesignated former par. (8) as (7).

Subsec. (b)(9). Pub. L. 102-198, §7(c)(1)(B)(iii), added par. (9).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective Sept. 30, 1996, and withdrawals and elections as provided under such amendment to be made at earliest practicable date as determined by Executive Director in regulations, see section 101(f) [title VI, §659 [title II, §207]] of Pub. L. 104-208, set out as a note under section 5545a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-226 effective Mar. 10, 1995, see section 9(j) of Pub. L. 103-226, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 7(c)(3) of Pub. L. 102-198, as amended by Pub. L. 102-572, title IX, §902(b)(2), Oct. 29, 1992, 106 Stat. 4516, provided that: “Paragraphs (8) and (9) of section 8440c(b) of title 5, United States Code (as added by paragraph (1)) shall be effective as of January 1, 1991, and shall apply to any Court of Federal Claims judge retiring on or after such date.”

EFFECTIVE DATE

Section applicable to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after Dec. 1, 1990, see section 306(f) of Pub. L. 101-650, set out as an Effective Date of 1990 Amendment note under section 8331 of this title.

§ 8440d. Judges of the United States Court of Appeals for Veterans Claims

(a)(1) A judge of the United States Court of Appeals for Veterans Claims may elect to contribute to the Thrift Savings Fund.

(2) An election may be made under paragraph (1) as provided under section 8432(b) of this title for individuals subject to this chapter.

(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII of this chapter shall apply with respect to a judge making contributions to the Thrift Savings Fund.

(2) The amount contributed by a judge of the United States Court of Appeals for Veterans Claims for any pay period may not exceed the maximum percentage of such judge’s basic pay for such pay period allowable under section 8440f. Basic pay does not include any retired pay paid pursuant to section 7296 of title 38.

(3) No contributions may be made for the benefit of a judge under section 8432(c) of this title.

(4) Section 8433(b) of this title applies with respect to a judge who elects to make contribu-

tions to the Thrift Savings Fund and retires under section 7296(b) of title 38.

(5) Section 8433(b) of this title applies in the case of a judge who elects to make contributions to the Thrift Savings Fund and thereafter ceases to serve as a judge of the United States Court of Appeals for Veterans Claims but does not retire under section 7296(b) of title 38.

(6) The provisions of section 8351(b)(7)¹ of this title shall apply with respect to a judge who has elected to contribute to the Thrift Savings Fund under this section.

(Added Pub. L. 102-82, §5(a)(1), Aug. 6, 1991, 105 Stat. 376, §8440c; renumbered §8440d, Pub. L. 102-198, §7(c)(4)(A), Dec. 9, 1991, 105 Stat. 1625, as amended by Pub. L. 102-378, §5(d)(1), Oct. 2, 1992, 106 Stat. 1358; amended Pub. L. 103-226, §9(h), Mar. 30, 1994, 108 Stat. 121; Pub. L. 105-368, title V, §512(b)(1)(A), (2)(A), Nov. 11, 1998, 112 Stat. 3342; Pub. L. 106-361, §2(b)(6), Oct. 27, 2000, 114 Stat. 1401; Pub. L. 106-554, §1(a)(4) [div. B, title I, §138(a)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A-233; Pub. L. 108-469, §1(d)(7), Dec. 21, 2004, 118 Stat. 3892.)

REFERENCES IN TEXT

Section 8351(b)(7) of this title, referred to in subsec. (b)(6), was redesignated section 8351(b)(5) of this title by Pub. L. 103-226, §9(a)(3), Mar. 30, 1994, 108 Stat. 119.

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108-469 substituted “as” for “only during a period”.

2000—Subsec. (a)(2). Pub. L. 106-361 substituted “this chapter” for “chapter 84 of this title”.

Subsec. (b)(2). Pub. L. 106-554 amended first sentence generally. Prior to amendment, first sentence read as follows: “The amount contributed by a judge may not exceed 5 percent of the amount of the judge’s basic pay.”

1998—Pub. L. 105-368, §512(b)(2)(A), substituted “Judges of the United States Court of Appeals for Veterans Claims” for “Judges of the United States Court of Veterans Appeals” in section catchline.

Subsecs. (a)(1), (b)(5). Pub. L. 105-368, §512(b)(1)(A), substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1994—Subsec. (b)(5). Pub. L. 103-226 substituted “Section 8433(b) of this title applies” for “A transfer shall be made as provided in section 8433(d) of this title”.

1992—Pub. L. 102-378 amended Pub. L. 102-198. See 1991 Amendment note below.

1991—Pub. L. 102-198, as amended by Pub. L. 102-378, renumbered section 8440c of this title as this section.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-361 effective at the earliest practicable date after Sept. 30, 2000, as determined by the Executive Director in regulations, see section 2(c)(1) of Pub. L. 106-361, set out as a note under section 8432 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of Title 38, Veterans’ Benefits.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-226 effective Mar. 10, 1995, see section 9(j) of Pub. L. 103-226, set out as a note under section 8351 of this title.

¹ See References in Text note below.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-378 effective Dec. 9, 1991, see section 9(b)(2) of Pub. L. 102-378, set out as a note under section 6303 of this title.

FIRST ELECTION

Section 5(b) of Pub. L. 102-82, as amended by Pub. L. 102-198, §7(c)(4)(C), Dec. 9, 1991, 105 Stat. 1625, provided that: "A judge of the United States Court of Veterans Appeals on the date of the enactment of this Act [Aug. 6, 1991] may make an election under section 8440d(a) of title 5, United States Code, within 60 days after the date of the enactment of this Act."

§ 8440e. Members of the uniformed services

(a) For purposes of this section—

(1) the term "member" has the meaning given such term by section 211 of title 37; and

(2) the term "basic pay" means basic pay payable under section 204 of title 37.

(b)(1) Any member eligible to participate in the Thrift Savings Plan by virtue of section 211(b) of title 37 may contribute to the Thrift Savings Fund.

(2)(A) Except as provided in subparagraph (B), an election to contribute to the Thrift Savings Fund under this section may be made as provided under section 8432(b).

(B)(i) Notwithstanding subparagraph (A), any individual who is a member as of the effective date that applies with respect to such individual under section 663 of the National Defense Authorization Act for Fiscal Year 2000 may make the first such election during the 60-day period beginning on such effective date.

(ii) An election made under this subparagraph shall take effect on the first day of the first applicable pay period beginning after the close of the 60-day period referred to in clause (i).

(c) Except as otherwise provided in this section, the provisions of this subchapter and subchapter VII shall apply with respect to members making contributions to the Thrift Savings Fund, and such members shall, for purposes of this subchapter and subchapter VII, be considered employees within the meaning of section 8401(11).

(d)(1)(A) The amount contributed by a member described in section 211(a)(1) of title 37 for any pay period out of basic pay may not exceed the maximum percentage of such member's basic pay for such pay period allowable under section 8440f.

(B) The amount contributed by a member described in section 211(a)(2) of title 37 for any pay period out of any compensation received under section 206 of title 37 may not exceed the maximum percentage of such member's compensation for such pay period (received under such section 206) allowable under section 8440f.

(2) A member making contributions to the Thrift Savings Fund out of basic pay, or out of compensation under section 206 of title 37, may also contribute (by direct transfer to the Fund) any part of any special or incentive pay that such member receives under chapter 5 of title 37.

(3) Nothing in this section or section 211 of title 37 shall be considered to waive any dollar limitation under the Internal Revenue Code of 1986 which otherwise applies with respect to the Thrift Savings Fund.

(e) Except as provided in section 211(d) of title 37, no contribution under section 8432(c) of this title may be made for the benefit of a member making contributions to the Thrift Savings Fund under this section.

(Added Pub. L. 106-65, div. A, title VI, §661(a)(2)(A), Oct. 5, 1999, 113 Stat. 670; amended Pub. L. 106-398, §1 [[div. A], title VI, §661(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A-167; Pub. L. 106-554, §1(a)(4) [div. B, title I, §138(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A-233; Pub. L. 108-469, §1(d)(8), Dec. 21, 2004, 118 Stat. 3892.)

REFERENCES IN TEXT

Section 663 of the National Defense Authorization Act for Fiscal Year 2000, referred to in subsec. (b)(2)(B)(i), is section 663 of Pub. L. 106-65, as amended, which is set out as an Effective Date note below.

The Internal Revenue Code of 1986, referred to in subsec. (d)(3), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2004—Subsec. (b)(2)(A). Pub. L. 108-469 substituted "as provided under section 8432(b)" for "only during a period provided under section 8432(b), subject to the same conditions as prescribed under paragraph (2) (A)-(D) thereof".

2000—Subsec. (b)(2)(B)(i). Pub. L. 106-398 substituted "as of the effective date that applies with respect to such individual under section 663 of the National Defense Authorization Act for Fiscal Year 2000" for "as of the effective date described in paragraph (1) of section 663(a) of the National Defense Authorization Act for Fiscal Year 2000 (or, if applicable, paragraph (2) thereof)".

Subsec. (d)(1)(A). Pub. L. 106-554, §1(a)(4) [div. B, title I, §138(a)(6)(A)], substituted "the maximum percentage of such member's basic pay for such pay period allowable under section 8440f." for "5 percent of such member's basic pay for such pay period."

Subsec. (d)(1)(B). Pub. L. 106-554, §1(a)(4) [div. B, title I, §138(a)(6)(B)], substituted "the maximum percentage of such member's compensation for such pay period (received under such section 206) allowable under section 8440f." for "5 percent of such compensation, payable to such member for such pay period."

EFFECTIVE DATE

Pub. L. 106-65, div. A, title VI, §663, Oct. 5, 1999, 113 Stat. 673, as amended by Pub. L. 106-398, §1 [[div. A], title VI, §661(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-167, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle F (§§661-663) of title VI of div. A of Pub. L. 106-65, enacting this section and section 211 of Title 37, Pay and Allowances of the Uniformed Services, and amending sections 8351, 8432b, 8433, 8439, and 8473 of this title and section 211 of Title 37] shall take effect 180 days after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [Oct. 30, 2000].

"(b) POSTPONEMENT AUTHORITY.—(1) The Secretary of Defense may postpone by up to 180 days after the date that would otherwise apply under subsection (a)—

"(A) the date as of which the amendments made by this subtitle shall take effect; or

"(B) the date as of which section 211(a)(2) of title 37, United States Code (as added by this subtitle) shall take effect.

"(2) Postponement authority under this subsection may be exercised only to the extent that the failure to do so would prevent the Federal Retirement Thrift Investment Board from being able to provide timely and accurate services to investors or would place an excessive burden on the administrative capacity of the

Board to accommodate participants in the Thrift Savings Plan, as determined by the Secretary of Defense after consultation with the Executive Director (appointed by the Board).

“(3) Paragraph (1) includes the authority to postpone the effective date of the amendments made by this subtitle (apart from section 211(a)(2) of title 37, United States Code), and the effective date of such section 211(a)(2), by different lengths of time.

“(4) The Secretary shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Government Reform [now Committee on Oversight and Government Reform] of the House of Representatives, and the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate of any determination made under this subsection.”

REGULATIONS

Pub. L. 106-65, div. A, title VI, §661(b), Oct. 5, 1999, 113 Stat. 672, as amended by Pub. L. 106-398, §1 [[div. A], title VI, §661(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-167, provided that: “Not later than the 180th day after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [Oct. 30, 2000], the Executive Director (appointed by the Federal Retirement Thrift Investment Board) shall issue regulations to implement the amendments made by this subtitle [subtitle F (§§661-663) of title VI of div. A of Pub. L. 106-65, enacting this section and section 211 of Title 37, Pay and Allowances of the Uniformed Services, and amending sections 8351, 8432b, 8433, 8439, and 8473 of this title and section 211 of Title 37].”

§ 8440f. Maximum percentage allowable for certain participants

(a) The maximum percentage allowable under this section shall be determined in accordance with the following table:

In the case of a pay period beginning in fiscal year:	The maximum percentage allowable is:
2001	6
2002	7
2003	8
2004	9
2005	10
2006 or thereafter	100.

(b) Notwithstanding any limitation under this section, an eligible participant (as defined by section 414(v) of the Internal Revenue Code of 1986) may make such additional contributions to the Thrift Savings Fund as are permitted by such section 414(v) and regulations of the Executive Director consistent therewith.

(Added Pub. L. 106-554, §1(a)(4) [div. B, title I, §138(a)(7)(A)], Dec. 21, 2000, 114 Stat. 2763, 2763A-234; amended Pub. L. 107-304, §1(b)(2), Nov. 27, 2002, 116 Stat. 2363.)

REFERENCES IN TEXT

Section 414(v) of the Internal Revenue Code of 1986, referred to in subsec. (b), is classified to section 414(v) of Title 26, Internal Revenue Code.

AMENDMENTS

2002—Pub. L. 107-304 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-304 effective as of the earliest practicable date determined by the Executive Director in regulations, see section 1(c) of Pub. L. 107-304, set out as a note under section 8351 of this title.

SUBCHAPTER IV—SURVIVOR ANNUITIES

§ 8441. Definitions

For the purpose of this subchapter—

(1) the term “widow” means the surviving wife of an employee, Member, or annuitant, or of a former employee or Member, who—

- (A) was married to him for at least 9 months immediately before his death; or
- (B) is the mother of issue by that marriage;

(2) the term “widower” means the surviving husband of an employee, Member, or annuitant, or of a former employee or Member, who—

- (A) was married to her for at least 9 months immediately before her death; or
- (B) is the father of issue by that marriage;

(3) the term “dependent”, in the case of any child, means that the employee, Member, or annuitant involved was, at the time of death of the employee, Member, or annuitant either living with or contributing to the support of such child, as determined in accordance with such regulations as the Office shall prescribe; and

(4) the term “child” means—

- (A) an unmarried dependent child under 18 years of age, including (i) an adopted child, (ii) a stepchild but only if the stepchild lived with the employee, Member, or annuitant in a regular parent-child relationship, (iii) a recognized natural child, and (iv) a child who lived with and for whom a petition of adoption was filed by an employee, Member, or annuitant and who is adopted by the widow or widower of the employee, Member, or annuitant after the death of such employee, Member, or annuitant;

(B) such unmarried dependent child regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18; or

(C) such unmarried dependent child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

For the purpose of this paragraph and section 8443, a child whose 22nd birthday occurs before July 1 or after August 31 of a calendar year, and while regularly pursuing such a course of study or training, is deemed to have become 22 years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if such child shows to the satisfaction of the Office that such child has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 558.)

§ 8442. Rights of a widow or widower

(a)(1) Except as provided in subsection (g), if an annuitant dies and is survived by a widow or widower, the widow or widower is entitled to an annuity equal to 50 percent of an annuity computed under section 8415 with respect to the annuitant, (or one-half thereof, if designated for this purpose under section 8419 of this title), unless—

(A) the right to an annuity was waived under section 8416(a) (and no election was subsequently made under section 8416(d) nullifying the waiver); or

(B) in the case of a marriage after retirement, the annuitant did not file an election under section 8416(b) or (c), as the case may be.

(2) A spouse acquired after retirement is entitled to an annuity under this subsection (as provided in paragraph (1)) only upon electing this annuity instead of any other survivor benefit to which such spouse may be entitled under this subchapter or section 8424 or under another retirement system for Government employees.

(b)(1) If an employee or Member dies after completing at least 18 months of civilian service creditable under section 8411 and is survived by a widow or widower, the widow or widower is entitled to—

(A) an amount equal to the sum of—

(i) 50 percent of the final annual rate of basic pay (or of the average pay, if higher) of the employee or Member; and

(ii) \$15,000 as adjusted under section 8462(e); and

(B) if the employee or Member completed at least 10 years of service, an annuity equal to 50 percent of an annuity computed under section 8415 with respect to the employee or Member, but without regard to subsection (f) of such section.

(2) The Office shall prescribe regulations under which the total amount payable to a widow or widower under paragraph (1)(A) may, at the election of the widow or widower, be paid—

(A) in a lump sum; or

(B) on a monthly basis—

(i) over a period of 3 years beginning on the day after the employee's or Member's death; or

(ii) over any other period established under the regulations.

Any method of payment provided for under subparagraph (B) shall be designed such that the present value of the benefits provided under such method is actuarially equivalent to the present value of a lump-sum payment under subparagraph (A).

(3) An amount payable under paragraph (1)(A) shall not be considered to be part of an annuity for purposes of this chapter.

(c)(1) If a former employee or Member dies after having separated from the service with title to a deferred annuity under section 8413 but before having established a valid claim for an annuity, and is survived by a widow or widower to whom married on the date of separation, the widow or widower may elect to receive—

(A) an annuity under paragraph (2); or

(B) the lump-sum credit, if the widow or widower is the individual who would be entitled

to the lump-sum credit and if such widow or widower files application therefor with the Office.

(2)(A)(i) Subject to clause (ii) and subparagraph (B)(ii), the annuity of the widow or widower is equal to 50 percent of an annuity computed under section 8415 for the former employee or Member.

(ii)(I) In computing an amount under section 8415 for a former employee or Member (described in subclause (II)) in order to compute the annuity for a widow or widower under this subsection, the computation under section 8415 shall be made as if the former employee or Member had attained the applicable minimum retirement age under section 8412(h).

(II) This clause applies with respect to a former employee or Member who dies before having attained the applicable minimum retirement age under section 8412(h).

(B)(i) Notwithstanding the first sentence of subsection (d)(1), the annuity of the widow or widower of a former employee or Member under subparagraph (A)(ii) commences—

(I) on the day after the date on which the former employee or Member would have attained age 62 (or, if applicable, either age 60 if the former employee or Member completed at least 20 years of service, or the applicable minimum retirement age (under section 8412(h)) if the former employee or Member completed at least 30 years of service); or

(II) if the widow or widower so designates in the election, as of the day after the death of the former employee or Member.

(ii) The present value of the annuity of a widow or widower who chooses the earlier commencement date under clause (i)(II) shall be actuarially equivalent to the present value of an annuity computed for the widow or widower, determined as if the commencement date under clause (i)(I) were applicable.

(3)(A) Paragraphs (1) and (2) shall apply only in the case of an employee or Member who completes at least 10 years of service.

(B) Nothing in this subsection shall be considered to affect the provisions of this chapter relating to a lump-sum credit in the case of the widow or widower of a former employee or Member who dies after completing less than 10 years of service.

(d)(1) The annuity of a widow or widower under this section commences on the day after the death of the individual on whose service such annuity is based. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(A) dies; or

(B) except as provided in paragraph (3), remarries before becoming 55 years of age.

(2) In the case of a widow or widower whose annuity under this section is terminated because of remarriage before becoming 55 years of age, the annuity shall be restored at the same rate commencing on the day the remarriage is dissolved by death, divorce, or annulment, if—

(A) the widow or widower elects to receive this annuity instead of any other survivor benefit to which such widow or widower may be entitled (under this subchapter or section 8424

or under another retirement system for Government employees) by reason of the remarriage; and

(B) any lump sum paid on termination of the annuity is returned to the Fund.

(3) Paragraph (1)(B) (relating to termination of a survivor annuity because of a remarriage before age 55) shall not apply if the widow or widower was married for at least 30 years to the individual on whose service the survivor annuity is based.

(e) The requirement in paragraphs (1)(A) and (2)(A) of section 8441 that the widow or widower of an annuitant, employee, or Member, or of a former employee or Member, have been married to such individual for at least 9 months immediately before the death of the individual in order to qualify as the widow or widower of such individual shall be deemed satisfied in any case in which the individual dies within the applicable 9-month period, if—

(1) the death of the individual was accidental; or

(2) the surviving spouse of the individual had been previously married to such individual and subsequently divorced, and the aggregate time married is at least 9 months.

(f)(1) Subject to paragraph (4), a survivor who is entitled to an annuity under subsection (a) shall also be entitled to a supplementary annuity under this subsection.

(2) A supplementary annuity under this subsection shall be equal to the lesser of—

(A) the amount by which the survivor's assumed CSRS annuity exceeds the annuity payable to such survivor under subsection (a); or

(B) the amount determined under paragraph (3).

(3)(A) Except as provided in subparagraph (B), the amount under this paragraph for a survivor is the amount of widow's or widower's insurance benefits which would be payable to such survivor under title II of the Social Security Act (without regard to sections 202(e)(7), 202(f)(2), and 203 of such Act) based on the wages and self-employment income of the deceased annuitant, and determined—

(i) as of the date on which the annuitant died; and

(ii) as if the survivor had attained age 60 and made application for those benefits under subsection (e) or (f) of section 202 of such Act, as the case may be.

(B) Any computation or determination under this paragraph shall be made in accordance with the applicable provisions of the Social Security Act, except that in computing any primary insurance amount under section 215 of such Act for purposes of determining an amount under this subsection, subparagraphs (A) and (C) of section 8421(b)(2) shall apply.

(4) A supplementary annuity under this subsection—

(A) shall be payable to a survivor only for calendar months ending before the calendar month in which such survivor first satisfies the minimum age requirement under section 202(e)(1)(B)(i) or 202(f)(1)(B)(i) of the Social Security Act, as the case may be;

(B) shall not be payable to a survivor who would not be entitled to benefits under subsection (e) or (f) of section 202 of the Social Security Act based on the wages and self-employment income of the deceased annuitant (determined, as of the date of the annuitant's death, as if the survivor had attained age 60 and made appropriate application for benefits, but without regard to any restriction under either such subsection relating to remarriage); and

(C) shall not be payable to a survivor for any calendar month in which such survivor is entitled (or would, on proper application, be entitled) to benefits under section 202(g) of the Social Security Act (relating to mother's and father's insurance benefits), or under section 202(e) or (f) of such Act by reason of having become disabled, based on the wages and self-employment income of the deceased annuitant.

(5) For the purpose of this subsection, the term "assumed CSRS annuity", as used in the case of a survivor, means the amount of the annuity to which such survivor would be entitled under subchapter III of chapter 83 of this title based on the service of the deceased annuitant, determined—

(A) as of the day after the date of the annuitant's death;

(B) as if the survivor had made appropriate application therefor; and

(C) as if the service of the deceased annuitant were creditable under such subchapter.

(6) An amount payable under this subsection shall be adjusted under section 8462 and shall otherwise be treated under this chapter in the same way as an amount payable under subsection (a).

(g)(1) If the widow or widower of an annuitant under section 8452 (hereinafter in this subsection referred to as a "disability annuitant") is determined under subsection (a) to be entitled to an annuity based on the service of such disability annuitant, the annuity of the widow or widower shall be equal to 50 percent of the amount determined under paragraph (2) (or one-half thereof if designated for this purpose under section 8419 of this title), rather than of the amount referred to in subsection (a).

(2)(A) Except as provided in subparagraph (B), the amount on which the annuity of the widow or widower of a disability annuitant is based shall be the amount of the annuity to which such disability annuitant was entitled, as computed under section 8452 (including appropriate reduction under subsection (a)(2) of such section and any adjustments under section 8462 allowed under section 8452), as of the day before the date of the disability annuitant's death.

(B)(i) In the case of a widow or widower entitled to an annuity based on the service of a disability annuitant who dies before age 62, the amount under clause (ii) shall apply instead of the amount which would otherwise apply under subparagraph (A).

(ii)(I) Subject to subclause (II), the amount of the annuity to which the disability annuitant was entitled as of the day before the date of death shall be considered to be the amount which would be computed with respect to such

disability annuitant under section 8452(b) if the disability annuitant had attained age 62 on the day before date of death.

(II) For purposes of any such computation under section 8452(b)(2) pursuant to this clause, creditable service shall (in addition to the service which would otherwise be used under subparagraph (B)(i) of such section) include the period of time between date of death and the date of the sixty-second anniversary of the birth of the annuitant, and average pay shall be adjusted in accordance with subparagraph (B)(ii) of such section only through date of death.

(h) The following rules shall apply notwithstanding any other provision of this section:

(1) The annuity payable under this section to a widow or widower may not exceed the difference between—

(A) the amount of the annuity which would otherwise be payable to such widow or widower under this section; and

(B) the amount of the annuity payable to any former spouse of the deceased employee, Member, or annuitant, or former employee or Member, based on an election made under section 8417(b) or a court order previously issued or agreement previously entered into as described in section 8445(a).

(2) The amount payable under subsection (b)(1)(A) to a widow or widower may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under such subsection; and

(B) the portion of such amount payable to any former spouse of the deceased employee, Member, or annuitant, or former employee or Member, based on a court order previously issued or agreement previously entered into.

(3) A lump-sum credit under subsection (c)(2) shall be subject to the same terms and conditions as apply with respect to a lump-sum credit under section 8424(b).

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 559; amended Pub. L. 99-556, title I, §120, Oct. 27, 1986, 100 Stat. 3134; Pub. L. 100-238, title I, §131(b), Jan. 8, 1988, 101 Stat. 1760; Pub. L. 105-61, title V, §518(b)(1), Oct. 10, 1997, 111 Stat. 1307.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (f)(3), (4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42. Sections 202, 203, and 215 are classified to sections 402, 403, and 415, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1997—Subsec. (d)(1)(B). Pub. L. 105-61, §518(b)(1)(B), substituted “except as provided in paragraph (3), remarries” for “remarries”.

Subsec. (d)(3). Pub. L. 105-61, §518(b)(1)(A), added par. (3).

1988—Subsec. (a)(1). Pub. L. 100-238, §131(b)(1), inserted “(or one-half thereof, if designated for this purpose under section 8419 of this title),” after “with respect to the annuitant,”.

Subsec. (g)(1). Pub. L. 100-238, §131(b)(2), inserted “(or one-half thereof if designated for this purpose under section 8419 of this title)” after “paragraph (2)”.

1986—Subsec. (c)(2)(B)(i)(I). Pub. L. 99-556 which directed that subsec. (c)(2)(B)(i)(I) of this section be amended generally was executed to subsec. (c)(2)(B)(i)(I) of this section, as the probable intent of Congress. Prior to the amendment, subcl. (I) read as follows: “on the day after the date on which the former employee or Member would have attained age 62; or”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-61 applicable with respect to remarriages occurring on or after Jan. 1, 1995, see section 518(c) of Pub. L. 105-61, set out as a note under section 8341 of this title.

§ 8443. Rights of a child

(a)(1) If an employee or Member dies after completing at least 18 months of civilian service which is creditable under section 8411, or an annuitant dies, each surviving child is, for any month, entitled to an annuity equal to—

(A) the amount by which the applicable amount under paragraph (2) for such month exceeds the applicable amount under paragraph (3) for such month, divided by

(B) the number of children entitled to a payment under this section for such month.

(2) The applicable amount under this paragraph for any month is the total amount to which the surviving child or children (as the case may be) of the annuitant, employee, or Member would be entitled for such month under subchapter III of chapter 83 (including any adjustment based on section 8340) based on the service of such annuitant, employee, or Member, if the service of such annuitant, employee, or Member were creditable under such subchapter.

(3) The applicable amount under this paragraph for any month is the total amount of child's insurance benefits which are payable (or would, on proper application, be payable) under title II of the Social Security Act for such month based on the wages and self-employment income of such annuitant, employee, or Member.

(b) The annuity of a child under this subchapter—

(1) commences on the day after the annuitant, employee, or Member dies;

(2) commences or resumes on the first day of the month in which the child later becomes or again becomes a student as described by section 8441(4), if any lump sum paid is returned to the Fund; or

(3) commences or resumes on the first day of the month in which the child later becomes or again becomes incapable of self-support because of a mental or physical disability incurred before age 18 (or a later recurrence of such disability), if any lump sum paid is returned to the Fund.

This annuity and the right thereto terminate on the last day of the month before the child—

(A) becomes 18 years of age unless then a student as described or incapable of self-support;

(B) becomes capable of self-support after becoming 18 years of age unless then such a student;

(C) becomes 22 years of age if then such a student and capable of self-support;

(D) ceases to be such a student after becoming 18 years of age unless then incapable of self-support; or

(E) dies or marries;

whichever occurs first. On the death of the surviving wife or husband, or former wife or husband, or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though the wife or husband, former wife or husband, or child had not survived the annuitant, employee, or Member. If the annuity of a child under this subchapter terminates under subparagraph (E) because of marriage, then, if such marriage ends, such annuity shall resume on the first day of the month in which it ends, but only if any lump sum paid is returned to the Fund, and that individual is not otherwise ineligible for such annuity.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 563; amended Pub. L. 99-556, title I, §117(a), Oct. 27, 1986, 100 Stat. 3134; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §633(a)(2)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-363.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-208 inserted at end “If the annuity of a child under this subchapter terminates under subparagraph (E) because of marriage, then, if such marriage ends, such annuity shall resume on the first day of the month in which it ends, but only if any lump sum paid is returned to the Fund, and that individual is not otherwise ineligible for such annuity.”

1986—Subsec. (a)(2). Pub. L. 99-556 inserted “(including any adjustment based on section 8340)”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 applicable with respect to termination of marriage taking effect before, on, or after Sept. 30, 1996, except that benefits are payable only with respect to amounts accruing for periods beginning on first day of month beginning after the later of termination of marriage or Sept. 30, 1996, see section 101(f) [title VI, §633(b)] of Pub. L. 104-208, set out as a note under section 8341 of this title.

§ 8444. Rights of a named individual with an insurable interest

The annuity of a survivor named under section 8420(a) is 55 percent of the reduced annuity of the retired employee or Member determined under paragraph (2) of such section 8420(a). The annuity of the survivor commences on the day after the retired employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the survivor dies.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 563.)

§ 8445. Rights of a former spouse

(a) Subject to subsections (b) through (e), a former spouse of a deceased employee, Member,

or annuitant (or of a former employee or Member who dies after having separated from the service with title to a deferred annuity under section 8413 but before having established a valid claim for annuity) is entitled to an annuity under this section, if and to the extent expressly provided for in an election under section 8417(b), or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(b)(1) The annuity payable to a former spouse under this section may not exceed the difference between—

(A) the amount applicable in the case of such former spouse, as determined under paragraph (2); and

(B) the amount of any annuity payable under this section to any other former spouse of the employee, Member, or annuitant, or former employee or Member, based on an election previously made under section 8417(b), or a court order previously issued or agreement previously entered into as described in subsection (a).

(2) The applicable amount, for purposes of paragraph (1)(A) in the case of a former spouse, is the amount of the annuity which would be payable under the provisions of section 8442 (including subsection (f) of such section, but without regard to subsection (h) of such section) if such former spouse were a widow or widower entitled to an annuity under such provisions based on the service of the deceased employee, Member, or annuitant, or former employee or Member.

(c) The commencement and termination of an annuity payable under this section shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—

(1) shall not commence before—

(A) the day after the employee, Member, or annuitant, or former employee or Member, dies; or

(B) the first day of the second month beginning after the date on which the Office receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Office may prescribe;

whichever is later; and

(2) except as provided in subsection (h), shall terminate no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies.

(d) For purposes of this chapter, a modification in a decree, order, agreement, or election referred to in subsection (a) shall not be effective—

(1) if such modification is made after the retirement or death of the employee, Member, or annuitant, or former employee or Member, concerned; and

(2) to the extent that such modification involves an annuity under this section.

(e) For purposes of this chapter, a decree, order, agreement, or election referred to in sub-

section (a) shall not be effective, in the case of a former spouse, to the extent that it is inconsistent with any joint waiver previously executed with respect to such former spouse under section 8416(a).

(f)(1) Any amount under section 8442(b)(1)(A) which would otherwise be payable to a widow or widower based on the service of another individual shall be paid (in whole or in part) by the Office to a former spouse of such individual if and to the extent expressly provided for in the terms of a court decree of divorce, annulment, or legal separation, or the terms of a court order or court-approved property settlement incident to any decree of divorce, annulment, or legal separation.

(2) Paragraph (1) shall apply only to payments made by the Office after the date of receipt in the Office of written notice of such decree, order, or agreement, and such additional information and documentation as the Office may prescribe.

(g) Any payment under this section to a person bars recovery by any other person.

(h)(1) Subsection (c)(2) (to the extent that it provides for termination of a survivor annuity because of a remarriage before age 55) shall not apply if the former spouse was married for at least 30 years to the individual on whose service the survivor annuity is based.

(2) A remarriage described in paragraph (1) shall not be taken into account for purposes of section 8419(b)(1)(B) or any other provision of this chapter which the Office may by regulation identify in order to carry out the purposes of this subsection.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 564; amended Pub. L. 105-61, title V, §518(b)(2), Oct. 10, 1997, 111 Stat. 1308.)

AMENDMENTS

1997—Subsec. (c)(2). Pub. L. 105-61, §518(b)(2)(B), substituted “except as provided in subsection (h), shall” for “shall”.

Subsec. (h). Pub. L. 105-61, §518(b)(2)(A), added subsec. (h).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-61 applicable with respect to remarriages occurring on or after Jan. 1, 1995, see section 518(c) of Pub. L. 105-61, set out as a note under section 8341 of this title.

SUBCHAPTER V—DISABILITY BENEFITS

§ 8451. Disability retirement

(a)(1)(A) An employee who completes at least 18 months of civilian service creditable under section 8411 and has become disabled shall be retired on the employee’s own application or on application by the employee’s agency.

(B) For purposes of this subsection, an employee shall be considered disabled only if the employee is found by the Office to be unable, because of disease or injury, to render useful and efficient service in the employee’s position.

(2)(A) Notwithstanding paragraph (1), an employee shall not be eligible for disability retirement under this section if the employee has declined a reasonable offer of reassignment to a vacant position in the employee’s agency for which the employee is qualified if the position—

(i) is at the same grade (or pay level) as the employee’s most recent grade (or pay level) or higher;

(ii) is within the employee’s commuting area; and

(iii) is one in which the employee would be able to render useful and efficient service.

(B) An employee who is applying for disability retirement under this subchapter shall be considered for reassignment by the employee’s agency to a vacant position described in subparagraph (A) in accordance with such procedures as the Office shall by regulation prescribe.

(C) An employee is entitled to appeal to the Merit Systems Protection Board under section 7701 any determination that the employee is not unable, because of disease or injury, to render useful and efficient service in a position to which the employee has declined reassignment under this section.

(D) For purposes of subparagraph (A), an employee of the United States Postal Service shall not be considered qualified for a position if such position is in a different craft or if reassignment to such position would be inconsistent with the terms of a collective-bargaining agreement covering the employee.

(b) A Member who completes at least 18 months of service as a Member and is found by the Office to be disabled for useful and efficient service as a Member because of disease or injury shall be retired on the Member’s own application.

(c) An employee or Member retiring under this section is entitled to an annuity computed under section 8452.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 565.)

§ 8452. Computation of disability annuity

(a)(1)(A) Except as provided in paragraph (2), or subsection (b), (c), or (d), the annuity of an annuitant under this subchapter—

(i) for the period beginning on the date on which such annuity commences, or is restored (as described in section 8455(b)(2) or (3)), and ending at the end of the twelfth month beginning on or after such date, shall be equal to 60 percent of the annuitant’s average pay; and

(ii) after the end of the period referred to in clause (i), shall be equal to 40 percent of the annuitant’s average pay.

(B) An annuity computed under this paragraph—

(i) shall not, during any period referred to in subparagraph (A)(i), be adjusted under section 8462; but

(ii) shall, after the end of any period referred to in subparagraph (A)(i), be adjusted to reflect all adjustments made under section 8462(b) after the end of the period referred to in subparagraph (A)(i), whether the amount actually payable to the annuitant under this section in any month is determined under this subsection or otherwise.

(2)(A) For any month in which an annuitant is entitled both to an annuity under this subchapter as computed under paragraph (1) and to a disability insurance benefit under section 223

of the Social Security Act, the annuitant's annuity for such month (as so computed) shall—

(i) if such month occurs during a period referred to in paragraph (1)(A)(i), be reduced by 100 percent of the annuitant's assumed disability insurance benefit for such month; or

(ii) if such month occurs other than during a period referred to in paragraph (1)(A)(i), be reduced by 60 percent of the annuitant's assumed disability insurance benefit for such month;

except that an annuity may not be reduced below zero by reason of this paragraph.

(B)(i) For purposes of this paragraph, the assumed disability insurance benefit of an annuitant for any month shall be equal to—

(I) the amount of the disability insurance benefit to which the annuitant is entitled under section 223 of the Social Security Act for the month in which the annuity under this subchapter commences, or is restored, or, if no entitlement to such disability insurance benefits exists for such month, the first month thereafter for which the annuitant is entitled both to an annuity under this subchapter and disability insurance benefits under section 223 of the Social Security Act, adjusted by

(II) all adjustments made under section 8462(b) after the end of the period referred to in paragraph (1)(A)(i) (or, if later, after the end of the month preceding the first month for which the annuitant is entitled both to an annuity under this subchapter and disability insurance benefits under section 223 of the Social Security Act) and before the start of the month involved (without regard to whether the annuitant's annuity was affected by any of those adjustments).

(ii) For purposes of applying section 224 of the Social Security Act to the assumed disability insurance benefit used to compute the reduction under this paragraph, the amount of the annuity under this subchapter which is considered shall be the amount of the annuity as determined before the application of this paragraph.

(3) Section 8462 shall apply with respect to amounts under this subsection only as provided in paragraphs (1) and (2).

(b)(1) Except as provided in subsection (d), if an annuitant is entitled to an annuity under this subchapter as of the day before the date of the sixty-second anniversary of the annuitant's birth (hereinafter in this section referred to as the annuitant's "redetermination date"), such annuity shall be redetermined by the Office in accordance with paragraph (2). Effective as of the annuitant's redetermination date, the annuity (as so redetermined) shall be in lieu of any annuity to which such annuitant would otherwise be entitled under this subchapter.

(2)(A) An annuity redetermined under this subsection shall be equal to the amount of the annuity to which the annuitant would be entitled under section 8415, taking into account the provisions of subparagraph (B).

(B) In performing a computation under this paragraph—

(i) creditable service of an annuitant shall be increased by including any period (or periods) before the annuitant's redetermination date

during which the annuitant was entitled to an annuity under this subchapter; and

(ii) the average pay which would otherwise be used shall be adjusted to reflect all adjustments made under section 8462(b) with respect to any period (or periods) referred to in clause (i) (without regard to whether the annuitant's annuity was affected by any of those adjustments).

(c) Except as provided in subsection (d), the annuity of an annuitant under this subchapter shall be computed under section 8415 if—

(1) such annuity commences, or is restored, beginning on or after the redetermination date of the annuitant; or

(2) as of the day on which such annuity commences, or is restored, the annuitant satisfies the age and service requirements for entitlement to an annuity under section 8412 (other than subsection (g) of such section).

(d)(1) The annuity to which an annuitant is entitled under this section (after the reduction under subsection (a)(2), if applicable, has been made) shall not be less than the amount of an annuity computed under section 8415 (excluding subsection (g) of such section).

(2) In applying this subsection with respect to any annuitant, the amount of an annuity so computed under section 8415 shall be adjusted under section 8462 (including subsection (c) thereof)—

(A) to the same extent, and otherwise in the same manner, as if it were an annuity—

(i) subject to adjustment under such section; and

(ii) with a commencement date coinciding with the date the annuitant's annuity commenced or was restored under this subchapter, as the case may be; and

(B) whether the amount actually payable to the annuitant under this section in any month is determined under this subsection or otherwise.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 566; amended Pub. L. 99-556, title I, §§104, 106, Oct. 27, 1986, 100 Stat. 3131, 3132; Pub. L. 100-238, title I, §122(a)-(c), Jan. 8, 1988, 101 Stat. 1753, 1754; Pub. L. 108-176, title II, §226(b)(2)(B), Dec. 12, 2003, 117 Stat. 2530.)

REFERENCES IN TEXT

Sections 223 and 224 of the Social Security Act, referred to in subsec. (a)(2), are classified to sections 423 and 424a, respectively, of Title 42, The Public Health and Welfare.

AMENDMENTS

2003—Subsec. (d)(1). Pub. L. 108-176 substituted "subsection (g)" for "subsection (f)".

1988—Subsec. (a)(1)(B). Pub. L. 100-238, §122(c)(2)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "An annuity computed under this paragraph shall not, for purposes of any adjustment under section 8462 (including any adjustment under subsection (c)(1) of such section), be considered to have commenced until after such annuity ceases to be determined under subparagraph (A)(i)."

Subsec. (a)(2)(B)(i). Pub. L. 100-238, §122(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "For purposes of this paragraph, the assumed disability insurance benefit of an annuitant for any month shall be equal to—

“(I) the amount of the disability insurance benefit to which the annuitant would have been entitled under section 223 of the Social Security Act for the month in which the annuity under this subchapter commenced, or was restored, determined as if such annuitant had then satisfied all requirements for entitlement to a benefit under such section, adjusted by

“(II) all adjustments made under section 8462(b) between the date on which the annuity commenced, or was restored, and the start of the month involved (without regard to whether the annuitant’s annuity was affected by any of those adjustments).

For purposes of computing the assumed disability insurance benefit, the month in which the annuitant’s disability began (as determined under section 216(i)(2)(C) of the Social Security Act) shall be the month in which the annuity commenced or, if earlier (and if a determination was actually made) the month determined under such section.”

Subsec. (a)(3). Pub. L. 100-238, §122(c)(2)(B), added par. (3).

Subsec. (b). Pub. L. 100-238, §122(b), amended subsec. (b) generally, substituting pars. (1) and (2) for former pars. (1) to (4).

Subsec. (d). Pub. L. 100-238, §122(c)(1), designated existing provisions as par. (1) and added par. (2).

1986—Subsec. (b)(3). Pub. L. 99-556, §106, substituted “(a)(1)(A)(i)” for “(a)(1)(A)” in second sentence.

Subsec. (d). Pub. L. 99-556, §104, inserted “(after the reduction under subsection (a)(2), if applicable, has been made)”.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-176 effective on 60th day after Dec. 12, 2003, and applicable with respect to any annuity entitlement based on an individual’s separation from service occurring on or after such effective date, and any service performed by any such individual before, on, or after such effective date, subject to special rule relating to deposit requirement, see section 226(c) of Pub. L. 108-176, set out as a note under section 8401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 122(d) of Pub. L. 100-238 provided that: “The amendments made by this section [amending this section] shall be effective as of January 1, 1987, as if they had been enacted as part of the Federal Employees’ Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 514 and following).”

§ 8453. Application

A claim may be allowed under this subchapter only if application is filed with the Office before the employee or Member is separated from the service or within 1 year thereafter. This time limitation may be waived by the Office for an employee or Member who, at the date of separation from service or within 1 year thereafter, is mentally incompetent if the application is filed with the Office within 1 year from the date of restoration of the employee or Member to competency or the appointment of a fiduciary, whichever is earlier.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 568.)

§ 8454. Medical examination

An annuitant receiving a disability retirement annuity from the Fund shall be examined under the direction of the Office—

- (1) at the end of 1 year from the date of the disability retirement; and
- (2) annually thereafter until becoming 60 years of age;

unless the 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.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 568.)

§ 8455. Recovery; restoration of earning capacity

(a)(1) If an annuitant receiving a disability retirement annuity from the Fund recovers from the disability before becoming 60 years of age, payment of the annuity terminates on reemployment by the Government or 1 year after the date on which the Office determines that the annuitant has recovered, whichever is earlier.

(2) If an annuitant receiving a disability 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 180 days after the end of the calendar year in which earning capacity is so restored. 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.

(b)(1) If an annuitant whose annuity is terminated under subsection (a) is not reemployed in a position in which that individual is subject to this chapter, such individual is deemed, except for service credit, to have been involuntarily separated from the service for the purpose of subchapter II of this chapter as of the date of termination of the disability annuity, and after that termination is entitled to annuity under the applicable provisions of such subchapter.

(2) If an annuitant whose annuity is terminated under subsection (a)(2)—

(A) is not reemployed in a position subject to this chapter; and

(B) has not recovered from the disability for which that individual was retired;

the annuity of such individual shall be restored at the applicable rate under section 8452 effective the first of the year following any calendar year in which such individual’s 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.

(3) If an annuitant whose annuity is terminated because of a medical finding that the individual has recovered from disability is not reemployed in a position in which such individual is subject to this chapter, the annuity of such individual shall be restored at the applicable rate under section 8452 effective from the date on which the Office determines that there has been a recurrence of the disability.

(4) Paragraphs (2) and (3) shall not apply in the case of an annuitant receiving an annuity from the Fund under subchapter II of this chapter.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 568.)

§ 8456. Military reserve technicians

(a)(1) Except as provided in paragraph (2) or (3), an individual shall be retired under this subchapter if the individual—

(A) is separated from employment as a military reserve technician by reason of a disability that disqualifies the individual from membership in a reserve component of the Armed Forces specified in section 10101 of title 10 or from holding the military grade required for such employment;

(B) is not considered to be disabled under section 8451(a)(1)(B);

(C) is not appointed to a position in the Government (whether under subsection (b) or otherwise); and

(D) has not declined an offer of an appointment to a position in the Government under subsection (b).

(2) Payment of any annuity for an individual pursuant to this section terminates—

(A) on the date the individual is appointed to a position in the Government (whether pursuant to subsection (b) or otherwise);

(B) on the date the individual declines an offer of appointment to a position in the Government under subsection (b); or

(C) as provided under section 8455(a).

(3) An individual eligible to retire under section 8414(c) shall not be eligible to retire under this section.

(b) Any individual applying for or receiving any annuity pursuant to this section 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—

(1) the position is located within the commuting area of the individual's former position;

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

(3) the position is at the same grade or equivalent level as the position from which the individual was separated.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 570, §8457; amended Pub. L. 99-556, title I, §118, Oct. 27, 1986, 100 Stat. 3134; renumbered §8456, Pub. L. 100-238, title I, §124(b)(1)(B), Jan. 8, 1988, 101 Stat. 1756; Pub. L. 103-337, div. A, title XVI, §1677(a)(4), Oct. 5, 1994, 108 Stat. 3019.)

PRIOR PROVISIONS

A prior section 8456, added Pub. L. 99-355, title I, §101(a), June 6, 1986, 100 Stat. 569, related to relationship between annuity and workers' compensation, prior to repeal by Pub. L. 100-238, title I, §124(b)(1)(A), Jan. 8, 1988, 101 Stat. 1756. See section 8464a of this title.

AMENDMENTS

1994—Subsec. (a)(1)(A). Pub. L. 103-337 substituted "section 10101" for "section 261(a)".

1988—Pub. L. 100-238 renumbered section 8457 of this title as this section.

1986—Subsec. (a)(1)(C), (D), (2)(A), (B). Pub. L. 99-556 substituted "subsection (b)" for "subsection (c)".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

[§ 8457. Renumbered § 8456]

SUBCHAPTER VI—GENERAL AND ADMINISTRATIVE PROVISIONS

§ 8461. Authority of the Office of Personnel Management

(a) The Office shall pay all benefits that are payable under subchapter II, IV, V, or VI of this chapter from the Fund.

(b) The Office shall administer all provisions of this chapter not specifically required to be administered by the Board, the Executive Director, the Secretary of Labor, or any other officer or agency.

(c) The Office shall adjudicate all claims under the provisions of this chapter administered by the Office.

(d) The Office shall determine questions of disability and dependency arising under the provisions of this chapter administered by the Office. Except to the extent provided under subsection (e), the decisions of the Office concerning these matters are final and conclusive and are not subject to review. The Office may direct at any time such medical or other examinations as it considers necessary to determine the facts concerning disability or dependency of an individual receiving or applying for annuity under the provisions of this chapter administered by the Office. The Office may suspend or deny annuity for failure to submit to examination.

(e)(1) Subject to paragraph (2), an administrative action or order affecting the rights or interests of an individual or of the United States under the provisions of this chapter administered by the Office may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(2) In the case of any individual found by the Office to be disabled in whole or in part on the basis of the individual's mental condition, and that finding was made pursuant to an application by an agency for purposes of disability retirement under section 8451, the procedures under section 7701 shall apply and the decision of the Board shall be subject to judicial review under section 7703.

(f) The Office shall fix the fees for examinations made under subchapter V of this chapter by physicians or surgeons who are not medical officers of the United States. The fees and reasonable traveling and other expenses incurred in connection with the examinations are paid from appropriations for the cost of administering the provisions of this chapter administered by the Office.

(g) The Office may prescribe regulations to carry out the provisions of this chapter administered by the Office.

(h)(1) Each Government agency shall furnish the Director with such information as the Director determines necessary in order to administer this chapter.

(2) The Director, in consultation with the officials from whom such information is requested, shall establish (by regulation or otherwise) such safeguards as are necessary to ensure that information made available under this subsection is used only for the purpose authorized.

(i) In making a determination of "actuarial equivalence" under this chapter, the economic

assumptions used shall be the same as the economic assumptions most recently used by the Office (before the determination of actuarial equivalence involved) in determining the normal-cost percentage of the System.

(j)(1) Notwithstanding any other provision of this chapter, the Director of Central Intelligence shall, in a manner consistent with the administration of this chapter by the Office, and to the extent considered appropriate by the Director of Central Intelligence—

(A) determine entitlement to benefits under this chapter based on the service of employees of the Central Intelligence Agency;

(B) maintain records relating to the service of such employees;

(C) compute benefits under this chapter based on the service of such employees;

(D) collect deposits to the Fund made by such employees, their spouses, their former spouses, and their survivors;

(E) authorize and direct disbursements from the Fund to the extent based on service of such employees; and

(F) perform such other functions under this chapter (other than under subchapters III and VII of this chapter) with respect to employees of the Central Intelligence Agency as the Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management, determines to be appropriate.

(2) The Director of the Office of Personnel Management shall furnish such information and, on a reimbursable basis, such services to the Director of Central Intelligence as the Director of Central Intelligence requests to carry out paragraph (1).

(k)(1) The Director of Central Intelligence, in consultation with the Executive Director of the Federal Retirement Thrift Investment Board, may—

(A) maintain exclusive records relating to elections, contributions, and accounts under the Thrift Savings Plan provided in subchapter III of this chapter in the case of employees of the Central Intelligence Agency;

(B) provide that contributions by, or on behalf of, such employees to the Thrift Savings Plan be accounted for by such Executive Director in aggregate amounts;

(C) make the necessary disbursements from, and the necessary allocations of earnings, losses, and charges to, individual accounts of such employees under the Thrift Savings Plan; and

(D) perform such other functions under subchapters III and VII of this chapter (but not including investing sums in the Thrift Savings Fund) with respect to employees of the Central Intelligence Agency as the Director of Central Intelligence, in consultation with the Executive Director of the Federal Retirement Thrift Investment Board, determines to be appropriate.

(2) The Executive Director of the Federal Retirement Thrift Investment Board may not exercise authority under this chapter in the case of employees of the Central Intelligence Agency to the extent that the Director of Central Intelligence exercises authority provided in paragraph (1).

(3) The Executive Director of the Federal Retirement Thrift Investment Board shall furnish such information and, on a reimbursable basis, such services to the Director of Central Intelligence as the Director of Central Intelligence determines necessary to carry out this subsection.

(l) Subsection (h)(1), and sections 8439(b) and 8474(c)(4), shall be applied with respect to information relating to employees of the Central Intelligence Agency in a manner that protects intelligence sources, methods, and activities.

(m)(1) The Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management and the Executive Director of the Federal Retirement Thrift Investment Board, shall by regulation prescribe appropriate procedures to carry out subsections (j), (k), and (l).

(2) The regulations shall provide procedures for the Director of the Office of Personnel Management to inspect and audit disbursements from the Fund under this chapter.

(3) The Director of Central Intelligence shall submit the regulations prescribed under paragraph (1) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the regulations take effect.

(n)(1) Under regulations prescribed by the Office, an employee who—

(A) has not previously made an election under this subsection or had an opportunity to make an election under this paragraph; and

(B) moves, without a break in service of more than 1 year, to employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, described in section 2105(c),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered as an employee under this chapter during any employment described in section 2105(c) after such move.

(2) Under regulations prescribed by the Office, an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c), who—

(A) has not previously made an election under this subsection or had an opportunity to make an election under this paragraph;

(B) is a participant in a retirement system established for employees described in section 2105(c);

(C) moves, without a break in service of more than 1 year, to a position that is not described by section 2105(c); and

(D) is not eligible to make an election under section 8347(q),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered, during any subsequent employment as an employee as defined by section 2105(a) or section 2105(c), by the retirement system applicable to such employee's current or most recent employment described by section 2105(c) rather than be subject to this chapter.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 570; amended Pub. L. 99-556, title I, §102, Oct. 27, 1986, 100 Stat. 3131; Pub. L.

101-508, title VII, §7202(k)(2), Nov. 5, 1990, 104 Stat. 1388-339; Pub. L. 102-378, §2(71), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 104-106, div. A, title X, §1043(a)(2), Feb. 10, 1996, 110 Stat. 434; Pub. L. 107-107, div. A, title XI, §1131(b), Dec. 28, 2001, 115 Stat. 1242.)

AMENDMENTS

2001—Subsec. (n)(1). Pub. L. 107-107, §1131(b)(1), inserted “and” at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: “has 5 or more years of civilian service creditable under this chapter; and”.

Subsec. (n)(2)(B). Pub. L. 107-107, §1131(b)(2), struck out “vested” before “participant in a retirement system” and struck out “, as the term ‘vested participant’ is defined by such system” before semicolon at end.

1996—Subsec. (n)(1). Pub. L. 104-106, §1043(a)(2)(A), struck out “of the Department of Defense or the Coast Guard” after “an employee” in introductory provisions and substituted “1 year” for “3 days” in subpar. (C).

Subsec. (n)(2)(C). Pub. L. 104-106, §1043(a)(2)(B), substituted “1 year” for “3 days” and struck out “in the Department of Defense or the Coast Guard, respectively,” after “to a position”.

1992—Subsec. (n)(1)(A), (2)(A). Pub. L. 102-378, §2(71)(A), amended subpars. (A) generally. Prior to amendment, subpars. (A) read as follows: “has not previously made or had an opportunity to make an election under this subsection;”.

Subsec. (n)(2)(D). Pub. L. 102-378, §2(71)(B), substituted “8347(q)” for “8347(p)”.

1990—Subsec. (n). Pub. L. 101-508 added subsec. (n).

1986—Subsec. (m)(2). Pub. L. 99-556 struck out “, and from the Thrift Savings Fund,” after “from the Fund”.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 401 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendments by Pub. L. 104-106, see Regulations; Effective Date of 1996 Amendment note below.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-378 effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102-378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101-508, set out as a note under section 2105 of this title.

REGULATIONS; EFFECTIVE DATE OF 1996 AMENDMENT

For provisions relating to promulgation of regulations necessary to carry out amendment by Pub. L.

104-106, and effective date of such amendment in connection with those regulations, see section 1043(b), (c) of Pub. L. 104-106, set out as a note under section 8347 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TREATMENT OF INDIVIDUALS ELECTING TO REMAIN SUBJECT TO THEIR FORMER RETIREMENT SYSTEM

For provisions relating to the deductions and contributions required with respect to individuals electing under section 8347(q) or 8461(n) of this title to remain covered under subchapter III of chapter 83 of this title, chapter 84 of this title, or a retirement system for employees described in section 2105(c) of this title, see section 7202(n) of Pub. L. 101-508, set out as a note under section 2105 of this title.

§ 8462. Cost-of-living adjustments

(a) For the purpose of this section—

(1) the term “base quarter”, as used with respect to a year, means the calendar quarter ending on September 30 of such year;

(2) the price index for a base quarter is the arithmetical mean of such index for the 3 months comprising such quarter; and

(3) the term “percent change in the price index”, as used with respect to a year, means the percentage derived by—

(A) reducing—

(i) the price index for the base quarter of such year, by

(ii) the price index for the base quarter of the preceding year in which an adjustment under this subsection was made;

(B) dividing the difference under subparagraph (A) by the price index referred to in subparagraph (A)(ii); and

(C) multiplying the quotient under subparagraph (B) by 100.

(b)(1) Except as provided in subsection (c), effective December 1 of any year in which an adjustment under this subsection is to be made, as determined under paragraph (2), each annuity payable from the Fund under this chapter (other than an annuity under section 8443) having a commencing date not later than such December 1 shall be adjusted as follows:

(A) If the percent change in the price index for the year does not exceed 3 percent, each annuity subject to adjustment under this subsection shall be increased by the lesser of—

(i) the percent change in the price index (rounded to the nearest one-tenth of 1 percent); or

(ii) 2 percent.

(B) If the percent change in the price index for the year exceeds 3 percent, each annuity subject to adjustment under this subsection shall be increased by the excess of—

(i) the percent change in the price index (rounded to the nearest one-tenth of 1 percent), over

(ii) 1 percent.

(2) An adjustment under this subsection shall be made in a year only if the price index for the base quarter of such year exceeds the price index for the base quarter of the preceding year in which an adjustment under this subsection was made.

(3) An annuity under this chapter shall not be subject to adjustment under section 8340. Nothing in the preceding sentence shall affect the computation of any amount under section 8443(a)(2).

(c) Eligibility for an annuity increase under this section is governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase, except as follows:

(1) The first increase (if any) made under subsection (b) to an annuity which is payable from the Fund to an annuitant or survivor (other than a child under section 8443) whose annuity has not been increased under this subsection or subsection (b) shall be equal to the product (adjusted to the nearest one-tenth of 1 percent) of—

(A) one-twelfth of the applicable percent change computed under subsection (b), multiplied by

(B) the number of months (not to exceed 12 months, counting any portion of a month as a month)—

(i) for which the annuity was payable from the Fund before the effective date of the increase; or

(ii) in the case of a survivor of a deceased annuitant whose annuity has not been so increased, since the annuity was first payable to the deceased annuitant.

(2) Effective from its commencing date, an annuity payable from the Fund to an annuitant's survivor (other than a widow or widower whose annuity is computed under section 8442(g) or a child under section 8443) shall be increased by the total percentage by which the deceased annuitant's annuity had been increased under this section during the period beginning on the date the deceased annuitant's annuity commenced and ending on the date of the deceased annuitant's death.

(3)(A) An adjustment under subsection (b) for any year shall not be effective with respect to the annuity of an annuitant who is under 62 years of age as of the date on which such adjustment would otherwise first take effect.

(B)(i) Except as provided in clause (ii), this paragraph applies only with respect to an annuitant under section 8412, 8413, or 8414.

(ii) This paragraph does not apply with respect to an annuitant under subsection (d) or (e) of section 8412 or (in the case of an annuitant separated from service as a military reserve technician as a result of disability) under section 8414(c).

(4) The first increase (if any) made under subsection (b) to an annuity which is payable from the Fund to a widow or widower whose annuity is computed under section 8442(g) shall be equal to the product (adjusted to the nearest one-tenth of 1 percent) of—

(A) one-twelfth of the applicable percent change computed under subsection (b), multiplied by

(B) the number of months (not to exceed 12 months, counting any portion of a month as a month) since—

(i) the effective date of the adjustment last made under this section in the annuity of the annuitant on whose service on the widow's or widower's annuity is based; or

(ii) if the annuity of the annuitant (referred to in clause (i)) has not been increased under this section, the commencement date of such annuitant's annuity (determined subject to section 8452(a)(1)(B)).

(d) The monthly installment of an annuity after adjustment under this section shall be rounded to the next lowest dollar. However, the monthly installment shall, after adjustment, reflect an increase of at least \$1.

(e) The \$15,000 amount referred to in section 8442(b)(1)(A)(ii) shall be increased at the same time that, and by the same percent as the percentage by which, annuities under subchapter III of chapter 83 are increased.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 572; amended Pub. L. 99-556, title I, §117(b), Oct. 27, 1986, 100 Stat. 3134.)

AMENDMENTS

1986—Subsec. (b)(3). Pub. L. 99-556 inserted provision relating to the computation of any amount under section 8443(a)(2).

DELAY IN COST-OF-LIVING ADJUSTMENTS DURING FISCAL YEARS 1994, 1995, AND 1996

Any cost-of-living increase scheduled to take effect during fiscal year 1994, 1995, or 1996 under subsec. (b) of this section delayed until first day of third calendar month after date such increase would otherwise take effect, see section 11001 of Pub. L. 103-66, set out as a note under section 8340 of this title.

§ 8463. Rate of benefits

Each annuity payable from the Fund is stated as an annual amount, one-twelfth of which, rounded to the next lower dollar, constitutes the monthly rate payable on the first business day of the first month beginning after the month for which it has accrued.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 574.)

§ 8464. Commencement and termination of annuities of employees and Members

(a)(1) Except as otherwise provided in this chapter—

(A) an annuity payable from the Fund commences on the first day of the month after—

(i) separation from the service, in the case of an employee or Member retiring under section 8412, or subsection (a), (b)(1)(B), or (d) of section 8414; or

(ii) pay ceases, and the applicable age and service requirements are met, in the case of an employee or Member retiring under section 8413;

(B) an annuity payable from the Fund commences on the day after separation from the service in the case of an employee retiring under subsection (b)(1)(A) or (c) of section 8414; and

(C) an annuity payable from the Fund commences on the day after separation from the service or the day after pay ceases and the requirements for title to an annuity are met in the case of an employee or Member retiring under section 8451.

(2) Notwithstanding paragraph (1)(A)(i), an annuity payable from the Fund commences on the day after separation from the service in the case of an employee or Member—

(A) who retires under section 8412; and

(B) whose separation occurs upon the expiration of a term (or other period) for which the individual was appointed or elected.

(b) Except as otherwise provided in this chapter, the annuity of an annuitant under subchapter II or V of this chapter terminates on the date death or other terminating event occurs.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 574; amended Pub. L. 105-261, div. A, title XI, §1109(c)(2), Oct. 17, 1998, 112 Stat. 2145; Pub. L. 106-58, title VI, §651(b), Sept. 29, 1999, 113 Stat. 480; Pub. L. 106-398, §1 [[div. A], title XI, §1152(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A-323; Pub. L. 107-107, div. A, title X, §1048(f)(2), Dec. 28, 2001, 115 Stat. 1228.)

AMENDMENTS

2001—Subsec. (a)(1)(A)(i). Pub. L. 107-107 amended directory language of Pub. L. 106-398. See 2000 Amendment note below.

2000—Subsec. (a)(1)(A)(i). Pub. L. 106-398, as amended by Pub. L. 107-107, substituted “, (b)(1)(B), or (d)” for “or (b)(1)(B)”.

1999—Subsec. (a)(1)(A)(i). Pub. L. 106-58 repealed Pub. L. 105-261, §1109(c)(2). See 1998 Amendment note below.

1998—Subsec. (a)(1)(A)(i). Pub. L. 105-261, §1109(c)(2), which directed substitution of “, (b)(1)(B), or (d)” for “or (b)(1)(B)”, was repealed by Pub. L. 106-58.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title X, §1048(f), Dec. 28, 2001, 115 Stat. 1228, provided that the amendment made by section 1048(f)(2) is effective as of Oct. 30, 2000, and as if included in the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, as enacted into law by Pub. L. 106-398.

§ 8464a. Relationship between annuity and workers' compensation

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

(A) an annuity under subchapter II or V, 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 subchapter IV 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 chapter or subchapter I of chapter 81.

(b) If an individual is entitled to an annuity under subchapter II, IV, or V, 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 com-

mences, 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 subchapter II, IV, or V warrant deferred refunding, deductions from the annuity may be prorated against and paid from accruing payments in such manner as the Department determines appropriate.

(Added Pub. L. 100-238, title I, §124(a)(1)(B), Jan. 8, 1988, 101 Stat. 1755.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 8456 of this title prior to repeal by Pub. L. 100-238.

EFFECTIVE DATE

Section effective Jan. 1, 1987, and applicable with respect to benefits payable based on a death or disability occurring on or after that date, see section 124(c) of Pub. L. 100-238 set out as an Effective Date of 1988 Amendment note under section 8337 of this title.

§ 8465. Waiver, allotment, and assignment of benefits

(a) An individual entitled to an annuity payable from the Fund may decline to accept all or any part of the amount of the annuity by a waiver signed and filed with the Office. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver is in effect.

(b) An individual entitled to an annuity payable from the Fund may make allotments or assignments of amounts from the annuity for such purposes as the Office considers appropriate.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 575.)

§ 8466. Application for benefits

(a) No payment of benefits based on the service of an employee or Member shall be made from the Fund unless an application for payment of the benefits is received by the Office before the one hundred and fifteenth anniversary of the birth of the employee or Member.

(b) Notwithstanding subsection (a), after the death of an employee, Member, or annuitant, or former employee or Member, a benefit based on the service of such employee, Member, or annuitant, or former employee or Member, shall not be paid under subchapter II or IV of this chapter unless an application therefor is received by the Office within 30 years after the death or other event which establishes the entitlement to the benefit.

(c) Payment due a minor, or an individual mentally incompetent or under other legal disability, may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of the claimant or is otherwise legally vested with the care of the claimant or his estate. If a guardian or other fiduciary of the individual under legal disability has not been appointed under the law of the State of residence of the claimant, payment may be made to any person who, in the judgment of the Office, is responsible for the care of the claimant, and the payment bars recovery by any other person.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 575.)

§ 8467. Court orders

(a) Payments under this chapter which would otherwise be made to an employee, Member, or annuitant (including an employee, Member, or annuitant as defined in section 8331) based on service of that individual shall be paid (in whole or in part) by the Office or the Executive Director, as the case may be, to another person if and to the extent expressly provided for in the terms of—

(1) any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation; or

(2) any court order or other similar process in the nature of garnishment for the enforcement of a judgment rendered against such employee, Member, or annuitant, for physically, sexually, or emotionally abusing a child.

In the event that the Office or the Executive Director, as the case may be, is served with more than 1 decree, order, or other legal process with respect to the same moneys due or payable to any individual, such moneys shall be available to satisfy such processes on a first-come, first-served basis, with any such process being satisfied out of such moneys as remain after the satisfaction of all such processes which have been previously served.

(b) Subsection (a) shall apply only to payments made by the Office or the Executive Director under this chapter after the date on which the Office or the Executive Director (as the case may be) receives written notice of such decree, order, other legal process, or agreement, and such additional information and documentation as the Office or the Executive Director may require.

(c) For the purpose of this section—

(1) the term “judgment rendered for physically, sexually, or emotionally abusing a child” means any legal claim perfected through a final enforceable judgment, which claim is based in whole or in part upon the physical, sexual, or emotional abuse of a child, whether or not that abuse is accompanied by other actionable wrongdoing, such as sexual exploitation or gross negligence; and

(2) the term “child” means an individual under 18 years of age.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 575; amended Pub. L. 103-358, §2(b)(1)–(3), Oct. 14, 1994, 108 Stat. 3421.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-358, §2(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Payments under this chapter which would otherwise be made to an employee, Member, or annuitant (including an employee, Member, or annuitant as defined under section 8331) based on the service of that individual shall be paid (in whole or in part) by the Office or the Executive Director (as the case may be), to another person if and to the extent that the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation expressly provide. Any payment under this subsection to a person bars recovery by any other person.”

Subsec. (b). Pub. L. 103-358, §2(b)(2), inserted “other legal process,” after “order,”.

Subsec. (c). Pub. L. 103-358, §2(b)(3), added subsec. (c).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-358 effective Oct. 14, 1994, and applicable with respect to any decree, order, or other legal process, or notice of agreement received by Office of Personnel Management or Executive Director of Federal Retirement Thrift Investment Board on or after Oct. 14, 1994, see section 3 of Pub. L. 103-358, set out as a note under section 8345 of this title.

§ 8468. Annuities and pay on reemployment

(a) If an annuitant, except a disability annuitant whose annuity is terminated because of the annuitant’s recovery or restoration of earning capacity, becomes employed in an appointive or elective position, an amount equal to the annuity allocable to the period of actual employment shall be deducted from the annuitant’s pay, except for lump-sum leave payment purposes under section 5551. Unless the annuitant’s appointment is on an intermittent basis or is to a position as a justice or judge (as defined by section 451 of title 28) or as an employee subject to another retirement system for Government employees, or unless the annuitant is serving as President, deductions for the Fund shall be withheld from the annuitant’s pay under section 8422(a) and contributions under section 8423 shall be made. The deductions and contributions referred to in the preceding provisions of this subsection shall be deposited in the Treasury of the United States to the credit of the Fund. The annuitant’s lump-sum credit may not be reduced by annuity paid during the reemployment.

(b)(1)(A) If an annuitant subject to deductions under the second sentence of subsection (a) serves on a full-time basis for at least 1 year, or on a part-time basis for periods equivalent to at least 1 year of full-time service, the annuitant’s annuity on termination of reemployment shall be increased by an annuity computed under section 8415(a) through (h) as may apply based on the period of reemployment and the basic pay, before deduction, averaged during the reemployment.

(B)(i) If the annuitant is receiving a reduced annuity as provided in section 8419, the increase in annuity payable under subparagraph (A) is reduced by 10 percent and the survivor annuity or combination of survivor annuities payable under section 8442 or 8445 (or both) is increased by 50 percent of the increase in annuity payable under subparagraph (A), unless, at the time of claim-

ing the increase payable under subparagraph (A), the annuitant notifies the Office in writing that the annuitant does not desire the survivor annuity to be increased.

(ii) If an annuitant who is subject to the deductions referred to in subparagraph (A) dies while still reemployed, after having been reemployed for not less than 1 year of full-time service (or the equivalent thereof, in the case of full-time¹ employment), the survivor annuity payable is increased as though the reemployment had otherwise terminated.

(2)(A) If an annuitant subject to deductions under the second sentence of subsection (a) serves on a full-time basis for at least 5 years, or on a part-time basis for periods equivalent to at least 5 years of full-time service, the annuitant may elect, instead of the benefit provided by paragraph (1), to have such annuitant's rights redetermined under this chapter.

(B) If an annuitant who is subject to the deductions referred to in subparagraph (A) dies while still reemployed, after having been reemployed for at least 5 years of full-time service (or the equivalent thereof in the case of part-time employment), any person entitled to a survivor annuity under section 8442 or 8445 based on the service of such annuitant shall be permitted to elect, in accordance with regulations prescribed by the Office of Personnel Management, to have such person's rights under subchapter IV redetermined. A redetermined survivor annuity elected under this subparagraph shall be in lieu of an increased annuity which would otherwise be payable in accordance with paragraph (1)(B)(ii).

(3) If an annuitant subject to deductions under the second sentence of subsection (a) serves on a full-time basis for a period of less than 1 year, or on a part-time basis for periods equivalent to less than 1 year of full-time service, the total amount withheld under section 8422(a) from the annuitant's basic pay for the period or periods involved shall, upon written application to the Office, be payable to the annuitant (or the appropriate survivor or survivors, determined in the order set forth in section 8424(d)).

(c) This section does not apply to an individual appointed to serve as a Governor of the Board of Governors of the United States Postal Service.

(d) If an annuitant becomes employed as a justice or judge of the United States, as defined by section 451 of title 28, the annuitant may, at any time prior to resignation or retirement from regular active service as such a justice or judge, apply for and be paid, in accordance with section 8424(a), the amount (if any) by which the lump-sum credit exceeds the total annuity paid, notwithstanding the time limitation contained in such section for filing an application for payment.

(e) A reference in this section to an "annuity" shall not be considered to include any amount payable from a source other than the Fund.

(f)(1) The Director of the Office of Personnel Management may, at the request of the head of an Executive agency—

(A) waive the application of the preceding provisions of this section on a case-by-case

basis for employees in positions for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

(B) grant authority to the head of such agency to waive the application of the preceding provisions of this section, on a case-by-case basis, for an employee serving on a temporary basis, but only if, and for so long as, the authority is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances.

(2) The Office shall prescribe regulations for the exercise of any authority under this subsection, including criteria for any exercise of authority and procedures for terminating a delegation of authority under paragraph (1)(B).

(g)(1) If warranted by circumstances described in subsection (f)(1)(A) or (B) (as applicable), the Director of the Administrative Office of the United States Courts shall, with respect to an employee in the judicial branch, have the same waiver authority as would be available to the Director of the Office of Personnel Management, or a duly authorized agency head, under subsection (f) with respect to an employee of an Executive agency.

(2) Authority under this subsection may not be exercised with respect to a justice or judge of the United States, as defined in section 451 of title 28.

(h)(1) If warranted by circumstances described in subsection (f)(1)(A) or (B) (as applicable), an official or committee designated in paragraph (2) shall, with respect to the employees specified in the applicable subparagraph of such paragraph, have the same waiver authority as would be available to the Director of the Office of Personnel Management, or a duly authorized agency head, under subsection (f) with respect to an employee of an Executive agency.

(2) Authority under this subsection may be exercised—

(A) with respect to an employee of an agency in the legislative branch, by the head of such agency;

(B) with respect to an employee of the House of Representatives, by the Committee on House Oversight of the House of Representatives; and

(C) with respect to an employee of the Senate, by the Committee on Rules and Administration of the Senate.

(3) Any exercise of authority under this subsection shall be in conformance with such written policies and procedures as the agency head, the Committee on House Oversight of the House of Representatives, or the Committee on Rules and Administration of the Senate (as applicable) shall prescribe, consistent with the provisions of this subsection.

(4) For the purpose of this subsection, "agency in the legislative branch", "employee of the House of Representatives", "employee of the Senate", and "congressional employee" each has the meaning given to it in section 5531 of this title.

(i)(1) For purposes of this subsection—

(A) the term "head of an agency" means—

(i) the head of an Executive agency, other than the Department of Defense or the Government Accountability Office;

¹ So in original. Probably should be "part-time".

(ii) the head of the United States Postal Service;

(iii) the Director of the Administrative Office of the United States Courts, with respect to employees of the judicial branch; and

(iv) any employing authority described under subsection (h)(2), other than the Government Accountability Office; and

(B) the term “limited time appointee” means an annuitant appointed under a temporary appointment limited to 1 year or less.

(2) The head of an agency may waive the application of subsection (a) with respect to any annuitant who is employed in such agency as a limited time appointee, if the head of the agency determines that the employment of the annuitant is necessary to—

(A) fulfill functions critical to the mission of the agency, or any component of that agency;

(B) assist in the implementation or oversight of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) or the Troubled Asset Relief Program under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.);

(C) assist in the development, management, or oversight of agency procurement actions;

(D) assist the Inspector General for that agency in the performance of the mission of that Inspector General;

(E) promote appropriate training or mentoring programs of employees;

(F) assist in the recruitment or retention of employees; or

(G) respond to an emergency involving a direct threat to life of property or other unusual circumstances.

(3) The head of an agency may not waive the application of subsection (a) with respect to an annuitant—

(A) for more than 520 hours of service performed by that annuitant during the period ending 6 months following the individual’s annuity commencing date;

(B) for more than 1040 hours of service performed by that annuitant during any 12-month period; or

(C) for more than a total of 3120 hours of service performed by that annuitant.

(4)(A) The total number of annuitants to whom a waiver by the head of an agency under this subsection or section 8344(l) applies may not exceed 2.5 percent of the total number of full-time employees of that agency.

(B) If the total number of annuitants to whom a waiver by the head of an agency under this subsection or section 8344(l) applies exceeds 1 percent of the total number of full-time employees of that agency, the head of that agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Personnel Management—

(i) a report with an explanation that justifies the need for the waivers in excess of that percentage; and

(ii) not later than 180 days after submitting the report under clause (i), a succession plan.

(5)(A) The Director of the Office of Personnel Management may promulgate regulations providing for the administration of this subsection.

(B) Any regulations promulgated under subparagraph (A) may—

(i) provide standards for the maintenance and form of necessary records of employment under this subsection;

(ii) to the extent not otherwise expressly prohibited by law, require employing agencies to provide records of such employment to the Office or other employing agencies as necessary to ensure compliance with paragraph (3);

(iii) authorize other administratively convenient periods substantially equivalent to 12 months, such as 26 pay periods, to be used in determining compliance with paragraph (3)(B);

(iv) include such other administrative requirements as the Director of the Office of Personnel Management may find appropriate to provide for effective operation of, or to ensure compliance with, this subsection; and

(v) encourage the training and mentoring of employees by any limited time appointee employed under this subsection.

(6)(A) Any hours of training or mentoring of employees by any limited time appointee employed under this subsection shall not be included in the hours of service performed for purposes of paragraph (3), but those hours of training or mentoring may not exceed 520 hours.

(B) If the primary service performed by any limited time appointee employed under this subsection is training or mentoring of employees, the hours of that service shall be included in the hours of service performed for purposes of paragraph (3).

(7) The authority of the head of an agency under this subsection to waive the application of subsection (a) shall terminate 5 years after the date of enactment of the National Defense Authorization Act for Fiscal Year 2010.

(j)(1) For the purpose of subsections (f) through (i), “Executive agency” shall not include the Government Accountability Office.

(2) An employee as to whom a waiver under subsection (f), (g), (h), or (i) is in effect shall not be considered an employee for purposes of this chapter or chapter 83 of this title.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 576; amended Pub. L. 100-238, title I, §134(a), Jan. 8, 1988, 101 Stat. 1762; Pub. L. 101-509, title V, §529 [title I, §108(c)], Nov. 5, 1990, 104 Stat. 1427, 1450; Pub. L. 101-510, div. A, title XII, §1206(j)(3), Nov. 5, 1990, 104 Stat. 1664; Pub. L. 102-190, div. A, title VI, §655(c), Dec. 5, 1991, 105 Stat. 1392; Pub. L. 102-378, §8(a), Oct. 2, 1992, 106 Stat. 1359; Pub. L. 105-55, title I, §107, Oct. 7, 1997, 111 Stat. 1184; Pub. L. 105-61, title V, §516(a)(9), Oct. 10, 1997, 111 Stat. 1307; Pub. L. 108-176, title II, §226(b)(2)(C), Dec. 12, 2003, 117 Stat. 2530; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 111-84, div. A, title XI, §1122(b), Oct. 28, 2009, 123 Stat. 2507.)

REFERENCES IN TEXT

The American Recovery and Reinvestment Act of 2009, referred to in subsec. (i)(2)(B), is Pub. L. 111-5, Feb. 17, 2009, 123 Stat. 115. For complete classification

of this Act to the Code, see Short Title of 2009 Amendment note set out under section 1 of Title 26, Internal Revenue Code, and Tables.

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (i)(2)(B), is div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765. Title I of the Act is classified principally to subchapter I (§ 5211 et seq.) of chapter 52 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of Title 12 and Tables.

The date of enactment of the National Defense Authorization Act for Fiscal Year 2010, referred to in subsec. (i)(7), is the date of enactment of Pub. L. 111-84, which was approved Oct. 28, 2009.

AMENDMENTS

2009—Subsec. (i). Pub. L. 111-84, § 1122(b)(2), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 111-84, § 1122(b)(1), redesignated subsec. (i) as (j).

Subsec. (j)(1). Pub. L. 111-84, § 1122(b)(3)(A), substituted “(i)” for “(h)”.

Subsec. (j)(2). Pub. L. 111-84, § 1122(b)(3)(B), substituted “(h), or (i)” for “or (h)”.

2004—Subsec. (i)(1). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

2003—Subsec. (b)(1)(A). Pub. L. 108-176 substituted “through (h)” for “through (g)”.

1997—Subsec. (b)(1)(A). Pub. L. 105-61 substituted “through (g)” for “through (f)”.

Subsec. (h)(2)(B), (3). Pub. L. 105-55 substituted “the Committee on House Oversight of the House of Representatives” for “the Speaker of the House of Representatives”.

1992—Subsec. (f). Pub. L. 102-378 repealed Pub. L. 101-510, § 1206(j)(3). See 1990 Amendment note below.

1991—Subsec. (f)(3). Pub. L. 102-190, § 655(c)(2), struck out par. (3) which read as follows: “An employee to whom a waiver under subparagraph (A) or (B) of paragraph (1) applies shall not be deemed an employee for the purposes of chapter 83 or this chapter while such waiver is in effect.”

Subsecs. (g) to (i). Pub. L. 102-190, § 655(c)(1), added subsecs. (g) to (i).

1990—Subsec. (f). Pub. L. 101-510, § 1206(j)(3), added a subsec. (f) identical to that added by Pub. L. 101-509, see below. Pub. L. 102-378, § 8(a), repealed Pub. L. 101-510, § 1206(j)(3), and provided that this title shall read as if section 1206(j)(3) had not been enacted.

Pub. L. 101-509 added subsec. (f).

1988—Pub. L. 100-238 amended section generally, substituting subsecs. (a) to (e) for former subsecs. (a) to (c).

CHANGE OF NAME

Committee on House Oversight of House of Representatives changed to Committee on House Administration of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-176 effective on 60th day after Dec. 12, 2003, and applicable with respect to any annuity entitlement based on an individual’s separation from service occurring on or after such effective date, and any service performed by any such individual before, on, or after such effective date, subject to special rule relating to deposit requirement, see section 226(c) of Pub. L. 108-176, set out as a note under section 8401 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 8334 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-378 effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102-378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101-509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 134(d) of Pub. L. 100-238 provided that:

“(1) GENERALLY.—The amendments made by this section [amending this section and provisions set out as notes under section 8331 of this title] shall take effect on the date of the enactment of this Act [Jan. 8, 1988], and as provided in paragraph (2), shall apply with respect to any individual who becomes a reemployed annuitant on or after such date.

“(2) EXCEPTION.—The amendment made by subsection (b) [amending provisions set out as a note under section 8331 of this title] shall apply with respect to any election made by a reemployed annuitant on or after the date of the enactment of this Act [Jan. 8, 1988].”

CONSTRUCTION OF 2009 AMENDMENT

Nothing in amendment by section 1122 of Pub. L. 111-84 to be construed to authorize the waiver of the hiring preferences under chapter 33 of this title in selecting annuitants to employ in an appointive or elective position, see section 1122(c) of Pub. L. 111-84, set out as a note under section 8344 of this title.

ANNUAL REPORT TO CONGRESS

Each agency in legislative branch to submit to Speaker of House of Representatives and Committee on Rules and Administration of Senate, for each calendar year, a written report on how authority made available as result of amendment by Pub. L. 102-190 was used by such agency during the period covered by such report, see section 655(d) of Pub. L. 102-190, set out as a note under section 8344 of this title.

§ 8469. Withholding of State income taxes

(a) The Office shall, in accordance with this section, enter into an agreement with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Office shall withhold State income tax in the case of the monthly annuity of any annuitant who voluntarily requests, in writing, such withholding. The amounts withheld during any calendar quarter shall be held in the Fund and disbursed to the States during the month following that calendar quarter.

(b) An annuitant may have in effect at any time only one request for withholding under this section, and an annuitant may not have more than two such requests in effect during any one calendar year.

(c) Subject to subsection (b), an annuitant may change the State designated by that annuitant for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with such change. An annuitant also may revoke any request of that annuitant for withholding. Any change in the State designated or revocation is effective on the first day of the month after the month in which the request or the revocation is processed by the Office, but in no event later than on the first day

of the second month beginning after the day on which such request or revocation is received by the Office.

(d) This section does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of this section. The Office may not accept pay from a State for services performed in withholding State income taxes from annuities. Any amount erroneously withheld from an annuity and paid to a State by the Office shall be repaid by the State in accordance with regulations issued by the Office.

(e) For the purpose of this section—

(1) the term “State” means a State, the District of Columbia, or any territory or possession of the United States; and

(2) the term “annuitant” includes a survivor who is receiving an annuity from the Fund.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 576.)

§ 8470. Exemption from legal process; recovery of payments

(a) An amount payable under subchapter II, IV, or V of this chapter is not assignable, either in law or equity, except under the provisions of section 8465 or 8467, or subject to execution, levy, attachment, garnishment or other legal process, except as otherwise may be provided by Federal laws.

(b) Recovery of payments under subchapter II, IV, or V of this chapter may not be made from an individual when, in the judgment of the Office, the individual is without fault and recovery would be against equity and good conscience. Withholding or recovery of money paid under subchapter II, IV, or V of this chapter on account of a certification or payment made by a former employee of the United States in the discharge of his official duties may be made only if the head of the agency on behalf of which the certification or payment was made certifies to the Office that the certification or payment involved fraud on the part of the former employee.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 577.)

SUBCHAPTER VII—FEDERAL RETIREMENT THRIFT INVESTMENT MANAGEMENT SYSTEM

§ 8471. Definitions

For the purposes of this subchapter—

(1) the term “beneficiary” means an individual (other than a participant) entitled to payment from the Thrift Savings Fund under subchapter III of this chapter;

(2) the term “Council” means the Employee Thrift Advisory Council established under section 8473 of this title;

(3) the term “participant” means an individual for whom an account has been established under section 8439 of this title;

(4) the term “person” means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, es-

tate, unincorporated organization, association, or labor organization; and

(5) the term “Thrift Savings Fund” means the Thrift Savings Fund established under section 8437 of this title.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 577.)

EFFECTIVE DATE

Subchapter VII effective June 6, 1986, see section 702(b)(1) of Pub. L. 99-335, set out as a note under section 8401 of this title.

§ 8472. Federal Retirement Thrift Investment Board

(a) There is established in the Executive Branch of the Government a Federal Retirement Thrift Investment Board.

(b) The Board shall be composed of—

(1) 3 members appointed by the President, of whom 1 shall be designated by the President as Chairman; and

(2) 2 members appointed by the President, of whom—

(A) 1 shall be appointed by the President after taking into consideration the recommendation made by the Speaker of the House of Representatives in consultation with the minority leader of the House of Representatives; and

(B) 1 shall be appointed by the President after taking into consideration the recommendation made by the majority leader of the Senate in consultation with the minority leader of the Senate.

(c) Except as provided in section 311 of the Federal Employees’ Retirement System Act of 1986, appointments under subsection (a) shall be made by and with the advice and consent of the Senate.

(d) Members of the Board shall have substantial experience, training, and expertise in the management of financial investments and pension benefit plans.

(e)(1) Except as provided in section 311 of the Federal Employees’ Retirement System Act of 1986, a member of the Board shall be appointed for a term of 4 years, except that of the members first appointed (other than the members appointed under such section)—

(A) the Chairman shall be appointed for a term of 4 years;

(B) the members appointed under subsection (b)(2) shall be appointed for terms of 3 years; and

(C) the remaining members shall be appointed for terms of 2 years.

(2)(A) A vacancy on the Board shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(3) The term of any member shall not expire before the date on which the member’s successor takes office.

(f) The Board shall—

(1) establish policies for—

(A) the investment and management of the Thrift Savings Fund; and

(B) the administration of subchapter III of this chapter;

(2) review the performance of investments made for the Thrift Savings Fund; and

(3) review and approve the budget of the Board.

(g)(1) The Board may—

(A) adopt, alter, and use a seal;

(B) except as provided in paragraph (2), direct the Executive Director to take such action as the Board considers appropriate to carry out the provisions of this subchapter and subchapter III of this chapter and the policies of the Board;

(C) upon the concurring votes of four members, remove the Executive Director from office for good cause shown; and

(D) take such other actions as may be necessary to carry out the functions of the Board.

(2) Except in the case of investments required by section 8438 of this title to be invested in securities of the Government, the Board may not direct the Executive Director to invest or to cause to be invested any sums in the Thrift Savings Fund in a specific asset or to dispose of or cause to be disposed of any specific asset of such Fund.

(h) The members of the Board shall discharge their responsibilities solely in the interest of participants and beneficiaries under this subchapter and subchapter III of this chapter.

(i) The Board shall prepare and submit to the President, and, at the same time, to the appropriate committees of Congress, an annual budget of the expenses and other items relating to the Board which shall be included as a separate item in the budget required to be transmitted to the Congress under section 1105 of title 31.

(j) The Board may submit to the President, and, at the same time, shall submit to each House of the Congress, any legislative recommendations of the Board relating to any of its functions under this title or any other provision of law.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 578; amended Pub. L. 99-509, title VI, §6001(e), Oct. 21, 1986, 100 Stat. 1931.)

REFERENCES IN TEXT

Section 311 of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99-335], referred to in subsecs. (c) and (e)(1), is set out as a note below.

AMENDMENTS

1986—Subsecs. (i), (j). Pub. L. 99-509 added subsecs. (i) and (j).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-509 effective Jan. 1, 1987, see section 6001(f) of Pub. L. 99-509, set out as a note under section 8432 of this title.

INITIAL APPOINTMENTS TO FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Section 311 of Pub. L. 99-335 provided that:

“(a) INITIAL APPOINTMENT OF MEMBERS.—Section 8472(c) of title 5, United States Code (as added by section 101(a) of this Act) shall not apply to the members of the Federal Retirement Thrift Investment Board first appointed to such Board.

“(b) TERMS OF SERVICE.—Notwithstanding subsection (e)(1) of section 8472 of title 5, United States Code (as added by section 101(a) of this Act), the term of service of each member of the Federal Retirement Thrift Investment Board appointed pursuant to subsection (a) shall be 1 year, except that such member shall continue to serve until his successor is appointed under subsection (b) of such section 8472 and confirmed under subsection (c) of such section.”

AUTHORIZATION OF APPROPRIATIONS FOR CERTAIN EXPENSES OF FEDERAL RETIREMENT THRIFT INVESTMENT MANAGEMENT SYSTEM

Section 701 of Pub. L. 99-335, as amended by Pub. L. 99-500, §101(m) [title IV, §401], Oct. 18, 1986, 100 Stat. 1783-308, 1783-322, and Pub. L. 99-591, §101(m) [title IV, §401], Oct. 30, 1986, 100 Stat. 3341-308, 3341-322, provided that:

“(a) TEMPORARY ALTERNATIVE FUNDING.—Notwithstanding section 8434(c)(3) [probably should be “section 8437(c)(3)”] of title 5, United States Code (as added by section 101 of this Act), the expenses incurred in the administration of the Federal Retirement Thrift Investment Management System under subchapter VII of chapter 84 of such title (as so added) during fiscal years 1986 and 1987 may be paid from sums appropriated pursuant to subsection (b).

“(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Retirement Thrift Investment Board, for fiscal years 1986 and 1987, such sums as may be necessary to pay the expenses incurred in the administration of the Federal Retirement Thrift Investment Management System during such fiscal years.”

§ 8473. Employee Thrift Advisory Council

(a) The Board shall establish an Employee Thrift Advisory Council. The Council shall be composed of 15 members appointed by the Chairman of the Board in accordance with subsection (b).

(b) The Chairman shall appoint 15 members of the Council, of whom—

(1) 4 shall be appointed to represent the respective labor organizations representing (as exclusive representatives) the first, second, third, and fourth largest numbers of individuals subject to chapter 71 of this title;

(2) 2 shall be appointed to represent the respective labor organizations which have been accorded exclusive recognition under section 1203(a) of title 39 representing the largest and second largest numbers of individuals employed by the United States Postal Service;

(3) 1 shall be appointed to represent the labor organization which has been accorded exclusive recognition under section 1203(a) of title 39 representing the largest number of individuals employed by the United States Postal Service as rural letter carriers;

(4) 2 shall be appointed to represent the respective managerial organizations (other than an organization described in paragraph (5)) which consult with the United States Postal Service under section 1004(b) of title 39 and which represent the largest and second largest numbers of individuals employed by the United States Postal Service as managerial personnel;

(5) 1 shall be appointed to represent the supervisors' organization as defined in section 1004(h) of title 39;

(6) 1 shall be appointed to represent employee organizations having as a purpose pro-

moting the interests of women in Government service;

(7) 1 shall be appointed to represent the organization representing the largest number of individuals receiving annuities under this chapter or chapter 83 of this title;

(8) 1 shall be appointed to represent the organization representing the largest number of supervisors and management officials (as defined by section 7103(a));

(9) 1 shall be appointed to represent the organization representing the largest number of members of the Senior Executive Service; and

(10) 1 shall be appointed to represent participants (under section 8440e) who are members of the uniformed services.

(c)(1) The Chairman of the Board shall designate 1 member of the Council to serve as head of the Council.

(2) A member of the Council shall be appointed for a term of 4 years.

(3)(A) A vacancy in the Council shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(C) The term of any member shall not expire before the date on which the member's successor takes office.

(d) The Council shall act by resolution of a majority of the members.

(e) The Council shall—

(1) advise the Board and the Executive Director on matters relating to—

(A) investment policies for the Thrift Savings Fund; and

(B) the administration of this subchapter and subchapter III of this chapter; and

(2) perform such other duties as the Board may direct with respect to investment funds established in accordance with subchapter III of this chapter.

(f) Section 14(a)(2) of the Federal Advisory Committee Act shall not apply to the Council.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 579; amended Pub. L. 103-89, §3(b)(1)(N), Sept. 30, 1993, 107 Stat. 982; Pub. L. 106-65, div. A, title VI, §661(a)(6), Oct. 5, 1999, 113 Stat. 672.)

REFERENCES IN TEXT

Section 14(a)(2) of the Federal Advisory Committee Act [Pub. L. 92-463], referred to in subsec. (f), is section 14(a)(2) of Pub. L. 92-463, which is set out in the Appendix to this title.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106-65, §661(a)(6)(A), substituted “15 members” for “14 members”.

Subsec. (b). Pub. L. 106-65, §661(a)(6)(B)(i), substituted “15 members” for “14 members” in introductory provisions.

Subsec. (b)(10). Pub. L. 106-65, §661(a)(6)(B)(ii)-(iv), added par. (10).

1993—Subsec. (b)(8). Pub. L. 103-89 substituted “supervisors and management officials (as defined by section 7103(a))” for “individuals subject to the Performance Management and Recognition System under chapter 54 of this title”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-65 effective 180 days after Oct. 30, 2000, unless postponed, see section 663 of Pub. L. 106-65, as amended, set out as an Effective Date note under section 8440e of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103-89, set out as a note under section 3372 of this title.

§ 8474. Executive Director

(a)(1) The Board shall appoint, without regard to the provisions of law governing appointments in the competitive service, an Executive Director by action agreed to by a majority of the members of the Board.

(2) The Executive Director shall have substantial experience, training, and expertise in the management of financial investments and pension benefit plans.

(b) The Executive Director shall—

(1) carry out the policies established by the Board;

(2) invest and manage the Thrift Savings Fund in accordance with the investment policies and other policies established by the Board;

(3) purchase annuity contracts and provide for the payment of other benefits under subchapter III of this chapter;

(4) administer the provisions of this subchapter and subchapter III of this chapter;

(5) prescribe such regulations (other than regulations relating to fiduciary responsibilities) as may be necessary for the administration of this subchapter and subchapter III of this chapter; and

(6) meet from time to time with the Council upon request of the Council.

(c) The Executive Director may—

(1) prescribe such regulations as may be necessary to carry out the responsibilities of the Executive Director under this section, other than regulations relating to fiduciary responsibilities;

(2) appoint such personnel as may be necessary to carry out the provisions of this subchapter and subchapter III of this chapter;

(3) subject to approval by the Board, procure the services of experts and consultants under section 3109 of this title;

(4) secure directly from an Executive agency, the United States Postal Service, or the Postal Regulatory Commission any information necessary to carry out the provisions of this subchapter or subchapter III of this chapter and policies of the Board;

(5) make such payments out of sums in the Thrift Savings Fund as the Executive Director determines are necessary to carry out the provisions of this subchapter and subchapter III of this chapter and the policies of the Board;

(6) pay the compensation, per diem, and travel expenses of individuals appointed under paragraphs (2), (3), and (7) of this subsection from the Thrift Savings Fund;

(7) accept and use the services of individuals employed intermittently in the Government service and reimburse such individuals for travel expenses, as authorized by section 5703

of this title, including per diem as authorized by section 5702 of this title;

(8) except as otherwise expressly prohibited by law or the policies of the Board, delegate any of the Executive Director's functions to such employees under the Board as the Executive Director may designate and authorize such successive redelegations of such functions to such employees under the Board as the Executive Director may consider to be necessary or appropriate; and

(9) take such other actions as are appropriate to carry out the functions of the Executive Director.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 580; amended Pub. L. 109-435, title VI, §604(b), Dec. 20, 2006, 120 Stat. 3241.)

REFERENCES IN TEXT

The provisions of law governing appointments in the competitive service, referred to in subsec. (a)(1), are classified generally to section 3301 et seq. of this title.

AMENDMENTS

2006—Subsec. (c)(4). Pub. L. 109-435 substituted "Postal Regulatory Commission" for "Postal Rate Commission".

§ 8475. Investment policies

The Board shall develop investment policies under section 8472(f)(1) of this title which provide for—

- (1) prudent investments suitable for accumulating funds for payment of retirement income; and
- (2) low administrative costs.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 581.)

§ 8476. Administrative provisions

(a) The Board shall meet—

- (1) not less than once during each month; and
- (2) at additional times at the call of the Chairman.

(b)(1) Except as provided in sections 8472(g)(1)(C) and 8474(a)(1) of this title, the Board shall perform the functions and exercise the powers of the Board on a majority vote of a quorum of the Board.

(2) A vacancy on the Board shall not impair the authority of a quorum of the Board to perform the functions and exercise the powers of the Board.

(c) Three members of the Board shall constitute a quorum for the transaction of business.

(d)(1) Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at the daily rate of basic pay for level IV of the Executive Schedule for each day during which such member is engaged in performing a function of the Board.

(2) A member of the Board shall be paid travel, per diem, and other necessary expenses under subchapter I of chapter 57 of this title while traveling away from such member's home or regular place of business in the performance of the duties of the Board.

(3) Payments authorized under this subsection shall be paid from the Thrift Savings Fund.

(e) The accrued annual leave of any employee who is a member of the Board or the Council shall not be charged for any time used in performing services for the Board or the Council.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 581; amended Pub. L. 101-509, title V, §529 [title I, §101(b)(9)(K)], Nov. 5, 1990, 104 Stat. 1427, 1442.)

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (d)(1), is set out in section 5315 of this title.

AMENDMENTS

1990—Subsec. (d)(1). Pub. L. 101-509 substituted "level IV of the Executive Schedule" for "grade GS-18 of the General Schedule".

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

§ 8477. Fiduciary responsibilities; liability and penalties

(a) For the purposes of this section—

- (1) the term "account" is not limited by the definition provided in section 8401(1);
- (2) the term "adequate consideration" means—

(A) in the case of a security for which there is a generally recognized market—

(i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934; or

(ii) if the security is not traded on such a national securities exchange, a price not less favorable to the Thrift Savings Fund than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest; and

(B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary of Labor;

(3) the term "fiduciary" means—

(A) a member of the Board;

(B) the Executive Director;

(C) any person who has or exercises discretionary authority or discretionary control over the management or disposition of the assets of the Thrift Savings Fund; and

(D) any person who, with respect to the Thrift Savings Fund, is described in section 3(21)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(21)(A)); and

(4) the term "party in interest" includes—

(A) any fiduciary;

(B) any counsel to a person who is a fiduciary, with respect to the actions of such person as a fiduciary;

(C) any participant;

(D) any person providing services to the Board and, with respect to the actions of the

Executive Director as a fiduciary any person providing services to the Executive Director;

(E) a labor organization, the members of which are participants;

(F) a spouse, sibling, ancestor, lineal descendant, or spouse of a lineal descendant of a person described in subparagraph (A), (B), or (D);

(G) a corporation, partnership, or trust or estate of which, or in which, at least 50 percent of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation;

(ii) the capital interest or profits interest of such partnership; or

(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by a person described in subparagraph (A), (B), (D), or (E);

(H) an official (including a director) of, or an individual employed by, a person described in subparagraph (A), (B), (D), (E), or (G), or an individual having powers or responsibilities similar to those of such an official;

(I) a holder (directly or indirectly) of at least 10 percent of the shares in a person described in any subparagraph referred to in subparagraph (H); and

(J) a person who, directly or indirectly, is at least a 10 percent partner or joint venturer (measured in capital or profits) in a person described in any subparagraph referred to in subparagraph (H).

(b)(1) To the extent not inconsistent with the provisions of this chapter and the policies prescribed by the Board, a fiduciary shall discharge his responsibilities with respect to the Thrift Savings Fund or applicable portion thereof solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of—

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the Thrift Savings Fund or applicable portions thereof;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent individual acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like objectives; and

(C) to the extent permitted by section 8438 of this title, by diversifying the investments of the Thrift Savings Fund or applicable portions thereof so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

(2) No fiduciary may maintain the indicia of ownership of any assets of the Thrift Savings Fund outside the jurisdiction of the district courts of the United States.

(c)(1) A fiduciary shall not permit the Thrift Savings Fund to engage in any of the following transactions, except in exchange for adequate consideration:

(A) A transfer of any assets of the Thrift Savings Fund to any person the fiduciary knows or should know to be a party in interest or the use of such assets by any such person.

(B) An acquisition of any property from or sale of any property to the Thrift Savings Fund by any person the fiduciary knows or should know to be a party in interest.

(C) A transfer or exchange of services between the Thrift Savings Fund and any person the fiduciary knows or should know to be a party in interest.

(2) Notwithstanding paragraph (1), a fiduciary with respect to the Thrift Savings Fund shall not—

(A) deal with any assets of the Thrift Savings Fund in his own interest or for his own account;

(B) act, in an individual capacity or any other capacity, in any transaction involving the Thrift Savings Fund on behalf of a party, or representing a party, whose interests are adverse to the interests of the Thrift Savings Fund or the interests of its participants or beneficiaries; or

(C) receive any consideration for his own personal account from any party dealing with sums credited to the Thrift Savings Fund in connection with a transaction involving assets of the Thrift Savings Fund.

(3)(A) The Secretary of Labor may, in accordance with procedures which the Secretary shall by regulation prescribe, grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by paragraph (2).

(B) An exemption granted under this paragraph shall not relieve a fiduciary from any other applicable provision of this chapter.

(C) The Secretary of Labor may not grant an exemption under this paragraph unless he finds that such exemption is—

(i) administratively feasible;

(ii) in the interests of the Thrift Savings Fund and of its participants and beneficiaries; and

(iii) protective of the rights of participants and beneficiaries of such Fund.

(D) An exemption under this paragraph may not be granted unless—

(i) notice of the proposed exemption is published in the Federal Register;

(ii) interested persons are given an opportunity to present views; and

(iii) the Secretary of Labor affords an opportunity for a hearing and makes a determination on the record with respect to the respective requirements of clauses (i), (ii), and (iii) of subparagraph (C).

(E) Notwithstanding subparagraph (D), the Secretary of Labor may determine that an exemption granted for any class of fiduciaries or transactions under section 408(a) of the Employee Retirement Income Security Act of 1974 shall, upon publication of notice in the Federal Register under this subparagraph, constitute an exemption for purposes of the provisions of paragraph (2).

(d) This section does not prohibit any fiduciary from—

(1) receiving any benefit which the fiduciary is entitled to receive under this subchapter or subchapter III of this chapter as a participant or beneficiary;

(2) receiving any reasonable compensation authorized by this subchapter for services rendered, or for reimbursement of expenses properly and actually incurred, in the performance of the fiduciary's duties under this chapter; or

(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

(e)(1)(A) Any fiduciary that breaches the responsibilities, duties, and obligations set out in subsection (b) or violates subsection (c) shall be personally liable to the Thrift Savings Fund for any losses to such Fund resulting from each such breach or violation and to restore to such Fund any profits made by the fiduciary through use of assets of such Fund by the fiduciary, and shall be subject to such other equitable or remedial relief as a court considers appropriate, except as provided in paragraphs (3) and (4) of this subsection. A fiduciary may be removed for a breach referred to in the preceding sentence.

(B) The Secretary of Labor may assess a civil penalty against a party in interest with respect to each transaction which is engaged in by the party in interest and is prohibited by subsection (c). The amount of such penalty shall be equal to 5 percent of the amount involved in each such transaction (as defined in section 4975(f)(4) of the Internal Revenue Code of 1986) for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary of Labor shall prescribe by regulation consistent with section 4975(f)(5) of such Code) within 90 days after the date the Secretary of Labor transmits notice to the party in interest (or such longer period as the Secretary of Labor may permit), such penalty may be in an amount not more than 100 percent of the amount involved.

(C)(i) A fiduciary shall not be liable under subparagraph (A) with respect to a breach of fiduciary duty under subsection (b) committed before becoming a fiduciary or after ceasing to be a fiduciary.

(ii) A fiduciary shall not be liable under subparagraph (A), and no civil action may be brought against a fiduciary—

(I) for providing for the automatic enrollment of a participant in accordance with section 8432(b)(2)(A);

(II) for enrolling a participant in a default investment fund in accordance with section 8438(c)(2); or

(III) for allowing a participant to invest through the mutual fund window or for establishing restrictions applicable to participants' ability to invest through the mutual fund window.

(D) A fiduciary shall be jointly and severally liable under subparagraph (A) for a breach of fiduciary duty under subsection (b) by another fiduciary only if—

(i) the fiduciary participates knowingly in, or knowingly undertakes to conceal, an act or

omission of such other fiduciary, knowing such act or omission is such a breach;

(ii) by the fiduciary's failure to comply with subsection (b) in the administration of the fiduciary's specific responsibilities which give rise to the fiduciary status, the fiduciary has enabled such other fiduciary to commit such a breach; or

(iii) the fiduciary has knowledge of a breach by such other fiduciary, unless the fiduciary makes reasonable efforts under the circumstances to remedy the breach.

(E) The Secretary of Labor shall prescribe, in regulations, procedures for allocating fiduciary responsibilities among fiduciaries, including investment managers. Any fiduciary who, pursuant to such procedures, allocates to a person or persons any fiduciary responsibility shall not be liable for an act or omission of such person or persons unless—

(i) such fiduciary violated subsection (b) with respect to the allocation, with respect to the implementation of the procedures prescribed by the Secretary of Labor (or the Board under section 114 of the Federal Employees' Retirement System Technical Corrections Act of 1986), or in continuing such allocation; or

(ii) such fiduciary would otherwise be liable in accordance with subparagraph (D).

(2) No civil action may be maintained against any fiduciary with respect to the responsibilities, liabilities, and penalties authorized or provided for in this section except in accordance with paragraphs (3) and (4).

(3) A civil action may be brought in the district courts of the United States—

(A) by the Secretary of Labor against any fiduciary other than a Member of the Board or the Executive Director of the Board—

(i) to determine and enforce a liability under paragraph (1)(A);

(ii) to collect any civil penalty under paragraph (1)(B);

(iii) to enjoin any act or practice which violates any provision of subsection (b) or (c);

(iv) to obtain any other appropriate equitable relief to redress a violation of any such provision; or

(v) to enjoin any act or practice which violates subsection (g)(2) or (h) of section 8472 of this title;

(B) by any participant, beneficiary, or fiduciary against any fiduciary—

(i) to enjoin any act or practice which violates any provision of subsection (b) or (c);

(ii) to obtain any other appropriate equitable relief to redress a violation of any such provision;

(iii) to enjoin any act or practice which violates subsection (g)(2) or (h) of section 8472 of this title; or

(C) by any participant or beneficiary—

(i) to recover benefits of such participant or beneficiary under the provisions of subchapter III of this chapter, to enforce any right of such participant or beneficiary under such provisions, or to clarify any such

right to future benefits under such provisions; or

(ii) to enforce any claim otherwise cognizable under sections 1346(b) and 2671 through 2680 of title 28, provided that the remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for injury or loss of property caused by the negligent or wrongful act or omission of any fiduciary while acting within the scope of his duties or employment shall be exclusive of any other civil action or proceeding by the participant or beneficiary for recovery of money by reason of the same subject matter against the fiduciary (or the estate of such fiduciary) whose act or omission gave rise to such action or proceeding, whether or not such action or proceeding is based on an alleged violation of subsection (b) or (c).

(4)(A) In all civil actions under paragraph (3)(A), attorneys appointed by the Secretary may represent the Secretary (except as provided in section 518(a) of title 28), however all such litigation shall be subject to the direction and control of the Attorney General.

(B) The Attorney General shall defend any civil action or proceeding brought in any court against any fiduciary referred to in paragraph (3)(C)(ii) (or the estate of such fiduciary) for any such injury. Any fiduciary against whom such a civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such fiduciary (or an attested copy thereof) to the Executive Director of the Board, who shall promptly furnish copies of the pleading and process to the Attorney General and the United States Attorney for the district wherein the action or proceeding is brought.

(C) Upon certification by the Attorney General that a fiduciary described in paragraph (3)(C)(ii) was acting in the scope of such fiduciary's duties or employment as a fiduciary at the time of the occurrence or omission out of which the action arose, any such civil action or proceeding commenced in a State court shall be—

(i) removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division in which it is pending; and

(ii) deemed a tort action brought against the United States under the provisions of title 28 and all references thereto.

(D) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect. To the extent section 2672 of title 28 provides that persons other than the Attorney General or his designee may compromise and settle claims, and that payment of such claims may be made from agency appropriations, such provisions shall not apply to claims based upon an alleged violation of subsection (b) or (c).

(E) For the purposes of paragraph (3)(C)(ii) the provisions of sections 2680(h) of title 28 shall not apply to any claim based upon an alleged violation of subsection (b) or (c).

(F) Notwithstanding sections 1346(b) and 2671 through 2680 of title 28, whenever an award, compromise, or settlement is made under such sections upon any claim based upon an alleged violation of subsection (b) or (c), payment of such award, compromise, or settlement shall be made to the appropriate account within the Thrift Savings Fund, or where there is no such appropriate account, to the participant or beneficiary bringing the claim.

(G) For purposes of paragraph (3)(C)(ii), fiduciary includes only the Members of the Board and the Board's Executive Director.

(5) Any relief awarded against a Member of the Board or the Executive Director of the Board in a civil action authorized by paragraph (3) may not include any monetary damages or any other recovery of money.

(6) An action may not be commenced under paragraph (3)(A) or (B) with respect to a fiduciary's breach of any responsibility, duty, or obligation under subsection (b) or a violation of subsection (c) after the earlier of—

(A) 6 years after (i) the date of the last action which constituted a part of the breach or violation, or (ii) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation; or

(B) 3 years after the earliest date on which the plaintiff had actual knowledge of the breach or violation, except that, in the case of fraud or concealment, such action may be commenced not later than 6 years after the date of discovery of such breach or violation.

(7)(A) The district courts of the United States shall have exclusive jurisdiction of civil actions under this subsection.

(B) An action under this subsection may be brought in the District Court of the United States for the District of Columbia or a district court of the United States in the district where the breach alleged in the complaint or petition filed in the action took place or in the district where a defendant resides or may be found. Process may be served in any other district where a defendant resides or may be found.

(8)(A) A copy of the complaint or petition filed in any action brought under this subsection (other than by the Secretary of Labor) shall be served on the Executive Director, the Secretary of Labor, and the Secretary of the Treasury by certified mail.

(B) Any officer referred to in subparagraph (A) of this paragraph shall have the right in his discretion to intervene in any action. If the Secretary of Labor brings an action under paragraph (2) of this subsection on behalf of a participant or beneficiary, he shall notify the Executive Director and the Secretary of the Treasury.

(f) The Secretary of Labor may prescribe regulations to carry out this section.

(g)(1) The Secretary of Labor shall establish a program to carry out audits to determine the level of compliance with the requirements of this section relating to fiduciary responsibilities and prohibited activities of fiduciaries.

(2) An audit under this subsection may be conducted by the Secretary of Labor, by contract with a qualified non-governmental organization, or in cooperation with the Comptroller General

of the United States, as the Secretary considers appropriate.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 582; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99-556, title I, §§112, 114(b), Oct. 27, 1986, 100 Stat. 3133; Pub. L. 100-238, title I, §133(a), (c), Jan. 8, 1988, 101 Stat. 1760, 1762; Pub. L. 100-366, §3(a), July 13, 1988, 102 Stat. 826; Pub. L. 101-335, §8, July 17, 1990, 104 Stat. 325; Pub. L. 111-31, div. B, title I, §106(b), June 22, 2009, 123 Stat. 1855.)

REFERENCES IN TEXT

Section 6 of the Securities Exchange Act of 1934, referred to in subsec. (a)(2)(A)(i), is classified to section 78f of Title 15, Commerce and Trade.

Section 408(a) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (c)(3)(E), is classified to section 1108(a) of Title 29, Labor.

Section 4975(f)(4) and (5) of the Internal Revenue Code of 1986, referred to in subsec. (e)(1)(B), is classified to section 4975(f)(4) and (5) of Title 26, Internal Revenue Code.

Section 114 of the Federal Employees' Retirement System Technical Corrections Act of 1986, referred to in subsec. (e)(1)(E)(i), is section 114 of Pub. L. 99-556 which amended this section and enacted provisions set out as a note under this section.

AMENDMENTS

2009—Subsec. (e)(1)(C). Pub. L. 111-31 designated existing provisions as cl. (i) and added cl. (ii).

1990—Pub. L. 101-335 repealed section 133(c) of Pub. L. 100-238. See Effective Date of 1988 Amendment note below.

1988—Subsec. (e)(1)(A). Pub. L. 100-238, §133(a)(1), inserted “, except as provided in paragraphs (3) and (4) of this subsection”.

Subsec. (e)(1)(B). Pub. L. 100-238, §133(a)(2), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

Subsec. (e)(1)(D). Pub. L. 100-238, §133(a)(3), inserted “only” in introductory provisions.

Subsec. (e)(2), (3). Pub. L. 100-238, §133(a)(5), added pars. (2) and (3) and struck out former pars. (2) and (3) which read as follows:

“(2) A civil action may be brought in the district courts of the United States—

“(A) by the Secretary of Labor—

“(i) to determine and enforce a liability under paragraph (1)(A);

“(ii) to collect any civil penalty under paragraph (1)(B); or

“(iii) to enjoin any act or practice which violates subsection (g)(2) or (h) of section 8472 of this title;

“(B) by the Secretary of Labor, any participant, beneficiary, or fiduciary—

“(i) to enjoin any act or practice which violates any provision of subsection (b) or (c); or

“(ii) to obtain any other appropriate equitable relief to redress a violation of any such provision; or

“(C) by any participant or beneficiary to recover benefits due to him or her under the provisions of subchapter III of this chapter, to enforce his or her rights under such provisions, or to clarify his or her rights to future benefits under such provisions.

“(3) An action may not be commenced under paragraph (2) with respect to a fiduciary's breach of any responsibility, duty, or obligation under subsection (b) or a violation of subsection (c) after the earlier of—

“(A) 6 years after (i) the date of the last action which constituted a part of the breach or violation, or (ii) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation; or

“(B) 3 years after the earliest date on which the plaintiff had actual knowledge of the breach or viola-

tion, except that, in the case of fraud or concealment, such action may be commenced not later than 6 years after the date of discovery of such breach or violation.”

Subsec. (e)(3)(C)(ii). Pub. L. 100-366, §3(a)(1), substituted “28, provided that” for “28, if” and “shall be exclusive of” for “is exclusive of”.

Subsec. (e)(4) to (8). Pub. L. 100-238, §133(a)(4), (5), added pars. (4) to (6) and redesignated former pars. (4) and (5) as (7) and (8), respectively.

Subsec. (e)(5). Pub. L. 100-366, §3(a)(2), substituted “paragraph (3)” for “paragraphs (3) and (4)”.

1986—Subsec. (c)(3)(E). Pub. L. 99-556, §112, added subpar. (E).

Subsec. (e)(1)(B). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

Subsec. (e)(1)(E)(i). Pub. L. 99-556, §114(b), substituted “Secretary of Labor (or the Board under section 114 of the Federal Employees' Retirement System Technical Corrections Act of 1986)” for “Board”.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 3(b) of Pub. L. 100-366 provided that: “Section 8477(e) of title 5, United States Code, as amended by subsection (a), shall apply to any civil action or proceeding arising from any act or omission occurring on or after October 1, 1986.”

Section 133(b) of Pub. L. 100-238 provided that: “The provisions of section 8477(e)(1), (2), (3), (4), (5), and (6) of title 5, United States Code (as amended by subsection (a) of this section), shall apply to any civil action or proceeding arising from any act or omission occurring on or after October 1, 1986.”

Section 133(c) of Pub. L. 100-238, which provided that the provisions of subsection (a) (and the amendments to section 8477(e) of title 5 contained therein) and subsection (b) of this section were to be repealed effective on Dec. 31, 1990, and that on and after Dec. 31, 1990, the provisions of section 8477(e) of title 5 were to be in effect as such provisions were in effect on Jan. 7, 1988, was repealed by Pub. L. 101-335, §8, July 17, 1990, 104 Stat. 325.

INTERIM EXEMPTION PROCEDURES

Section 111 of Pub. L. 99-556 provided that:

“(a) IN GENERAL.—Subject to subsection (b), until such time as final regulations under subparagraph (A) of section 8477(c)(3) of title 5, United States Code, become effective, the Secretary of Labor may, in accordance with procedures under section 408(a) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1108(a)], grant any exemption allowable under such section 8477(c)(3).

“(b) TERMINATION OF INTERIM AUTHORITY.—The authority to grant an exemption under section 8477(c)(3) of title 5, United States Code, using the procedures under section 408(a) of the Employee Retirement Income Security Act of 1974 shall expire not later than December 31, 1988.”

ALLOCATION OF FIDUCIARY RESPONSIBILITIES

Section 114(a) of Pub. L. 99-556 provided that:

“(1) Subject to paragraph (2), until such time as final regulations under subparagraph (E) of section 8477(e)(1) of title 5, United States Code, become effective, a fiduciary (as defined by section 8477(a)(3) of title 5, United States Code) may, in accordance with procedures established by the Federal Retirement Thrift Investment Board, make any allocation of fiduciary responsibilities.

“(2) The authority to make any allocation under section 8477(e)(1)(E) using the procedures referred to in paragraph (1), and any allocation so made using such procedures, shall expire not later than December 31, 1988.”

§ 8478. Bonding

(a)(1) Except as provided in paragraph (2), each fiduciary and each person who handles funds or

property of the Thrift Savings Fund shall be bonded as provided in this section.

(2)(A) Bond shall not be required of a fiduciary (or of any officer or employee of such fiduciary) if such fiduciary—

(i) is a corporation organized and doing business under the laws of the United States or of any State;

(ii) is authorized under such laws to exercise trust powers or to conduct an insurance business;

(iii) is subject to supervision or examination by Federal or State authority; and

(iv) has at all times a combined capital and surplus in excess of such minimum amount (not less than \$1,000,000) as the Secretary of Labor prescribes in regulations.

(B) If—

(i) a bank or other financial institution would, but for this subparagraph, not be required to be bonded under this section by reason of the application of the exception provided in subparagraph (A),

(ii) the bank or financial institution is authorized to exercise trust powers, and

(iii) the deposits of the bank or financial institution are not insured by the Federal Deposit Insurance Corporation,

such exception shall apply to such bank or financial institution only if the bank or institution meets bonding requirements under State law which the Secretary of Labor determines are at least equivalent to those imposed on banks by Federal law.

(b)(1) The Secretary of Labor shall prescribe the amount of a bond under this section at the beginning of each fiscal year. Except as otherwise provided in this paragraph, such amount shall not be less than 10 percent of the amount of funds handled. In no case shall such bond be less than \$1,000 nor more than \$500,000, except that the Secretary of Labor, after due notice and opportunity for hearing to all interested parties, and other consideration of the record, may prescribe an amount in excess of \$500,000.

(2) For the purpose of prescribing the amount of a bond under paragraph (1), the amount of funds handled shall be determined by reference to the amount of the funds handled by the person, group, or class to be covered by such bond or by their predecessor or predecessors, if any, during the preceding fiscal year, or to the amount of funds to be handled during the current fiscal year by such person, group, or class, estimated as provided in regulations prescribed by the Secretary of Labor.

(c) A bond required by subsection (a)—

(1) shall include such terms and conditions as the Secretary of Labor considers necessary to protect the Thrift Savings Fund against loss by reason of acts of fraud or dishonesty on the part of the bonded person directly or through connivance with others;

(2) shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 9304 through 9308 of title 31; and

(3) shall be in a form or of a type approved by the Secretary of Labor, including individ-

ual bonds or schedule or blanket forms of bonds which cover a group or class.

(d)(1) It shall be unlawful for any person to whom subsection (a) applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of the Thrift Savings Fund without being bonded as required by this section.

(2) It shall be unlawful for any fiduciary, or any other person having authority to direct the performance of functions described in paragraph (1), to permit any such function to be performed by any person to whom subsection (a) applies unless such person has met the requirements of such subsection.

(e) Notwithstanding any other provision of law, any person who is required to be bonded as provided in subsection (a) shall be exempt from any other provision of law which would, but for this subsection, require such person to be bonded for the handling of the funds or other property of the Thrift Savings Fund.

(f) The Secretary of Labor shall prescribe such regulations as may be necessary to carry out the provisions of this section, including exempting a person or class of persons from the requirements of this section.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 586; amended Pub. L. 99-556, title I, §§108, 115, Oct. 27, 1986, 100 Stat. 3132, 3134; Pub. L. 102-378, §2(72), Oct. 2, 1992, 106 Stat. 1355.)

AMENDMENTS

1992—Subsec. (a)(2)(B)(iii). Pub. L. 102-378 struck out “Corporation or the Federal Savings and Loan Insurance” before “Corporation”.

1986—Subsec. (a)(1). Pub. L. 99-556, §108, struck out “(other than a member of the Employee Thrift Advisory Council with respect to his duties as a member)” after “each fiduciary”.

Subsec. (c)(2). Pub. L. 99-556, §115, substituted “sections 9304 through 9308 of title 31” for “sections 6 through 13 of title 6”.

INTERIM BONDING REGULATIONS

Section 113 of Pub. L. 99-556 provided that:

“(a) IN GENERAL.—Subject to subsection (b), until such time as the Secretary of Labor promulgates final regulations under section 8478 of title 5, United States Code, the Secretary of Labor may, with respect to the Thrift Savings Fund, apply the temporary regulations under section 412 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1112] that are set forth in section 2550.412-1, and subchapter I of chapter XXV, of title 29 of the Code of Federal Regulations, as in effect on September 23, 1986.

“(b) TERMINATION OF INTERIM AUTHORITY.—The authority to apply the temporary regulations referred to in subsection (a) with respect to the Thrift Savings Fund shall expire not later than December 31, 1989.”

§ 8478a. Investigative authority

Any authority available to the Secretary of Labor under section 504 of the Employee Retirement Income Security Act of 1974 is hereby made available to the Secretary of Labor, and any officer designated by the Secretary of Labor, to determine whether any person has violated, or is about to violate, any provision of section 8477 or 8478.

(Added Pub. L. 99-556, title I, §110(a), Oct. 27, 1986, 100 Stat. 3132.)

REFERENCES IN TEXT

Section 504 of the Employee Retirement Income Security Act of 1974, referred to in text, is classified to section 1134 of Title 29, Labor.

§ 8479. Exculpatory provisions; insurance

(a) Any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this subchapter shall be void.

(b)(1) The Executive Director may require employing agencies to contribute an amount not to exceed 1 percent of the amount such agencies are required to contribute in accordance with section 8432(c) of this title to the Thrift Savings Fund.

(2) The sums credited to the Thrift Savings Fund under paragraph (1) shall be available and may be used at the discretion of the Executive Director to purchase insurance to cover potential liability of persons who serve in a fiduciary capacity with respect to the Thrift Savings Fund, without regard to whether a policy of insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 588.)

§ 8480. Subpoena authority

(a) In order to carry out the responsibilities specified in this subchapter and subchapter III of this chapter, the Executive Director may issue subpoenas commanding each person to whom the subpoena is directed to produce designated books, documents, records, electronically stored information, or tangible materials in the possession or control of that individual.

(b) Notwithstanding any Federal, State, or local law, any person, including officers, agents, and employees, receiving a subpoena under this section, who complies in good faith with the subpoena and thus produces the materials sought, shall not be liable in any court of any State or the United States to any individual, domestic or foreign corporation or upon a partnership or other unincorporated association for such production.

(c) When a person fails to obey a subpoena issued under this section, the district court of the United States for the district in which the investigation is conducted or in which the person failing to obey is found, shall on proper application issue an order directing that person to comply with the subpoena. The court may punish as contempt any disobedience of its order.

(d) The Executive Director shall prescribe regulations to carry out subsection (a).

(Added Pub. L. 111-31, div. B, title I, §107(a), June 22, 2009, 123 Stat. 1856.)

CHAPTER 85—UNEMPLOYMENT COMPENSATION

SUBCHAPTER I—EMPLOYEES GENERALLY

Sec.	
8501.	Definitions.
8502.	Compensation under State agreement.
8503.	Compensation absent State agreement.

Sec.	
8504.	Assignment of Federal service and wages.
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SUBCHAPTER II—EX-SERVICEMEN

8521.	Definitions; application.
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8524.	Repealed.
8525.	Effect on other statutes.

AMENDMENTS

1992—Pub. L. 102-378, §2(73), Oct. 2, 1992, 106 Stat. 1355, added item 8509.

1975—Pub. L. 94-183, §2(42), Dec. 31, 1975, 89 Stat. 1059, substituted "Repealed" for "Accrued leave" in item 8524.

SUBCHAPTER I—EMPLOYEES GENERALLY

§ 8501. Definitions

For the purpose of this subchapter—

(1) "Federal service" means service performed after 1952 in the employ of the United States or an instrumentality of the United States which is wholly or partially owned by the United States, but does not include service (except service to which subchapter II of this chapter applies) performed—

(A) by an elective official in the executive or legislative branch;

(B) as a member of the armed forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration;

(C) by members of the Foreign Service for whom payments are provided under section 609(b)(1) of the Foreign Service Act of 1980;

(D) outside the United States, the Commonwealth of Puerto Rico, and the Virgin Islands by an individual who is not a citizen of the United States;

(E) by an individual excluded by regulations of the Office of Personnel Management from the operation of subchapter III of chapter 83 of this title because he is paid on a contract or fee basis;

(F) by an individual receiving nominal pay and allowances of \$12 or less a year;

(G) in a hospital, home, or other institution of the United States by a patient or inmate thereof;

(H) by a student-employee as defined by section 5351 of this title;

(I) by an individual serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(J) by an individual employed under a Federal relief program to relieve him from unemployment;

(K) as a member of a State, county, or community committee under the Agricultural Stabilization and Conservation Service or of any other board, council, committee, or other similar body, unless the board, council, committee, or other body is composed exclusively of individuals otherwise in the full-time employ of the United States; or

(L) by an officer or a member of the crew on or in connection with an American vessel—

- (i) owned by or bareboat chartered to the United States; and
- (ii) whose business is conducted by a general agent of the Secretary of Commerce;

if contributions on account of the service are required to be made to an unemployment fund under a State unemployment compensation law under section 3305(g) of title 26;

(2) "Federal wages" means all pay and allowances, in cash and in kind, for Federal service;

(3) "Federal employee" means an individual who has performed Federal service;

(4) "compensation" means cash benefits payable to an individual with respect to his unemployment including any portion thereof payable with respect to dependents;

(5) "benefit year" means the benefit year as defined by the applicable State unemployment compensation law, and if not so defined the term means the period prescribed in the agreement under this subchapter with a State or, in the absence of such an agreement, the period prescribed by the Secretary of Labor;

(6) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;

(7) "United States", when used in a geographical sense, means the States; and

(8) "base period" means the base period as defined by the applicable State unemployment compensation law for the benefit year.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 585; Pub. L. 94-566, title I, §116(e)(1), title II, §214(b), Oct. 20, 1976, 90 Stat. 2672, 2678; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-215, §4(a), Mar. 25, 1980, 94 Stat. 124; Pub. L. 96-465, title II, §2314(h), Oct. 17, 1980, 94 Stat. 2168.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	42 U.S.C. 1361.	Sept. 1, 1954, ch. 1212, §4(a) "Sec. 1501", 68 Stat. 1130. Aug. 28, 1958, Pub. L. 85-848, §2, 72 Stat. 1087. July 12, 1960, Pub. L. 86-624, §30(g), 74 Stat. 420. Sept. 13, 1960, Pub. L. 86-778, §§531(e), 542(d), 74 Stat. 984, 986.

Clause (4) of former section 1361(a) is omitted as obsolete.

In paragraph (1)(A), the word "official" is substituted for "officer" because of the definition of "officer" in section 2104. The words "of the Government of the United States" are omitted as unnecessary.

In paragraph (1)(E), the words "by regulations of the Civil Service Commission from the operation of subchapter III of chapter 83 of this title" are substituted for "by Executive order from the operation of the Civil Service Retirement Act of 1930" on authority of the Civil Service Retirement Act Amendments of 1956, which are carried into subchapter III of chapter 83.

In paragraph (1)(K), the words "Agricultural Stabilization and Conservation Service" are substituted for "Production and Marketing Administration" on authority of Secretary's memorandum 1320, supp. 4 of November 2, 1953.

In paragraph (1)(L), the words "section 1606(g) of Title 26, Internal Revenue Code of 1939" in former section 1361(a)(13) are omitted as obsolete.

The last sentence of former section 1361 is omitted as its substance is included in paragraph (1)(D).

Former section 1361(f) is omitted as unnecessary as the full title of the Secretary of Labor is set out the first time it is used in each section.

Paragraphs (6) and (7) are added on authority of section 1101(a)(1), (2) of the Act of Aug. 14, 1935, ch. 531, 49 Stat. 647, as amended; 42 U.S.C. 1301(a)(1), (2).

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

REFERENCES IN TEXT

Section 609(b)(1) of the Foreign Service Act of 1980, referred to in par. (1)(C), is classified to section 4009(b)(1) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1980—Par. (1)(B). Pub. L. 96-215 inserted "or the Commissioned Corps of the National Oceanic and Atmospheric Administration" after "armed forces".

Par. (1)(C). Pub. L. 96-465 substituted "members of the Foreign Service for whom payments are provided under section 609(b)(1) of the Foreign Service Act of 1980" for "Foreign Service personnel for whom special separation allowances are provided under chapter 14 of title 22".

1978—Par. (1)(E). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

1976—Par. (6). Pub. L. 94-566, §116(e)(1), added the Virgin Islands in definition of "State".

Par. (8). Pub. L. 94-566, §214(b), added par. (8).

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

Section 4(c) of Pub. L. 96-215 provided that: "The amendments made by this section [amending this section and section 8521 of this title] shall apply with respect to assignments of services and wages pursuant to any first claim (for a benefit year) which is filed after the date of the enactment of this Act [Mar. 25, 1980]."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 116(e)(1) of Pub. L. 94-566 applicable with respect to benefit years beginning on or after the later of Oct. 1, 1976, or the first day of the first week for which compensation becomes payable under an unemployment compensation law of the Virgin Islands which is approved by the Secretary of Labor under section 3304(a) of Title 26, Internal Revenue Code, see section 116(f)(3) of Pub. L. 94-566, set out as a note under section 3304 of Title 26.

Section 214(c) of Pub. L. 94-566 provided that: "The amendments made by this section [amending this section and section 8505 of this title] shall apply with regard to compensation paid on the basis of claims for compensation filed on or after July 1, 1977".

TEMPORARY 1990 CENSUS SERVICES CONSTITUTING FEDERAL SERVICE

Determination respecting temporary 1990 census services as Federal service for purposes of this subchapter, see section 141 of Pub. L. 101-382, set out as a note under section 23 of Title 13, Census.

§ 8502. Compensation under State agreement

(a) The Secretary of Labor, on behalf of the United States, may enter into an agreement

with a State, or with an agency administering the unemployment compensation law of a State, under which the State agency shall—

(1) pay, as agent of the United States, compensation under this subchapter to Federal employees; and

(2) otherwise cooperate with the Secretary and with other State agencies in paying compensation under this subchapter.

(b) The agreement shall provide that compensation will be paid by the State to a Federal employee in the same amount, on the same terms, and subject to the same conditions as the compensation which would be payable to him under the unemployment compensation law of the State if his Federal service and Federal wages assigned under section 8504 of this title to the State had been included as employment and wages under that State law.

[(c) Repealed. Pub. L. 90-83, §1(86)(B), Sept. 11, 1967, 81 Stat. 218.]

(d) A determination by a State agency with respect to entitlement to compensation under an agreement is subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

(e) Each agreement shall provide the terms and conditions on which it may be amended or terminated.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 586; Pub. L. 90-83, §1(86), Sept. 11, 1967, 81 Stat. 218.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	42 U.S.C. 1362.	Sept. 1, 1954, ch. 1212, §4(a) "Sec. 1502", 68 Stat. 1131. Sept. 13, 1960, Pub. L. 86-778, §542(b)(1)(A), 74 Stat. 985.

In subsection (a), the words "under this subchapter" are substituted for "on the basis provided in subsection (b) of this section".

In subsection (b), the words "with respect to unemployment after December 31, 1954" are omitted as obsolete.

In subsection (c), the words "with respect to unemployment after December 31, 1960" are omitted as obsolete. In the last sentence, the application to section 8503(b) is omitted and carried into that section.

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. 8502 to eliminate certain provisions that are now obsolete. The obsolete provisions were based on section 542(b)(1)(A) of the act of September 13, 1960, 74 Stat. 985, that amended section 1502(b) of the Social Security Act effective January 1, 1961, but only in the case of weeks of unemployment beginning before January 1, 1966. Any existing rights are preserved by section 7 of this bill.

§ 8503. Compensation absent State agreement

(a) In the case of a Federal employee whose Federal service and Federal wages are assigned under section 8504 of this title to a State which does not have an agreement with the Secretary of Labor, the Secretary, under regulations prescribed by him, shall, on the filing by the Fed-

eral employee of a claim for compensation under this subsection, pay compensation to him in the same amount, on the same terms, and subject to the same conditions as would be paid to him under the unemployment compensation law of the State if his Federal service and Federal wages had been included as employment and wages under that State law. However, if the Federal employee, without regard to his Federal service and Federal wages, has employment or wages sufficient to qualify for compensation during the benefit year under that State law, then payments of compensation under this subsection may be made only on the basis of his Federal service and Federal wages.

(b) A Federal employee whose claim for compensation under subsection (a) of this section is denied is entitled to a fair hearing under regulations prescribed by the Secretary. A final determination by the Secretary with respect to entitlement to compensation under this section is subject to review by the courts in the same manner and to the same extent as is provided by section 405(g) of title 42.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 587; Pub. L. 90-83, §1(87), Sept. 11, 1967, 81 Stat. 218; Pub. L. 94-566, title I, §116(e)(2), Oct. 20, 1976, 90 Stat. 2673.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	42 U.S.C. 1363.	Sept. 1, 1954, ch. 1212, §4(a) "Sec. 1503", 68 Stat. 1132. Sept. 13, 1960, Pub. L. 86-778, §542(b)(1)(B), (C), (c)(1), 74 Stat. 986.

In subsections (a) and (b), the words "with respect to unemployment after December 31, 1954" are omitted as obsolete.

In subsection (b), the last sentence is added on authority of the last sentence of former section 1362(b), which section is carried into section 8502.

In subsection (c), the words "with respect to final decisions of the Secretary of Health, Education, and Welfare under subchapter II of this chapter" are 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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8503(b)	[Uncodified].	Sept. 13, 1960, Pub. L. 86-778, §542(a)(1), 74 Stat. 985.

This section also amends 5 U.S.C. 8503 to eliminate certain provisions that are now obsolete. The obsolete provisions were based on section 542(b)(1)(B) and (C) of the act of September 13, 1960, 74 Stat. 986, that amended section 1503 (a) and (b) of the Social Security Act effective January 1, 1961, but only in the case of weeks of unemployment beginning before January 1, 1966. Any existing rights are preserved by section 7 of this bill.

AMENDMENTS

1976—Subsecs. (b), (c). Pub. L. 94-566, §116(e)(2), redesignated subsec. (c) as (b) and substituted "subsection (a)" for "subsection (a) or (b)". Former subsec. (b), which made special provision for Federal employees whose Federal service and Federal wages were assigned to the Virgin Islands, was struck out.

Subsec. (d). Pub. L. 94-566, §116(e)(2)(A), struck out subsec. (d) which authorized the Secretary to use the personnel and facilities of the agency in the Virgin Islands cooperating with the United States Employment Service.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-566 applicable with respect to benefit years beginning on or after later of Oct. 1, 1976, or first day of first week for which compensation becomes payable under an unemployment compensation law of Virgin Islands which is approved by Secretary of Labor under section 3304(a) of Title 26, Internal Revenue Code, see section 116(f)(3) of Pub. L. 94-566, set out as a note under section 3304 of Title 26.

§ 8504. Assignment of Federal service and wages

Under regulations prescribed by the Secretary of Labor, the Federal service and Federal wages of a Federal employee shall be assigned to the State in which he had his last official station in Federal service before the filing of his first claim for compensation for the benefit year. However—

(1) if, at the time of filing his first claim, he resides in another State in which he performed, after the termination of his Federal service, service covered under the unemployment compensation law of the other State, his Federal service and Federal wages shall be assigned to the other State; and

(2) if his last official station in Federal service, before filing his first claim, was outside the United States, his Federal service and Federal wages shall be assigned to the State where he resides at the time he files his first claim.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 588; Pub. L. 90-83, §1(88), Sept. 11, 1967, 81 Stat. 218; Pub. L. 94-566, title I, §116(e)(3), Oct. 20, 1976, 90 Stat. 2673.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	42 U.S.C. 1364.	Sept. 1, 1954, ch. 1212, §4(a) "Sec. 1504", 68 Stat. 1133. Sept. 13, 1960, Pub. L. 86-778, § 542(b)(2), 74 Stat. 986.

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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8504(3)	[Uncodified].	Sept. 13, 1960, Pub. L. 86-778, § 542(a)(2), 74 Stat. 985.

This section also amends 5 U.S.C. 8504 to eliminate certain provisions that are now obsolete. The obsolete provisions were based on section 542(b)(2) of the act of September 13, 1960, 74 Stat. 986, that amended section 1504 of the Social Security Act effective January 1, 1961, but only in the case of first claims filed before January 1, 1966. Any existing rights are preserved by section 7 of this bill.

AMENDMENTS

1976—Par. (3). Pub. L. 94-566 struck out par. (3) which covered the assignment to the Virgin Islands of the Federal service and Federal wages of Federal employ-

ees whose first claims were filed while residing in the Virgin Islands.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-566 applicable with respect to benefit years beginning on or after later of Oct. 1, 1976, or first day of first week for which compensation becomes payable under an unemployment compensation law of Virgin Islands which is approved by Secretary of Labor under section 3304(a) of Title 26, Internal Revenue Code, see section 116(f)(3), set out as a note under section 3304 of Title 26.

§ 8505. Payments to States

(a) Each State is entitled to be paid by the United States with respect to each individual whose base period wages included Federal wages an amount which shall bear the same ratio to the total amount of compensation paid to such individual as the amount of his Federal wages in his base period bears to the total amount of his base period wages.

(b) Each State shall be paid, either in advance or by way of reimbursement, as may be determined by the Secretary of Labor, the sum that the Secretary estimates the State is entitled to receive under this subchapter for each calendar month. The sum shall be reduced or increased by the amount which the Secretary finds that his estimate for an earlier calendar month was greater or less than the sum which should have been paid to the State. An estimate may be made on the basis of a statistical, sampling, or other method agreed on by the Secretary and the State agency.

(c) The Secretary, from time to time, shall certify to the Secretary of the Treasury the sum payable to each State under this section. The Secretary of the Treasury, before audit or settlement by the Government Accountability Office, shall pay the State in accordance with the certification from the funds for carrying out the purposes of this subchapter.

(d) Money paid a State under this subchapter may be used solely for the purposes for which it is paid. Money so paid which is not used for these purposes shall be returned, at the time specified by the agreement, to the Treasury of the United States and credited to current applicable appropriations, funds, or accounts from which payments to States under this subchapter may be made.

(e) An agreement may—

(1) require each State officer or employee who certifies payments or disburses funds under the agreement, or who otherwise participates in its performance, to give a surety bond to the United States in the amount the Secretary considers necessary; and

(2) provide for payment of the cost of the bond from funds for carrying out the purposes of this subchapter.

(f) In the absence of gross negligence or intent to defraud the United States, an individual designated by the Secretary, or designated under an agreement, as a certifying official is not liable for the payment of compensation certified by him under this subchapter.

(g) In the absence of gross negligence or intent to defraud the United States, a disbursing official is not liable for a payment by him under

this subchapter if it was based on a voucher signed by a certifying official designated as provided by subsection (f) of this section.

(h) For the purpose of payments made to a State under subchapter III of chapter 7 of title 42, administration by a State agency under an agreement is deemed a part of the administration of the State unemployment compensation law.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 588; Pub. L. 94-566, title II, §214(a), Oct. 20, 1976, 90 Stat. 2678; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	42 U.S.C. 1366.	Sept. 1, 1954, ch. 1212, §4(a) "Sec. 1506", 68 Stat. 1133.

In the first sentence of subsection (d), the word "may" is substituted for "shall" since the sentence does not direct the use of the money, rather it limits the purposes for which the money may be used.

In subsections (f) and (g), the word "official" is substituted for "officer" because of the definition of "officer" in section 2104.

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

AMENDMENTS

2004—Subsec. (c). Pub. L. 108-271 substituted "Government Accountability Office" for "General Accounting Office".

1976—Subsec. (a). Pub. L. 94-566 substituted provisions that each State is entitled to be paid by the United States with respect to each individual whose base period wages included Federal wages an amount which shall bear the same ratio to the total amount of compensation paid to such individual as the amount of his Federal wages in his base period bears to the total amount of his base period wages for provisions that each State is entitled to be paid by the United States an amount equal to the additional cost to the State of payments of compensation in accordance with an agreement under this subchapter which would not have been made by the State but for the agreement.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-566 applicable with regard to compensation paid on the basis of claims for compensation filed on or after July 1, 1977, see section 214(c) of Pub. L. 94-566, set out as a note under section 8501 of this title.

§ 8506. Dissemination of information

(a) Each agency of the United States and each wholly or partially owned instrumentality of the United States shall make available to State agencies which have agreements under this subchapter, or to the Secretary of Labor, as the case may be, such information concerning the Federal service and Federal wages of a Federal employee as the Secretary considers practicable and necessary for the determination of the entitlement of the Federal employee to compensation under this subchapter. The information shall include the findings of the employing agency concerning—

- (1) whether or not the Federal employee has performed Federal service;
- (2) the periods of Federal service;
- (3) the amount of Federal wages; and
- (4) the reasons for termination of Federal service.

The employing agency shall make the findings in the form and manner prescribed by regulations of the Secretary. The regulations shall include provision for correction by the employing agency of errors and omissions. This subsection does not apply with respect to Federal service and Federal wages covered by subchapter II of this chapter.

(b) The agency administering the unemployment compensation law of a State shall furnish the Secretary such information as he considers necessary or appropriate in carrying out this subchapter. The information is deemed the report required by the Secretary for the purpose of section 503(a)(6) of title 42.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 589; Pub. L. 94-566, title III, §313(a), Oct. 20, 1976, 90 Stat. 2680.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	42 U.S.C. 1367.	Sept. 1, 1954, ch. 1212, §4(a) "Sec. 1507", 68 Stat. 1134. Aug. 28, 1958, Pub. L. 85-848, §4, 72 Stat. 1089. Sept. 13, 1960, Pub. L. 86-778, §531(f), 74 Stat. 984.

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

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-566 struck out provision that findings made in accordance with the Secretary's regulations were final and conclusive for the purpose of sections 8502(d) and 8503(c) of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 313(b) of Pub. L. 94-566 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to findings made after the date of the enactment of this Act [Oct. 20, 1976]."

§ 8507. False statements and misrepresentations

(a) If a State agency, the Secretary of Labor, or a court of competent jurisdiction finds that an individual—

- (1) knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact; and
- (2) as a result of that action has received an amount as compensation under this subchapter to which he was not entitled;

the individual shall repay the amount to the State agency or the Secretary. Instead of requiring repayment under this subsection, the State agency or the Secretary may recover the amount by deductions from compensation payable to the individual under this subchapter during the 2-year period after the date of the finding. A finding by a State agency or the Secretary may be made only after an opportunity for a fair hearing, subject to such further review as may be appropriate under sections 8502(d) and 8503(c) of this title.

(b) An amount repaid under subsection (a) of this section shall be—

- (1) deposited in the fund from which payment was made, if the repayment was to a State agency; or

(2) returned to the Treasury of the United States and credited to the current applicable appropriation, fund, or account from which payment was made, if the repayment was to the Secretary.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 590.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	42 U.S.C. 1368(b).	Sept. 1, 1954, ch. 1212, §4(a), "Sec. 1508(b)", 68 Stat. 1135.

In subsection (a), the words "as the case may be", "be liable to", and "of any amount" are 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.

§ 8508. Regulations

The Secretary of Labor may prescribe rules and regulations necessary to carry out this subchapter and subchapter II of this chapter. The Secretary, insofar as practicable, shall consult with representatives of the State unemployment compensation agencies before prescribing rules or regulations which may affect the performance by the State agencies of functions under agreements under this subchapter.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 590.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	42 U.S.C. 1369.	Sept. 1, 1954, ch. 1212, §4(a) "Sec. 1509", 68 Stat. 1135.

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

§ 8509. Federal Employees Compensation Account

(a) The Federal Employees Compensation Account (as established by section 909 of the Social Security Act, and hereafter in this section referred to as the "Account") in the Unemployment Trust Fund (as established by section 904 of such Act) shall consist of—

(1) funds appropriated to or transferred thereto, and

(2) amounts deposited therein pursuant to subsection (c).

(b) Moneys in the Account shall be available only for the purpose of making payments to States pursuant to agreements entered into under this chapter and making payments of compensation under this chapter in States which do not have in effect such an agreement.

(c)(1) Each employing agency shall deposit into the Account amounts equal to the expenditures incurred under this chapter on account of Federal service performed by employees and former employees of that agency.

(2) Deposits required by paragraph (1) shall be made during each calendar quarter and the amount of the deposit to be made by any employing agency during any quarter shall be

based on a determination by the Secretary of Labor as to the amounts of payments, made prior to such quarter from the Account based on Federal service performed by employees of such agency after December 31, 1980, with respect to which deposit has not previously been made. The amount to be deposited by any employing agency during any calendar quarter shall be adjusted to take account of any overpayment or underpayment of deposit during any previous quarter for which adjustment has not already been made.

(3) If any Federal agency does not deposit in the Federal Employees Compensation Account any amount before the date 30 days after the date on which the Secretary of Labor has notified such agency that it is required to so deposit such amount, the Secretary of Labor shall notify the Secretary of the Treasury of the failure to make such deposit and the Secretary of the Treasury shall transfer such amount to the Federal Employees Compensation Account from amounts otherwise appropriated to such Federal agency.

(d) The Secretary of Labor shall certify to the Secretary of the Treasury the amount of the deposit which each employing agency is required to make to the Account during any calendar quarter, and the Secretary of the Treasury shall notify the Secretary of Labor as to the date and amount of any deposit made to such Account by any such agency.

(e) Prior to the beginning of each fiscal year (commencing with the fiscal year which begins October 1, 1981) the Secretary of Labor shall estimate—

(1) the amount of expenditures which will be made from the Account during such year, and

(2) the amount of funds which will be available during such year for the making of such expenditures,

and if, on the basis of such estimate, he determines that the amount described in paragraph (2) is in excess of the amount necessary—

(3) to meet the expenditures described in paragraph (1), and

(4) to provide a reasonable contingency fund so as to assure that there will, during all times in such year, be sufficient sums available in the Account to meet the expenditures described in paragraph (1),

he shall certify the amount of such excess to the Secretary of the Treasury and the Secretary of the Treasury shall transfer, from the Account to the general fund of the Treasury, an amount equal to such excess.

(f) The Secretary of Labor is authorized to establish such rules and regulations as may be necessary or appropriate to carry out the provisions of this section.

(g) Any funds appropriated after the establishment of the Account, for the making of payments for which expenditures are authorized to be made from moneys in the Account, shall be made to the Account; and there are hereby authorized to be appropriated to the Account, from time to time, such sums as may be necessary to assure that there will, at all times, be sufficient sums available in the Account to meet the expenditures authorized to be made from moneys therein.

(h) For purposes of this section, the term “Federal service” includes Federal service as defined in section 8521(a).

(Added Pub. L. 96-499, title X, §1023(b), Dec. 5, 1980, 94 Stat. 2657; amended Pub. L. 97-362, title II, §202(a), Oct. 25, 1982, 96 Stat. 1732; Pub. L. 102-318, title V, §532(a), July 3, 1992, 106 Stat. 317.)

REFERENCES IN TEXT

Sections 909 and 904 of the Social Security Act, referred to in subsec. (a), are classified to sections 1109 and 1104, respectively, of Title 42, The Public Health and Welfare.

AMENDMENTS

1992—Subsec. (c)(3). Pub. L. 102-318 added par. (3).
1982—Subsecs. (b), (c)(1). Pub. L. 97-362, §202(a)(1), substituted “chapter” for “subchapter” wherever appearing.
Subsec. (h). Pub. L. 97-362, §202(a)(2), added subsec. (h).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 532(b) of Pub. L. 102-318 provided that: “The amendment made by subsection (a) [amending this section] shall apply to failures outstanding on the date of the enactment of this Act [July 3, 1992] or at any time thereafter.”

EFFECTIVE DATE OF 1982 AMENDMENT

Section 202(b)(1) of Pub. L. 97-362 provided that: “The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1983.”

TRANSFER OF APPROPRIATED UNEMPLOYMENT COMPENSATION FUNDS

Pub. L. 97-362, title II, §202(b)(2), Oct. 25, 1982, 96 Stat. 1733, provided that: “All funds appropriated which are available (on October 1, 1983) for the making of payments to States under chapter 85 of title 5, United States Code, on the basis of Federal service (as defined in section 8521(a) of such title 5) or for the making of payments under such chapter on the basis of such service in States which do not have in effect an agreement under such chapter, shall be transferred on such date to the Federal Employees Compensation Account established by section 909 of the Social Security Act [42 U.S.C. 1109]. On and after such date, all payments described in the preceding sentence shall be made from such account as provided by section 8509 of such title 5.”

Section 1023(c) of Pub. L. 96-499 provided that: “All funds appropriated which are available for the making of payments to States after December 31, 1980, pursuant to agreements entered into under subchapter I of chapter 85 of title 5, United States Code, or for the making of payments after such date of compensation under such subchapter in States which do not have in effect such an agreement, shall be transferred on January 1, 1981, to the Federal Employees Compensation Account established by section 909 of the Social Security Act [42 U.S.C. 1109]. On and after such date, all payments described in the preceding sentence shall be made from such Account as provided by section 8509 of title 5, United States Code.”

SUBCHAPTER II—EX-SERVICEMEN

§ 8521. Definitions; application

(a) For the purpose of this subchapter—

(1) “Federal service” means active service (not including active duty in a reserve status unless for a continuous period of 90 days or more) in the armed forces or the Commissioned Corps of the National Oceanic and At-

mospheric Administration if with respect to that service—

(A) the individual was discharged or released under honorable conditions (and, if an officer, did not resign for the good of the service); and

(B)(i) the individual was discharged or released after completing his first full term of active service which the individual initially agreed to serve, or

(ii) the individual was discharged or released before completing such term of active service—

(I) for the convenience of the Government under an early release program,

(II) because of medical disqualification, pregnancy, parenthood, or any service-incurred injury or disability,

(III) because of hardship (including pursuant to a sole survivorship discharge, as that term is defined in section 1174(i) of title 10), or

(IV) because of personality disorders or inaptitude but only if the service was continuous for 365 days or more;

(2) “Federal wages” means all pay and allowances, in cash and in kind, for Federal service, computed on the basis of the pay and allowances for the pay grade of the individual at the time of his latest discharge or release from Federal service as specified in the schedule applicable at the time he files his first claim for compensation for the benefit year. The Secretary of Labor shall issue, from time to time, after consultation with the Secretary of Defense, schedules specifying the pay and allowances for each pay grade of servicemen covered by this subchapter, which reflect representative amounts for appropriate elements of the pay and allowances whether in cash or in kind; and

(3) “State” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(b) The provisions of subchapter I of this chapter, subject to the modifications made by this subchapter, apply to individuals who have had Federal service as defined by subsection (a) of this section.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 590; Pub. L. 90-83, §1(89), Sept. 11, 1967, 81 Stat. 218; Pub. L. 94-566, title I, §116(e)(4), Oct. 20, 1976, 90 Stat. 2673; Pub. L. 96-215, §4(b), Mar. 25, 1980, 94 Stat. 124; Pub. L. 96-364, title IV, §415(a), Sept. 26, 1980, 94 Stat. 1310; Pub. L. 97-35, title XXIV, §2405(a), Aug. 13, 1981, 95 Stat. 876; Pub. L. 97-362, title II, §201(a), (b), Oct. 25, 1982, 96 Stat. 1732; Pub. L. 102-164, title III, §301(a), (b), Nov. 15, 1991, 105 Stat. 1059; Pub. L. 110-317, §7, Aug. 29, 2008, 122 Stat. 3529.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	42 U.S.C. 1371 (a)-(c).	Aug. 28, 1958, Pub. L. 85-848, §3 “Sec. 1511(a)-(c)”, 72 Stat. 1088.

In subsection (a)(1), the words “armed forces” are co-extensive with and substituted for “Army, Navy, Air

Force, Marine Corps, or Coast Guard of the United States" in view of the definition of "armed forces" in section 2101. The words "after October 27, 1958" are substituted for "after the sixtieth day after August 28, 1958".

In subsection (b), the words "with respect to weeks of unemployment ending after the sixtieth day after August 28, 1958" are omitted as obsolete because the law is here stated with prospective effect.

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 incorporates into 5 U.S.C. 8521 the definition of "State" which is applicable to the source statute of that section by virtue of section 1301(a)(1) of title 42.

CODIFICATION

Section 8 of Pub. L. 102-107, Aug. 17, 1991, 105 Stat. 546, which contained provisions substantially identical to those of section 301 of Pub. L. 102-164, amending this section and enacting provisions set out below, did not become effective pursuant to section 10(b) of Pub. L. 102-107, because the President did not take the action required by that section by Aug. 17, 1991.

AMENDMENTS

2008—Subsec. (a)(1)(B)(ii)(III). Pub. L. 110-317 substituted "hardship (including pursuant to a sole survivorship discharge, as that term is defined in section 1174(i) of title 10)," for "hardship."

1991—Subsec. (a)(1). Pub. L. 102-164, § 301(b), substituted "90 days" for "180 days".

Subsec. (c). Pub. L. 102-164, § 301(a), struck out subsec. (c) which read as follows:

"(1) An individual shall not be entitled to compensation under this subchapter for any week before the fifth week beginning after the week in which the individual was discharged or released.

"(2) The aggregate amount of compensation payable on the basis of Federal service (as defined in subsection (a)) to any individual with respect to any benefit year shall not exceed 13 times the individual's weekly benefit amount for total unemployment."

1982—Subsec. (a)(1). Pub. L. 97-362, § 201(a), substituted provision that "Federal service" means active service (not including active duty in a reserve status unless for a continuous period of 180 days or more) in the armed forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration if with respect to that service the individual was discharged or released under honorable conditions (and, if an officer, did not resign for the good of the service), and the individual was discharged or released after completing his first full term of active service which the individual initially agreed to serve, or the individual was discharged or released before completing such term of active service for the convenience of the Government under an early release program, because of medical disqualification, pregnancy, parenthood, or any service-incurred injury or disability, because of hardship, or because of personality disorders or inaptitude but only if the service was continuous for 365 days or more, for provision that "Federal service" meant active service, including active duty for training purposes, in the armed forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration which either began after January 31, 1955, or terminated after October 27, 1958, if that service was continuous for 365 days or more, or was terminated earlier because of an actual service-incurred injury or disability, and with respect to that service, the individual was discharged or released under honorable conditions, did not resign or voluntarily leave the service, and was not released or discharged for cause as defined by the Department of Defense.

Subsec. (c). Pub. L. 97-362, § 201(b), added subsec. (c). 1981—Subsec. (a)(1)(B). Pub. L. 97-35 substituted "honorable conditions;" for "conditions other than dis-

honorable; and" in cl. (i), and "did not resign or voluntarily leave the service; and" for "was not given a bad conduct discharge, or, if an officer, did not resign for the good of the service;" in cl. (ii), and added cl. (iii).

1980—Subsec. (a)(1). Pub. L. 96-215 inserted "or the Commissioned Corps of the National Oceanic and Atmospheric Administration" after "armed forces" in provisions preceding subpar. (A).

Subsec. (a)(1)(A). Pub. L. 96-364 substituted "365" for "90".

1976—Subsec. (a)(3). Pub. L. 94-566 added the Virgin Islands to definition of "State".

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-317 applicable with respect to any sole survivorship discharge granted after Aug. 29, 2008, see section 10 of Pub. L. 110-317, set out as a note under section 2108 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 301(c) of Pub. L. 102-164 provided that: "The amendments made by this section [amending this section] shall apply to weeks of unemployment beginning on or after the date of the enactment of this Act [Nov. 15, 1991]."

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITIONAL RULE

Section 201(c) of Pub. L. 97-362 provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section], shall apply with respect to terminations of service on or after July 1, 1981, but only for purposes of determining eligibility for benefits for weeks of unemployment beginning after the date of the enactment of this Act [Oct. 25, 1982].

"(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to the extent that such amendments would (but for this paragraph) reduce the amount of compensation payable in the case of benefit years established before the date of the enactment of this Act [Oct. 25, 1982]."

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2405(b) of Pub. L. 97-35 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to terminations of service on or after July 1, 1981, but only in the case of weeks of unemployment beginning after the date of the enactment of this Act [Aug. 13, 1981]."

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 415(b) of Pub. L. 96-364 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to determinations of Federal service in the case of individuals filing claims for unemployment compensation on or after October 1, 1980."

Amendment by Pub. L. 96-215 applicable with respect to assignments of services and wages pursuant to any first claim (for a benefit year) which is filed after Mar. 25, 1980, see section 4(c) of Pub. L. 96-215, set out as a note under section 8501 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-566 applicable with respect to benefit years beginning on or after later of Oct. 1, 1976, or first day of first week for which compensation becomes payable under an unemployment compensation law of Virgin Islands which is approved by Secretary of Labor under section 3304(a) of Title 26, Internal Revenue Code, see section 116(f)(3) of Pub. L. 94-566, set out as a note under section 3304 of Title 26.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-83 effective as of Sept. 6, 1966, for all purposes, see section 9(h) of Pub. L. 90-83, set out as a note under section 5102 of this title.

§ 8522. Assignment of Federal service and wages

Notwithstanding section 8504 of this title, Federal service and Federal wages not previously assigned shall be assigned to the State in which the claimant first files claim for unemployment compensation after his latest discharge or release from Federal service. This assignment is deemed as assignment under section 8504 of this title for the purpose of this subchapter.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 591; Pub. L. 94-566, title I, §116(e)(5), Oct. 20, 1976, 90 Stat. 2673.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	42 U.S.C. 1371(e).	Aug. 28, 1958, Pub. L. 85-848, §3 "Sec. 1511(e)", 72 Stat. 1088. Sept. 13, 1960, Pub. L. 86-778, §542(c)(2), 74 Stat. 986.

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

AMENDMENTS

1976—Pub. L. 94-566 struck out "or to the Virgin Islands, as the case may be," after "shall be assigned to the State".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-566 applicable with respect to benefit years beginning on or after later of Oct. 1, 1976, or first day of first week for which compensation becomes payable under an unemployment compensation law of Virgin Islands which is approved by Secretary of Labor under section 3304(a) of Title 26, Internal Revenue Code, see section 116(f)(3) of Pub. L. 94-566, set out as a note under section 3304 of Title 26.

§ 8523. Dissemination of information

(a) When designated by the Secretary of Labor, an agency of the United States shall make available to the appropriate State agency or to the Secretary, as the case may be, such information, including findings in the form and manner prescribed by regulations of the Secretary, as the Secretary considers practicable and necessary for the determination of the entitlement of an individual to compensation under this subchapter.

(b) Subject to correction of errors and omissions as prescribed by regulations of the Secretary, the following are final and conclusive for the purpose of sections 8502(d) and 8503(c) of this title:

(1) Findings by an agency of the United States made in accordance with subsection (a) of this section with respect to—

(A) whether or not an individual has met any condition specified by section 8521(a)(1) of this title;

(B) the periods of Federal service; and

(C) the pay grade of the individual at the time of his latest discharge or release from Federal service.

(2) The schedules of pay and allowances prescribed by the Secretary under section 8521(a)(2) of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 591.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	42 U.S.C. 1371(d).	Aug. 28, 1958, Pub. L. 85-848, §3 "Sec. 1511(d)", 72 Stat. 1088.

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

[§ 8524. Repealed. Pub. L. 91-373, title I, § 107, Aug. 10, 1970, 84 Stat. 701]

Section, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 591, provided that a payment to ex-servicemen for unused accrued leave was to be deemed to continue Federal service during period after termination with respect to which the serviceman received payment and that such payment was to be deemed Federal wages subject to regulations concerning allocation over the period after termination.

EFFECTIVE DATE OF REPEAL

Section 107 of Pub. L. 91-373 provided that the repeal is effective with respect to benefit years which begin more than 30 days after the date of enactment of Pub. L. 91-373, which was approved on Aug. 10, 1970.

§ 8525. Effect on other statutes

[(a) Repealed. Pub. L. 90-83, §1(90), Sept. 11, 1967, 81 Stat. 219.]

(b) An individual is not entitled to compensation under this subchapter for any period with respect to which he receives—

(1) a subsistence allowance under chapter 31 of title 38 or under part VIII of Veterans Regulation Numbered 1(a); or

(2) an educational assistance allowance under chapter 35 of title 38.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 591; Pub. L. 90-83, §1(90), Sept. 11, 1967, 81 Stat. 219.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	42 U.S.C. 1371(g)-(i).	Aug. 28, 1958, Pub. L. 85-848, §3 "Sec. 1511 (g)-(i)", 72 Stat. 1089. Sept. 2, 1958, Pub. L. 85-857, §13(i)(3), 72 Stat. 1265.

In subsection (b), the words "an education and training allowance under subsection (a), (b), (c), or (d) of section 1632 of title 38" are omitted as obsolete. The authority to pay an education and training allowance under section 1632 of title 38 terminated on January 31, 1965, pursuant to section 1613(a) of title 38.

Section 1371(i) of title 42, providing that certain individuals are not entitled to unemployment compensation under the provisions of subchapter I of chapter 41 of title 38, is omitted as obsolete. Subchapter I of chapter 41 of title 38, which related to unemployment compensation for Korean conflict veterans, was repealed by the Act of Sept. 19, 1962, Pub. L. 87-675, 76 Stat. 558.

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 deletes subsection (a) of 5 U.S.C. 8525. That subsection is now obsolete in view of the repeal, effective July 1, 1966, of chapter 43 of title 38, U.S.C., by Public Law 89-50, section 1(a) (79 Stat. 173).

CHAPTER 87—LIFE INSURANCE

Sec.	
8701.	Definitions.
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AMENDMENTS

1994—Pub. L. 103-409, §2(b), Oct. 25, 1994, 108 Stat. 4232, added item 8714d.

1988—Pub. L. 100-238, title I, §108(a)(2)(B), Jan. 8, 1988, 101 Stat. 1747, added item 8713.

1984—Pub. L. 98-353, title II, §208(b), July 10, 1984, 98 Stat. 351, inserted “; assignment of ownership” in item 8706.

1980—Pub. L. 96-427, §§2(e), 7(b), 8(c), and 9(b), Oct. 10, 1980, 94 Stat. 1832, 1836, 1837, added items 8714b and 8714c, substituted “Definitions” for “Definition” in item 8701, and struck out item 8713 “Advisory committee”.

1967—Pub. L. 90-206, title IV, §404(2), Dec. 16, 1967, 81 Stat. 648, added item 8714a.

Pub. L. 90-83, §1(94), Sept. 11, 1967, 81 Stat. 219, substituted “Advisory committee” for “Advisors” in item 8713.

§ 8701. Definitions

(a) For the purpose of this chapter, “employee” means—

(1) an employee as defined by section 2105 of this title;

(2) a Member of Congress as defined by section 2106 of this title;

(3) a Congressional employee as defined by section 2107 of this title;

(4) the President;

(5) a justice or judge of the United States appointed to hold office during good behavior (i) who is in regular active judicial service, or (ii) who is retired from regular active service under section 371(b) or 372(a) of title 28, United States Code, or (iii) who has resigned the judicial office under section 371(a) of title 28 with the continued right during the remainder of his lifetime to receive the salary of the office at the time of his resignation;

(6) an individual first employed by the government of the District of Columbia before October 1, 1987;

(7) an individual employed by Gallaudet College;¹

(8) an individual employed by a county committee established under section 590h(b) of title 16;

(9) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838); and

(10) an individual appointed to a position on the office staff of a former President, or a former Vice President under section 4 of the Presidential Transition Act of 1963, as amended (78 Stat. 153), who immediately before the date of such appointment was an employee as defined under any other paragraph of this subsection;

but does not include—

(A) an employee of a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;

(B) an individual who is not a citizen or national of the United States and whose permanent duty station is outside the United States, unless the individual was an employee for the purpose of this chapter on September 30, 1979, by reason of service in an Executive agency, the United States Postal Service, or the Smithsonian Institution in the area which was then known as the Canal Zone; or

(C) an employee excluded by regulation of the Office of Personnel Management under section 8716(b) of this title.

(b) Notwithstanding subsection (a) of this section, the employment of a teacher in the recess period between two school years in a position other than a teaching position in which he served immediately before the recess period does not qualify the individual as an employee for the purpose of this chapter. For the purpose of this subsection, “teacher” and “teaching position” have the meanings given them by section 901 of title 20.

(c) For the purpose of this chapter, “basic insurance amount” means, in the case of any employee under this chapter, an amount equal to the greater of—

(1) the annual rate of basic pay payable to the employee, rounded to the next higher multiple of \$1,000, plus \$2,000, or

(2) \$10,000.

In the case of any former employee entitled to coverage under this chapter, the term means the basic insurance amount applicable for the employee at the time the insurance to which the employee is entitled as an employee under this chapter stops pursuant to section 8706(a) of this title.

(d)(1) For the purpose of this chapter, “family member”, when used with respect to any individual, means—

(A) the spouse of the individual; and

(B) an unmarried dependent child of the individual (other than a stillborn child), including an adopted child, stepchild or foster child (but only if the stepchild or foster child lived with the individual in a regular parent-child relationship), or recognized natural child—

(i) who is less than 22 years of age, or

(ii) who is 22 years of age or older and is incapable of self-support because of a mental or physical disability which existed before the child became 22 years of age.

(2) For the purpose of this subsection, “dependent”, in the case of any child, means that

¹ See Change of Name note below.

the individual involved was, at the time of the child's death, either living with or contributing to the support of the child, as determined in accordance with the regulations the Office shall prescribe.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 592; Pub. L. 91-418, §3(a), Sept. 25, 1970, 84 Stat. 869; Pub. L. 93-160, §1(a), Nov. 27, 1973, 87 Stat. 635; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-54, §2(a)(51), Aug. 14, 1979, 93 Stat. 384; Pub. L. 96-70, title I, §1209(b), Sept. 27, 1979, 93 Stat. 463; Pub. L. 96-427, §§2(a), 8(b), Oct. 10, 1980, 94 Stat. 1831, 1837; Pub. L. 98-353, title II, §205, July 10, 1984, 98 Stat. 350; Pub. L. 99-335, title II, §207(k)(1), June 6, 1986, 100 Stat. 597; Pub. L. 100-679, §13(b), Nov. 17, 1988, 102 Stat. 4071; Pub. L. 105-311, §§3(1), 4, Oct. 30, 1998, 112 Stat. 2950.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	2 U.S.C. 126. 5 U.S.C. 2091(a) (1st sentence, less words between 6th and 7th commas), (b), (d) (1st sentence, less words between 1st and 2d commas). [Uncodified].	Sept. 1, 1954, ch. 1208, §603, 68 Stat. 1116. Aug. 17, 1954, ch. 752, §2(a) (1st sentence, less words between 6th and 7th commas), (b), 68 Stat. 736. Aug. 1, 1956, ch. 837, §501(c)(1) (as applicable to §2 (b)), 70 Stat. 882. Aug. 2, 1956, ch. 901, §1, 70 Stat. 955. July 1, 1960, Pub. L. 86-568, §115(c) "(d) (1st sentence, less words between 1st and 2d commas)". 74 Stat. 302. Aug. 31, 1964, Pub. L. 88-531 §2, 78 Stat. 737. Aug. 25, 1958, Pub. L. 85-745, §1(b) (last sentence, as applicable to the Federal Employees' Group Life Insurance Act of 1954), 72 Stat. 838.
(b)	5 U.S.C. 2358(c) (less applicability to the Civil Service Retirement Act).	July 17, 1959, Pub. L. 86-91, §10(c) (less applicability to the Civil Service Retirement Act), 73 Stat. 217.

The definition of "Congressional employee" in section 2107 of this title includes an Official Reporter of Debates of the Senate and an individual employed by an Official Reporter of Debates of the Senate so that the inclusion of "a Congressional employee" in subsection (a)(3) provides the coverage for those individuals which was given by former section 126 of title 2.

The definition of "employee" in section 2105 of this title is broad enough to cover the officers and employees set out in former section 2091(a) with the exception of Members of Congress, the President, individuals employed either by the government of the District of Columbia or by Gallaudet College, and United States commissioners. Accordingly, these have been added specifically in paragraphs (2), (4), (5), (6), and (7).

In subsection (a) (B), the words "United States" are substituted for "a State of the United States or the District of Columbia".

Subsection (a)(C) is added for clarity.

In subsection (b), the last sentence is added on authority of former section 2351, which section is scheduled for transfer to section 901 of title 20.

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

REFERENCES IN TEXT

Act of August 25, 1958 (72 Stat. 838), referred to in subsec. (a)(9), is Pub. L. 85-745 and is set out as a note under section 102 of Title 3, The President.

Section 4 of the Presidential Transition Act of 1963, referred to in subsec. (a)(10), is section 4 of Pub. L. 88-277, which is set out as a note under section 102 of Title 3.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105-311, §3(1), substituted a period for comma after "\$10,000" in par. (2) and struck out "except that the amount of insurance may not exceed the annual rate of basic pay payable for positions at level II of the Executive Schedule under section 5313 of this title, rounded to the next higher multiple of \$1,000, plus \$2,000." before last sentence.

Subsec. (d)(1)(B). Pub. L. 105-311, §4, inserted "or foster child" after "stepchild" in two places in introductory provisions.

1988—Subsec. (a)(10). Pub. L. 100-679 added par. (10).

1986—Subsec. (a)(6). Pub. L. 99-335 amended par. (6) generally, substituting "first employed" for "employed" and inserting "before October 1, 1987".

1984—Subsec. (a)(5) to (9). Pub. L. 98-353 added par. (5) and redesignated former pars. (5) to (8) as (6) to (9), respectively.

1980—Pub. L. 96-427, §2(a)(1), substituted "Definitions" for "Definition" in section catchline.

Subsec. (c). Pub. L. 96-427, §2(a)(2), added subsec. (c). Subsec. (d). Pub. L. 96-427, §8(b), added subsec. (d).

1979—Subsec. (a)(7) to (9). Pub. L. 96-54 struck out cl. (7) which related to coverage within term "employee" of a United States Commissioner, and redesignated cls. (8) and (9) as (7) and (8), respectively.

Subsec. (a)(B). Pub. L. 96-70 inserted provisions relating to an individual who was an employee for the purpose of this chapter on Sept. 30, 1979, by reason of service in an Executive agency, the United States Postal Service, or the Smithsonian Institution in the area which was then known as the Canal Zone.

1978—Subsec. (a)(C). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

1973—Subsec. (a)(B). Pub. L. 93-160 excluded from definition of "employee" persons who are not nationals of the United States and whose permanent duty station is outside the United States and the Panama Canal Zone.

1970—Subsec. (a)(B). Pub. L. 91-418 excluded from definition of "employee" a noncitizen employee whose permanent duty station is outside the Panama Canal Zone.

CHANGE OF NAME

Gallaudet College, referred to in subsec. (a)(7), redesignated Gallaudet University by section 101(a) of Pub. L. 99-371, which is classified to section 4301(a) of Title 20, Education.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-311, §11, Oct. 30, 1998, 112 Stat. 2954, provided that:

"(a) IN GENERAL.—Except as otherwise provided in this Act [see Short Title of 1998 Amendment note below], the amendments made by this Act shall take effect on the date of enactment of this Act [Oct. 30, 1998].

"(b) MAXIMUM LIMITATION ON EMPLOYEE INSURANCE.—Section 3 [amending this section and section 8714b of this title] shall take effect on the first day of the first applicable pay period beginning on or after the date of enactment of this Act.

"(c) ERRONEOUS COVERAGE.—Section 5 [amending section 8706 of this title] shall be effective in any case in which a finding of erroneous insurance coverage is made on or after the date of enactment of this Act.

"(d) DIRECT PAYMENT OF INSURANCE CONTRIBUTIONS.—Section 6 [amending sections 8707 and 8714a to 8714c of this title] shall take effect on the first day of the first applicable pay period beginning on or after the date of enactment of this Act.

“(e) ADDITIONAL OPTIONAL LIFE INSURANCE.—

“(1) IN GENERAL.—Section 7 [amending section 8714b of this title and enacting provisions set out as a note under section 8714b of this title] shall take effect on the first day of the first pay period that begins on or after the 180th day following the date of enactment of this Act, or on any earlier date that the Office of Personnel Management may prescribe that is at least 60 days after the date of enactment of this Act.

“(2) REGULATIONS.—The Office shall prescribe regulations under which an employee may elect to continue additional optional insurance that remains in force on such effective date without subsequent reduction and with the full cost withheld from annuity or compensation on and after such effective date if that employee—

“(A) separated from service before such effective date due to retirement or entitlement to compensation under subchapter I of chapter 81 of title 5, United States Code; and

“(B) continued additional optional insurance pursuant to section 8714b(c)(2) as in effect immediately before such effective date.

“(f) IMPROVED OPTIONAL LIFE INSURANCE ON FAMILY MEMBERS.—The amendments made by section 8 [amending section 8714c of this title] shall take effect on the first day of the first pay period which begins on or after the 180th day following the date of enactment of this Act or on any earlier date that the Office of Personnel Management may prescribe.

“(g) OPEN SEASON.—Any election made by an employee under section 9 [set out as a note below], and applicable withholdings, shall be effective on the first day of the first applicable pay period that—

“(1) begins on or after the date occurring 365 days after the first day of the election period authorized under section 9; and

“(2) follows a pay period in which the employee was in a pay and duty status.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 10 of Pub. L. 96-427 provided that:

“(a) Unless otherwise specified, this Act [see Short Title note below] shall take effect on the date of the enactment of this Act [Oct. 10, 1980] and shall have no effect in the case of an employee who died, was separated, or retired before the date of enactment.

“(b) The amendment made by subsection (d) of section 2 of this Act [amending section 8704 of this title] shall apply with respect to premium pay payable under section 5545(c)(2) of title 5, United States Code, from and after the first day of the first pay period which begins on or after the date of the enactment of this Act [Oct. 10, 1980].

“(c) The amendment made by section 3 of this Act [amending section 8706 of this title] shall apply only in the case of an employee who retires or become entitled to receive compensation for work injury on or after the 180th day following the date of the enactment of this Act [Oct. 10, 1980], or any earlier date that the Office of Personnel Management may prescribe which is at least 60 days after the date of enactment.

“(d) The amendments made by sections 7 and 8 of this Act [enacting sections 8714b and 8714c of this title and amending this section] shall take effect on the first day of the first pay period which begins on or after the 180th day following the date of the enactment of this Act [Oct. 10, 1980], or on any earlier date that the Office may prescribe which is at least 60 days after the date of enactment, and shall have no effect in the case of an employee who died, was finally separated, or retired before the effective date.”

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96-70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96-70, set out as an Effective

Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-311, §1, Oct. 30, 1998, 112 Stat. 2950, provided that: “This Act [amending this section and sections 7703, 8706, 8707, and 8714a to 8714c of this title and enacting provisions set out as notes under this section and sections 7703 and 8714b of this title] may be cited as the ‘Federal Employees Life Insurance Improvement Act.’”

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-409, §1, Oct. 25, 1994, 108 Stat. 4230, provided that: “This Act [enacting section 8714d of this title and provisions set out as notes under this section and sections 8704, 8714, and 8901 of this title] may be cited as the ‘FEGLI Living Benefits Act.’”

SHORT TITLE OF 1980 AMENDMENT

Section 1 of Pub. L. 96-427 provided that: “This Act [enacting sections 8714b and 8714c of this title, amending this section and sections 8704, 8706, 8707, 8709, and 8714a of this title, repealing section 8713 of this title and enacting provisions set out as notes under this section and sections 8704 and 8714a of this title] may be cited as the ‘Federal Employees’ Group Life Insurance Act of 1980.’”

CONSTRUCTION

Pub. L. 111-8, div. D, title III, §307(b), Mar. 11, 2009, 123 Stat. 648, provided that: “For purposes of construing and applying chapter 87 of title 5, United States Code, including any adjustment of insurance rates by regulation or otherwise, the following categories of judicial officers shall be deemed to be judges of the United States as described under section 8701 of title 5, United States Code:

“(1) United States magistrate judges.

“(2) Bankruptcy judges appointed under chapter 6 of title 28, United States Code.

“(3) Judges of the District Court of Guam, judges of the District Court for the Northern Mariana Islands, and judges of the District Court of the Virgin Islands.

“(4) Bankruptcy judges and magistrate judges retired under section 377 of title 28, United States Code.

“(5) Judges retired under section 373 of title 28, United States Code.”

[Section 307(b) of Pub. L. 111-8, set out above, applicable with respect to any payment made on or after the first day of the first applicable pay period beginning on or after Jan. 7, 2008, see section 307(c) of Pub. L. 111-8, set out as an Effective Date of 2009 Amendment note under section 604 of Title 28, Judiciary and Judicial Procedure.]

Similar provisions were contained in the following prior act:

Pub. L. 110-177, title V, §502(b), Jan. 7, 2008, 121 Stat. 2542.

OPEN SEASON

Pub. L. 105-311, §9, Oct. 30, 1998, 112 Stat. 2954, provided that: “Beginning not later than 180 days after the date of enactment of this Act [Oct. 30, 1998], the Office of Personnel Management shall conduct an open enrollment opportunity for purposes of chapter 87 of title 5, United States Code, over a period of not less than 8 weeks. During this period, an employee (as defined under section 8701(a) of such title)—

“(1) may, if the employee previously declined or voluntarily terminated any coverage under chapter 87

of such title, elect to begin, resume, or increase group life insurance (and acquire applicable accidental death and dismemberment insurance) under all sections of such chapter without submitting evidence of insurability; and

“(2) may, if currently insured for optional life insurance on family members, elect an amount above the minimum insurance on a spouse.”

Pub. L. 103-409, §3(b), Oct. 25, 1994, 108 Stat. 4232, provided that:

“(1) The Office of Personnel Management shall prescribe regulations under which, beginning not later than 9 months after the date of the enactment of this Act [Oct. 25, 1994], and over a period of not less than 8 weeks—

“(A) an employee (as defined by section 8701(a) of title 5, United States Code) who declined or voluntarily terminated coverage under chapter 87 of such title—

“(i) may elect to begin, or to resume, group life insurance and group accidental death and dismemberment insurance; and

“(ii) may make such other elections under such chapter as the Office may allow; and

“(B) such other elections as the Office allows may be made.

“(2) The Office shall take such action as may be necessary to ensure that employees and any other individuals who would be eligible to make an election under this subsection are afforded advance notification to that effect.”

CONTINUED COVERAGE UNDER CERTAIN FEDERAL EMPLOYEE BENEFIT PROGRAMS FOR CERTAIN EMPLOYEES OF SAINT ELIZABETHS HOSPITAL

For provisions relating to treatment of certain Federal employees of Saint Elizabeths Hospital under certain Federal employee benefit programs, see section 207(o) of Pub. L. 99-335, set out as a note under section 8331 of this title.

§ 8702. Automatic coverage

(a) An employee is automatically insured on the date he becomes eligible for insurance and each policy of insurance purchased by the Office of Personnel Management under this chapter shall provide for that automatic coverage.

(b) An employee desiring not to be insured shall give written notice to his employing office on a form prescribed by the Office. If the notice is received before he has become insured, he shall not be insured. If the notice is received after he has become insured, his insurance stops at the end of the pay period in which the notice is received.

(c) Notwithstanding a notice previously given under subsection (b), an employee who is deployed in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10) or an employee of the Department of Defense who is designated as an emergency essential employee under section 1580 of title 10 shall be insured if the employee, within 60 days after the date of notification of deployment or designation, elects to be insured under a policy of insurance under this chapter. An election under the preceding sentence shall be effective when provided to the Office in writing, in the form prescribed by the Office, within such 60-day period.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 593; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 106-398, §1 [[div. A], title XI, §1134(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-318; Pub. L. 110-417, [div. A], title XI, §1103(a), Oct. 14, 2008, 122 Stat. 4616.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2094(a) (less 1st par.).	Aug. 17, 1954, ch. 752, §5(a) (less 1st par.), 68 Stat. 738.

In subsection (a), the words “eligible for insurance” are coextensive with and substituted for “eligible under the terms of this chapter”.

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

AMENDMENTS

2008—Subsec. (c). Pub. L. 110-417 inserted “an employee who is deployed in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10) or” after “subsection (b),” and substituted “the date of notification of deployment or” for “the date of the”.

2000—Subsec. (c). Pub. L. 106-398 added subsec. (c).
 1978—Subsecs. (a), (b). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

APPLICABILITY

Pub. L. 106-398, §1 [[div. A], title XI, §1134(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-318, provided that: “For purposes of section 8702(c) of title 5, United States Code (as added by subsection (a)), an employee of the Department of Defense who is designated as an emergency essential employee under section 1580 of title 10, United States Code, before the date of the enactment of this Act [Oct. 30, 2000] shall be deemed to be so designated on the date of the enactment of this Act.”

§ 8703. Benefit certificate

The Office of Personnel Management shall arrange to have each insured employee receive a certificate setting forth the benefits to which he is entitled, to whom the benefits are payable, to whom the claims shall be submitted, and summarizing the provisions of the policy principally affecting him. The certificate is issued instead of the certificate which the insurance company would otherwise be required to issue.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 593; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2098.	Aug. 17, 1954, ch. 752, §9, 68 Stat. 742.

The words “each insured employee” are coextensive with and substituted for “each employee insured under such policy”.

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

AMENDMENTS

1978—Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 8704. Group insurance; amounts

(a) An employee eligible for insurance is entitled to be insured for an amount of group life insurance equal to—

- (1) the employee's basic insurance amount, multiplied by
- (2) the appropriate factor determined on the basis of the employee's age in accordance with the following schedule:

If the age of the employee is	The appropriate factor is:
35 or under	2.0
36	1.9
37	1.8
38	1.7
39	1.6
40	1.5
41	1.4
42	1.3
43	1.2
44	1.1
45 or over	1.0.

(b) An employee eligible for insurance is entitled to be insured for group accidental death and dismemberment insurance in accordance with this subsection. Subject to the conditions and limitations approved by the Office of Personnel Management which are contained in the policy purchased by the Office, the group accidental death and dismemberment insurance provides payment as follows:

Loss	Amount payable
For loss of life	Full amount of the employee's basic insurance amount.
Loss of one hand or of one foot or loss of sight of one eye.	One-half the amount of the employee's basic insurance amount.
Loss of two or more such members.	Full amount of the employee's basic insurance amount.

For any one accident the aggregate amount of group accidental death and dismemberment insurance that may be paid may not exceed an amount equal to the employee's basic insurance amount.

(c) The Office shall prescribe regulations providing for the conversion of other than annual rates of pay to annual rates of pay and shall specify the types of pay included in annual pay. For the purpose of this chapter, "annual pay" includes—

- (1) premium pay under section 5545(c)(1) of this title; and
- (2) with respect to a law enforcement officer as defined in section 8331(20) or 8401(17) of this title, premium pay under section 5545(c)(2) of this title.

(d) In determining the amount of insurance to which an employee is entitled—

- (1) a change in rate of pay under subchapter VI of chapter 53 of this title is deemed effective as of the first day of the pay period after the pay period in which the payroll change is approved; and
- (2) a change in rate of pay under section 5344 or 5349 of this title is deemed effective as of the date of issuance of the order granting the increase or the effective date of the increase,

whichever is later, except, that in the case of an employee who dies or retires during the period beginning on the effective date of the increase and ending on the date of the issuance of the order granting the increase, a change in rate of pay under either of such sections shall be deemed as having been in effect for such employee during that period.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 593; Pub. L. 89-737, §1(3), Nov. 2, 1966, 80 Stat. 1164; Pub. L. 90-206, title IV, §401, Dec. 16, 1967, 81 Stat. 646; Pub. L. 92-392, §11, Aug. 19, 1972, 86 Stat. 575; Pub. L. 95-454, title VIII, §801(a)(3)(E), title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1222, 1224; Pub. L. 96-427, §2(b)-(d), Oct. 10, 1980, 94 Stat. 1831, 1832; Pub. L. 100-238, title I, §103(b), Jan. 8, 1988, 101 Stat. 1744.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
(a)-(c)	5 U.S.C. 2092 (less (d))	Aug. 17, 1954, ch. 752, §3 (less (d)), 68 Stat. 737.
(d)(1)	[Uncodified].	Aug. 23, 1958, Pub. L. 85-737, §3, 72 Stat. 831.
(d)(2)	5 U.S.C. 1183.	Sept. 2, 1958, Pub. L. 85-872, §3, 72 Stat. 1697.

In subsection (a), the words "An employee eligible for insurance is entitled" are coextensive with and substituted for "Each employee to whom this chapter applies shall be eligible".

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

AMENDMENTS

1988—Subsec. (c)(2). Pub. L. 100-238 inserted "or 8401(17)" after "8331(20)".

1980—Subsec. (a). Pub. L. 96-427, §2(b), substituted new formula for group life insurance to be computed by multiplying the basic insurance with a factor to be obtained from the table based on age for provisions calling for group life insurance and an equal amount of death and dismemberment insurance in accordance with a schedule based on the basic pay with special provision for extension by the amount of increase in the annual rates of basic pay for positions at level II of the Executive Schedule under section 5313 of this title. Prior to this amendment, the table was as follows:

If annual pay is—		The amount of group life insurance is—	The amount of group accidental death and dismemberment insurance is—
Greater than—	But not greater than—		
	0	\$10,000	\$10,000
\$8,000	\$8,000	11,000	11,000
	9,000	12,000	12,000
	10,000	13,000	13,000
	11,000	14,000	14,000
	12,000	15,000	15,000
	13,000	16,000	16,000
	14,000	17,000	17,000
	15,000	18,000	18,000
	16,000	19,000	19,000
	17,000	20,000	20,000
	18,000	21,000	21,000
	19,000	22,000	22,000
	20,000	23,000	23,000
	21,000	24,000	24,000
	22,000	25,000	25,000
	23,000	26,000	26,000
	24,000	27,000	27,000
	25,000	28,000	28,000
	26,000	29,000	29,000
	27,000	30,000	30,000
	28,000	31,000	31,000
	29,000	32,000	32,000

Subsec. (b). Pub. L. 96-427, §2(c), inserted provision that an employee eligible for insurance is entitled to be insured for group accidental death and dismemberment insurance in accordance with this subsection and substituted reference to employee's basic insurance amount for reference to the amount shown in the schedule in subsec. (a) of this section in four places.

Subsec. (c). Pub. L. 96-427, §2(d), expanded definition of "annual pay" to include premium pay under section 5545(c)(2) of this title with respect to a law enforcement officer as defined in section 8331(20) of this title.

1978—Subsecs. (b), (c). Pub. L. 95-454, §906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively, wherever appearing.

Subsec. (d)(1). Pub. L. 95-454, §801(a)(3)(E), substituted "subchapter VI of chapter 53" for "section 5337".

1972—Subsec. (d)(2). Pub. L. 92-392 substituted "section 5344 or 5349 of this title" for "section 5343 of this title" and added the exception.

1967—Subsec. (a). Pub. L. 90-206, in material preceding the table, struck out reference to an approximate relationship between the amount of group life insurance and the eligible employee's annual pay and inserted reference to an automatic extension of the schedule correspondingly by the amounts of increases in the annual rate of basic pay for positions at level II of the Executive Schedule under section 5313 of this title, and raised the insurance coverages for both life and accidental death and dismemberment.

1966—Subsec. (c). Pub. L. 89-737 inserted provision that, for the purpose of this chapter, "annual pay" includes premium pay under section 5545(c)(1) of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective Jan. 1, 1987, see section 103(f) of Pub. L. 100-238 set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 2(d) of Pub. L. 96-427 applicable with respect to premium pay payable under section 5545(c)(2) of this title from and after the first day of the first pay period which begins on or after Oct. 10, 1980, see section 10(b) of Pub. L. 96-427, set out as a note under section 8701 of this title.

Section 2(f) of Pub. L. 96-427 provided that: "Subsections (b) and (c) of this section [amending this section] shall take effect beginning with the first pay period beginning on or after October 1, 1981."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 801(a)(3)(E) of Pub. L. 95-454 effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of this title.

Amendment by section 906(a)(2), (3) of Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92-392, set out as an Effective Date note under section 5341 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 405(a) of Pub. L. 90-206 provided that: "The amendments made by sections 401 to 403, inclusive, of this Act [amending this section and sections 8707 and 8708 of this title] shall take effect on the first day of the first pay period which begins on or after the sixtieth day following the date of enactment [Dec. 16, 1967]. In the case of an employee who dies or retires during the period beginning on the date of enactment

of this Act and prior to the effective date prescribed by this subsection, the amount of insurance shall be determined as if the amendments made by section 401 [amending this section] were in effect for such employee during such period."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-737 applicable with respect to premium pay payable from and after first day of first pay period which begins after date of enactment of Pub. L. 89-737, which was approved Nov. 2, 1966, see section 4 of Pub. L. 89-737, set out in the note under section 8114 of this title.

RETROACTIVE EFFECT OF 1967 AMENDMENT

Section 405(c) of Pub. L. 90-206 provided that: "The amendments made by sections 401 to 404, inclusive, of this Act [enacting section 8714a of this title and amending this section and sections 8707 and 8708 of this title] shall have no effect in the case of an employee who died, was finally separated, or retired prior to the date of enactment [Dec. 16, 1967]."

1967 ADJUSTMENT IN AMOUNT OF INSURANCE

Section 220(b) of Pub. L. 90-206 provided that: "For the purposes of determining the amount of insurance for which an individual is eligible chapter 87 of title 5, United States Code, relating to group life insurance for Federal employees—

"(1) all changes in rates of pay which result from the enactment of this title [see Short Title Note under section 5332 of this title] except Postal Field Service Schedule II, Rural Carrier Schedule II, and sections 207, 212, 213(d) and (e), 215, 219, and 225) shall be held and considered to become effective as of the date of such enactment [Dec. 16, 1967]; and

"(2) all changes in rates of pay which result from the enactment of section 212 of this title [enacting provisions set out as a note under section 5303 of this title] and which take effect retroactively from the date on which the adjustments thereof are actually ordered under such section, shall be held and considered to become effective on the date on which such adjustments are actually ordered."

[Section 220(b) of Pub. L. 90-206 effective Dec. 16, 1967, see section 220(a) (1) of Pub. L. 90-206, set out as an Effective Date note under section 3110 of this title.]

§ 8705. Death claims; order of precedence; escheat

(a) Except as provided in subsection (e), the amount of group life insurance and group accidental death insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office or, if insured because of receipt of annuity or of benefits under subchapter I of chapter 81 of this title as provided by section 8706(b) of this title, in the Office of Personnel Management. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee.

Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee.

Sixth, if none of the above, to other next of kin of the employee entitled under the laws of the domicile of the employee at the date of his death.

(b) If, within 1 year after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence named by subsection (a) of this section, or if payment to the person within that period is prohibited by Federal statute or regulation, payment may be made in the order of precedence as if the person had predeceased the employee, and the payment bars recovery by any other person.

(c) If, within 2 years after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence named by subsection (a) of this section, and neither the Office nor the administrative office established by the company concerned pursuant to section 8709(b) of this title has received notice that such a claim will be made, payment may be made to the claimant who in the judgment of the Office is equitably entitled thereto, and the payment bars recovery by any other person.

(d) If, within 4 years after the death of the employee, payment has not been made under this section and no claim for payment by a person entitled under this section is pending, the amount payable escheats to the credit of the Employees' Life Insurance Fund.

(e)(1) Any amount which would otherwise be paid to a person determined under the order of precedence named by subsection (a) shall be paid (in whole or in part) by the Office to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation.

(2) For purposes of this subsection, a decree, order, or agreement referred to in paragraph (1) shall not be effective unless it is received, before the date of the covered employee's death, by the employing agency or, if the employee has separated from service, by the Office.

(3) A designation under this subsection with respect to any person may not be changed except—

(A) with the written consent of such person, if received as described in paragraph (2); or

(B) by modification of the decree, order, or agreement, as the case may be, if received as described in paragraph (2).

(4) The Office shall prescribe any regulations necessary to carry out this subsection, including regulations for the application of this subsection in the event that two or more decrees, orders, or agreements, are received with respect to the same amount.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 594; Pub. L. 90-83, §1(91), Sept. 11, 1967, 81 Stat. 219; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-583, §1(b), Nov. 2, 1978, 92 Stat. 2481; Pub. L. 105-205, §1, July 22, 1998, 112 Stat. 683.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2093.	Aug. 17, 1954, ch. 752, §4, 68 Stat. 738. Aug. 28, 1962, Pub. L. 87-611, §1, 76 Stat. 406.

In subsection (c), the words "Employees' Life Insurance Fund" are substituted for "fund created pursuant to section 2094(c) of this title".

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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8705(a)	5 App.: 2093.	Mar. 23, 1966, Pub. L. 89-373, §1, 80 Stat. 78.

In subsection (a), "Civil Service Commission" is substituted for "Commission" on authority of former 5 U.S.C. 2091(a).

In subsection (c), "Commission" is substituted for "Civil Service Commission" for consistency of style. The full title of the Commission is set forth the first time it is used in a section.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-205, §1(1), substituted "Except as provided in subsection (e), the" for "The".

Subsec. (e). Pub. L. 105-205, §1(2), added subsec. (e).

1978—Subsec. (a). Pub. L. 95-583 struck out "or (c)" after "section 8706(b)".

Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (c). Pub. L. 95-454 substituted "Office" for "Commission" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-583 effective Nov. 2, 1978, see section 3 of Pub. L. 95-583, set out as a note under section 8706 of this title.

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 8706. Termination of insurance; assignment of ownership

(a) A policy purchased under this chapter shall contain a provision, approved by the Office of Personnel Management, to the effect that insurance on an employee stops on his separation from the service or 12 months after discontinuance of his pay, whichever is earlier, subject to a provision for temporary extension of life insurance coverage and for conversion to an individual policy of life insurance under conditions approved by the Office. Justices and judges of the United States described in section 8701(a)(5)(ii) and (iii) of this chapter are deemed to continue in active employment for purposes of this chapter.

(b)(1) In the case of any employee who retires on an immediate annuity and has been insured under this chapter throughout—

(A) the 5 years of service immediately preceding the date of the employee's retirement, or

(B) the full period or periods of service during which the employee was entitled to be insured, if fewer than 5 years,

life insurance, without accidental death and dismemberment insurance, may be continued, under conditions determined by the Office.

(2) In the case of any employee who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and has been insured under this chapter throughout—

(A) the 5 years of service immediately preceding the date the employee becomes entitled to compensation, or

(B) the full period or periods of service during which the employee was entitled to be insured, if fewer than 5 years,

life insurance, without accidental death and dismemberment insurance, may be continued, under conditions determined by the Office, during the period the employee is receiving compensation and is held by the Secretary of Labor or the Secretary's delegate to be unable to return to duty.

(3) The amount of life insurance continued under paragraph (1) or (2) of this subsection shall be continued, with or without reduction, at the end of each full calendar month after the date the employee becomes 65 years of age and is retired or is receiving compensation for disease or injury, in accordance with the employee's written election at the time eligibility to continue insurance during retirement or receipt of compensation arises, as follows:

(A) the employee may elect to have the deductions required by section 8707 of this title withheld from annuity or compensation, and the employee's life insurance shall be reduced each month by 2 percent of the face value until 25 percent of the amount of life insurance in force before the first reduction remains; or

(B) in addition to any deductions which would be required if the insurance were continued as provided under subparagraph (A) of this paragraph, the employee may elect continuous withholdings from annuity or compensation in amounts determined by the Office, and the employee's life insurance coverage shall be either continued without reduction or reduced each month by no more than 1 percent of its face value until no less than 50 percent of the amount of insurance in force before the first reduction remains.

(4) If an employee elects to continue insurance under subparagraph (B) of paragraph (3) of this subsection at the time eligibility to continue insurance during retirement or receipt of compensation for disease or injury arises, the individual may later cancel that election and life insurance coverage shall continue as if the individual had originally elected coverage under subparagraph (A) of paragraph (3) of this subsection.

(c) Notwithstanding subsections (a) and (b) of this section, an employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8701(a) of this title, within 60 days after entering on that leave without pay, may elect to continue his insurance and arrange to pay currently into the Employees' Life Insurance Fund,

through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the premium payments to the Fund. If the employee does not so elect, his insurance will continue during nonpay status and stop as provided by subsection (a) of this section.

(d)(1) An employee who enters on approved leave without pay in the circumstances described in paragraph (2) may elect to have such employee's life insurance continue (beyond the end of the 12 months of coverage provided for under subsection (a)) for an additional 12 months and arrange to pay currently into the Employees' Life Insurance Fund, through such employee's employing agency, both employee and agency contributions, from the beginning of that additional 12 months of coverage. The employing agency shall forward the premium payments to the Fund. If the employee does not so elect, such employee's insurance will continue during nonpay status and stop as provided by subsection (a). An individual making an election under this subsection may cancel that election at any time, in which case such employee's insurance will stop as provided by subsection (a) or upon receipt of notice of cancellation, whichever is later.

(2) This subsection applies in the case of any employee who—

(A) is a member of a reserve component of the armed forces called or ordered to active duty under a call or order that does not specify a period of 30 days or less; and

(B) enters on approved leave without pay to perform active duty pursuant to such call or order.

(e) If the insurance of an employee stops because of separation from the service or suspension without pay, and the separation or suspension is thereafter officially found to have been erroneous, the employee is deemed to have been insured during the period of erroneous separation or suspension. Deductions otherwise required by section 8707 of this chapter shall not be withheld from any backpay awarded for the period of separation or suspension unless death or accidental dismemberment of the employee occurs during such period.

(f)(1) Under regulations prescribed by the Office, each policy purchased under this chapter shall provide that an insured employee or former employee may make an irrevocable assignment of the employee's or former employee's incidents of ownership in the policy.

(2) A court decree of divorce, annulment, or legal separation, or the terms of a court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation, may direct that an insured employee or former employee make an irrevocable assignment of the employee's or former employee's incidents of ownership in insurance under this chapter (if there is no previous assignment) to the person specified in the court order or court-approved property settlement agreement.

(g) If the insurance of a former employee receiving a disability annuity under section 8337 of this title stops because of the termination of such annuity, and such annuity is thereafter restored under the second or third sentence of sub-

section (e) of such section, such former employee may, under regulations prescribed by the Office, elect to resume the insurance coverage which was so stopped.

(h) The insurance of an employee under a policy purchased under section 8709 shall not be invalidated based on a finding that the employee erroneously became insured, or erroneously continued insurance upon retirement or entitlement to compensation under subchapter I of chapter 81 of this title, if such finding occurs after the erroneous insurance and applicable withholdings have been in force for 2 years during the employee's lifetime.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 595; Pub. L. 90-83, §1(92), Sept. 11, 1967, 81 Stat. 219; Pub. L. 92-529, Oct. 21, 1972, 86 Stat. 1050; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-583, §1(a), Nov. 2, 1978, 92 Stat. 2481; Pub. L. 96-427, §3(a), Oct. 10, 1980, 94 Stat. 1832; Pub. L. 98-353, title II, §§206, 208, July 10, 1984, 98 Stat. 351, as amended by Pub. L. 99-336, §7(1), June 19, 1986, 100 Stat. 639; Pub. L. 99-53, §3(b), June 17, 1985, 99 Stat. 95; Pub. L. 99-335, title II, §207(k)(2), June 6, 1986, 100 Stat. 597; Pub. L. 99-336, §7(1), June 19, 1986, 100 Stat. 639; Pub. L. 102-378, §2(74), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 103-336, §4, Oct. 3, 1994, 108 Stat. 2662; Pub. L. 105-205, §2, July 22, 1998, 112 Stat. 683; Pub. L. 105-311, §5, Oct. 30, 1998, 112 Stat. 2951; Pub. L. 110-181, div. A, title XI, §1102, Jan. 28, 2008, 122 Stat. 345.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)-(c)	5 U.S.C. 2095.	Aug. 17, 1954, ch. 752, §6, 68 Stat. 739. Aug. 11, 1955, ch. 794, §2(a), 69 Stat. 677. May 28, 1956, ch. 328, §1, 70 Stat. 213. Sept. 23, 1959, Pub. L. 86-377, §4(c), 73 Stat. 701.
(d)	5 U.S.C. 2091(c).	Aug. 1, 1956, ch. 837, §501(c)(1) (less applicability to §2(b)), 70 Stat. 882.

In subsection (b), the words "armed forces" are coextensive with and substituted for "Army, Navy, Air Force, and Marine Corps, or Coast Guard of the United States" in view of the definition of "armed forces" in section 2101.

In subsection (c), the word "only" is supplied for clarity and for consistency with subsection (b). The words "under conditions determined by the Commission, without cost to him" are coextensive with and substituted for "as provided in subsection (b) of this section".

In subsection (d), the first sentence of former section 2091(c) is omitted as unnecessary as the definition of "employee" in section 8701 precludes acquisition of coverage by a member of a uniformed service. The words "section 101 of title 38" are substituted for "section 1101 of title 38" on authority of section 5(a) of the Act of Sept. 2, 1958, Pub. L. 85-857, 72 Stat. 1262.

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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8706(e)	5 App.: 2095(d).	July 18, 1966, Pub. L. 89-504, §406(a), 80 Stat. 298.

The words "subsections (a)-(c) of this section" are substituted for "the foregoing" to reflect the codification of former 5 U.S.C. 2095. The word "officer" is omitted as included in "employee." The words "as defined by section 8701(a) of this title" are substituted for "as defined in section 2 of the Act" to reflect the codification of that section in 5 U.S.C. 8701(a). The words "Employees' Life Insurance Fund" and "Fund" are substituted for "fund" and "fund established by section 5 of this Act", respectively.

AMENDMENTS

2008—Subsecs. (d) to (h). Pub. L. 110-181 added subsec. (d) and redesignated former subsecs. (d) to (g) as (e) to (h), respectively.

1998—Subsec. (e). Pub. L. 105-205 designated existing provisions as par. (1) and added par. (2).

Subsec. (g). Pub. L. 105-311 added subsec. (g).

1994—Subsec. (e). Pub. L. 103-336 substituted "employee or former employee" for "Federal judge", "employee's or former employee's" for "judge's", and "purchased" for "purchase".

1992—Subsecs. (f), (g). Pub. L. 102-378 redesignated subsec. (g) as (f).

1986—Subsec. (a). Pub. L. 98-353, §206, as amended generally by Pub. L. 99-336, §7(1), inserted sentence which deemed justices and judges described in section 8701(a)(5)(ii) and (iii) of this chapter to continue in active employment for purposes of this chapter.

Subsecs. (c) to (f). Pub. L. 99-335 struck out subsec. (c) and redesignated subsecs. (d) to (f) as (c) to (e), respectively. Former subsec. (c) provided that insurance granted an employee stops, except for a 31-day extension of life insurance coverage, on the day immediately before his entry on active duty or active duty for training unless the period is covered by military leave with pay but does not stop during a period of inactive duty training and defined "active duty", "active duty for training", and "inactive duty training" as having the meanings given them by section 101 of title 38.

1985—Subsec. (g). Pub. L. 99-53 added subsec. (g).

1984—Pub. L. 98-353, §208(b), inserted "; assignment of ownership" in section catchline.

Subsec. (f). Pub. L. 98-353, §208(a), added subsec. (f).

1980—Subsec. (b). Pub. L. 96-427 added subsec. (b) and struck out former subsec. (b) which read as follows:

"(1) If on the date the insurance would otherwise stop the employee retires on an immediate annuity and has been insured under this chapter throughout—

"(A) the 5 years of service immediately preceding such date, or

"(B) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

life insurance only may be continued, without cost to the employee, under conditions determined by the Office.

"(2) If on the date the insurance would otherwise stop the employee is receiving compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and has been insured under this chapter throughout—

"(A) the 5 years of service immediately preceding such date, or

"(B) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

life insurance only may be continued, without cost to the employee, under conditions determined by the Office, during the period the employee is receiving compensation for work injuries and is held by the Secretary of Labor or his delegate to be unable to return to duty.

“(3) The amount of life insurance continued under paragraph (1) or paragraph (2) of this subsection shall be reduced by 2 percent at the end of each full calendar month after the date the employee becomes 65 years of age and is retired or is receiving such compensation for disease or injury. The Office shall prescribe minimum amounts, not less than 25 percent of the amount of life insurance in force before the first reduction, to which the insurance may be reduced.”

1978—Subsec. (a). Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively.

Subsec. (b). Pub. L. 95-583, §1(a)(1), added subsec. (b) and struck out former subsec. (b) which read as follows: “If on the date the insurance would otherwise stop the employee retires on an immediate annuity and—

“(1) his retirement is for disability; or

“(2) he has completed 12 years of creditable service as determined by the Commission;

his life insurance only may be continued, without cost to him, under conditions determined by the Commission. Periods of honorable, active service in the armed forces shall be credited toward the required 12 years if the employee has completed at least 5 years of civilian service. The amount of life insurance continued under this subsection shall be reduced by 2 percent at the end of each full calendar month after the date the employee becomes 65 years of age or retires, whichever is later. The Commission may prescribe minimum amounts, not less than 25 percent of the amount of life insurance in force before the first reduction, to which the insurance may be reduced.”

Pub. L. 95-454, which substituted “Office” for “Commission”, was executed to text of subsec. (b) as amended by Pub. L. 95-583. See Effective Date of 1978 Amendments note below.

Subsec. (c). Pub. L. 95-583, §1(a)(1), (2), struck out “If on the date the insurance would otherwise stop the employee is receiving benefits under subchapter I of chapter 81 of this title because of disease or injury to himself, his life insurance only may be continued, without cost to him, under conditions determined by the Commission while he is receiving the benefits and is held by the Department of Labor to be unable to return to duty.” and redesignated subsec. (d) as (c).

Subsec. (d). Pub. L. 95-583, §1(a)(2), (3), redesignated subsec. (e) as (d) and substituted reference to “subsections (a) and (b) of this section” for “subsections (a)-(c) of this section”. Former subsec. (d) redesignated (c).

Subsecs. (e), (f). Pub. L. 95-583, §1(a)(2), redesignated subsecs. (e) and (f) as (d) and (e), respectively.

1972—Subsec. (f). Pub. L. 92-529 added subsec. (f).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-311 effective in any case in which a finding of erroneous insurance coverage is made on or after Oct. 30, 1998, see section 11(c) of Pub. L. 105-311, set out as a note under section 8701 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 207 of Pub. L. 98-353, as amended generally by Pub. L. 99-336, §7(2), provided that: “The amendments to chapter 87 of title 5, United States Code, made by section 206 of this Act [which, as amended generally by Pub. L. 99-336, §7(1), amended this section and sections 8714a to 8714c of this title] shall apply in the case of any justice or judge who is retired under section 371(a) or 371(b) or 372(a) of title 28, United States Code. The amendments apply to those who retire on or after January 1, 1982.”

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 209 of Pub. L. 98-353 provided that:

“(a) Except as provided in subsection (b), the amendments made by this Act to section 8706 of title 5,

United States Code, shall apply to policies purchased by judges after the date of enactment of this Act [July 10, 1984].

“(b) If a company which issued a policy which is in effect on the date of the enactment of this Act agrees, the amendments made by this Act [probably should be ‘made by this Act to section 8706 of title 5’] shall apply to such policy.”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-427 applicable only in case of an employee who retires or becomes entitled to receive compensation for work injury on or after 180th day following Oct. 10, 1980, or any earlier date that Office of Personnel Management may prescribe which is at least 60 days after Oct. 10, 1980, see section 10(c) of Pub. L. 96-427, set out as a note under section 8701 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 3 of Pub. L. 95-583 provided that: “The amendments made by this Act [amending this section and sections 8705, 8714a, and 8901 of this title] shall take effect on the date of the enactment of this Act [Nov. 2, 1978].”

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

INSURANCE COVERAGE FOR RESTORED DISABILITY ANNUITANTS

Section 3(c) of Pub. L. 99-53 provided that:

“(1) The amendments made by this section [amending this section and section 8908 of this title] shall apply with respect to any individual whose disability annuity is or was restored under section 8337(e) of title 5, United States Code, after December 31, 1983.

“(2)(A) The Office of Personnel Management shall notify each individual under subparagraph (B) of any rights which such individual may have under section 8706(g) or section 8908(c) of title 5, United States Code, as amended by this section, including any procedures or deadlines which may apply with respect to the exercise of those rights.

“(B) Notification under this paragraph shall be provided to any individual who, as of the 90th day after the date of enactment of this Act [June 17, 1985], is receiving a disability annuity which was restored to such individual under section 8337(e) of title 5, United States Code, after December 31, 1983.

“(3)(A) Nothing in this section shall be construed to authorize—

“(i) coverage under chapter 87 of title 5, United States Code, in the case of any individual who makes an election under section 8706(g) of such title (as amended by this Act), for any period before the date of such election; or

“(ii) coverage under chapter 89 of title 5, United States Code, in the case of any individual who becomes enrolled in a health benefits plan under section 8908(c) of such title (as amended by this Act), for any period before the date as of which such individual becomes so enrolled.

“(B) This paragraph applies with respect to any individual receiving a disability annuity which is or was restored under section 8337(e) of title 5, United States Code, after December 31, 1983, and before the expiration of the 90-day period beginning on the date of enactment of this Act [June 17, 1985].”

ELECTION OF LIFE INSURANCE OR HEALTH BENEFITS DURING PERIOD OF SERVICE AS OFFICER OR EMPLOYEE OF AN EMPLOYEE ORGANIZATION; CONTRIBUTIONS INTO EMPLOYEES LIFE INSURANCE FUND OR EMPLOYEES HEALTH BENEFITS FUND, NON-ELECTION; REGULATIONS

Pub. L. 89-504, title IV, §406(c), July 18, 1966, 80 Stat. 298, provided that: “An officer or employee who is on approved leave without pay and serving as a full-time

officer or employee of an organization composed primarily of employees, as defined in section 2 of the Federal Employees' Group Life Insurance Act of 1954, as amended (5 U.S.C. 2091) [section 8701 of this title] or section 2 of the Federal Employees Health Benefits Act of 1959, as amended (5 U.S.C. 3001) [section 8901 of this title] as the case may be, may, within sixty days after the date of enactment of this Act [July 18, 1966], file with his employing agency an election (1) to continue any insurance status or health benefits enrollment, or both, that he has on the date of enactment of this Act [July 18, 1966], (2) to reacquire any insurance status or health benefits enrollment, or both, which he may have lost while on leave without pay, or (3) to acquire as insured status or enroll in a health benefits plan, or both, if he was never previously eligible to do so, by arranging to pay currently and continuously into the employees' life insurance fund and the employees' health benefits fund, as appropriate, through his employing agency, both employee and agency contributions. The employing agency shall forward such payments to the employees' life insurance fund and the employees' health benefits fund, as appropriate. If he does not so elect, his insurance status and health benefits enrollment will continue and terminate as for other employees in non-pay status, or he will remain ineligible for insurance and health benefits, as the case may be, as though this paragraph had not been enacted. The United States Civil Service Commission is authorized to issue regulations to carry out the purposes of this paragraph."

[Provision effective July 18, 1966, see section 410(1) of Pub. L. 89-504.]

§ 8707. Employee deductions; withholding

(a) Subject to subsection (c)(2), during each period in which an employee is insured under a policy purchased by the Office of Personnel Management under section 8709 of this title, there shall be withheld from the employee's pay a share of the cost of the group life insurance and accidental death and dismemberment insurance.

(b)(1) Subject to subsection (c)(2), whenever life insurance continues after an employee retires on an immediate annuity or while the employee is receiving compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, as provided in section 8706(b) of this title, deductions for insurance shall be withheld from the employee's annuity or compensation, except that, in any case in which the insurance is continued as provided in section 8706(b)(3)(A) of this title, the deductions shall not be made for months after the calendar month in which the employee becomes 65 years of age.

(2) Notwithstanding paragraph (1) of this subsection, insurance shall be so continued without cost (other than as provided under section 8706(b)(3)(B)) to each employee who so retires, or commences receiving compensation, on or before December 31, 1989.

(c)(1) The amount withheld from the pay, annuity, or compensation of each employee subject to insurance deductions shall be at the rate, adjusted to the nearest half-cent, of 66⅔ percent of the level cost as determined by the Office for each \$1,000 of the employee's basic insurance amount.

(2) An employee who is subject to withholdings under this section and whose pay, annuity, or compensation is insufficient to cover such withholdings may nevertheless continue insurance if the employee arranges to pay cur-

rently into the Employees' Life Insurance Fund, through the agency or retirement system that administers pay, annuity, or compensation, an amount equal to the withholdings that would otherwise be required under this section.

(d) If an agency fails to withhold the proper amount of life insurance deductions from an individual's salary, compensation, or retirement annuity, the collection of unpaid deductions may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of unpaid deductions, the agency shall submit an amount equal to the sum of the uncollected deductions and related agency contributions required under section 8708 of this title to the Office for deposit to the Employees' Life Insurance Fund.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 595; Pub. L. 90-206, title IV, § 402, Dec. 16, 1967, 81 Stat. 647; Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-427, § 4(a), Oct. 10, 1980, 94 Stat. 1833; Pub. L. 105-311, § 6(1), Oct. 30, 1998, 112 Stat. 2951.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2094(a) (1st par.).	Aug. 17, 1954, ch. 752, § 5(a) (1st par.), 68 Stat. 738. Sept. 23, 1959, Pub. L. 86-377, § 4(b), 73 Stat. 701.

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

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-311, § 6(1)(A), substituted "Subject to subsection (c)(2), during" for "During".

Subsec. (b)(1). Pub. L. 105-311, § 6(1)(B), substituted "Subject to subsection (c)(2), whenever" for "Whenever".

Subsec. (c). Pub. L. 105-311, § 6(1)(C), designated existing provisions as par. (1) and added par. (2).

1980—Subsec. (a). Pub. L. 96-427 designated first sentence of existing section as subsec. (a) and substituted "a policy purchased" for "a policy of insurance purchased" and "the employee's pay a share of the cost" for "the pay of the employee his share of the cost".

Subsec. (b). Pub. L. 96-427 added subsec. (b).

Subsec. (c). Pub. L. 96-427 designated second sentence of existing section as subsec. (c) and inserted reference to pay, annuity, or compensation of each employee.

Subsec. (d). Pub. L. 96-427 added subsec. (d).

1978—Pub. L. 95-454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

1967—Pub. L. 90-206 struck out reference to the Civil Service Commission's function of determining the amount to be withheld for group insurance and substituted provisions setting a rate of 66⅔ percent of the level cost of each \$1,000 of insurance as determined by the Commission for provisions setting a limit of 25 cents biweekly for each \$1,000 of group life insurance and directing the withholding of the amount from employees paid on other than a biweekly basis at a proportional rate adjusted to the nearest cent.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-311 effective on the first day of the first applicable pay period beginning on or after Oct. 30, 1998, see section 11(d) of Pub. L. 105-311, set out as a note under section 8701 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-427 effective Oct. 10, 1980, with the amendment to have no effect in case of an employee who died, was separated, or retired before Oct. 10, 1980, see section 10(a) of Pub. L. 96-427, set out as a note under section 8701 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-206 effective on first day of first pay period which begins on or after sixtieth day following Dec. 16, 1967, see section 405(a) of Pub. L. 90-206, set out as a note under section 8704 of this title.

RETROACTIVE EFFECT OF 1967 AMENDMENT

Amendment by Pub. L. 90-206 to have no effect in case of an employee who died, was finally separated, or retired prior to Dec. 16, 1967, see section 405(c) of Pub. L. 90-206, set out as a note under section 8704 of this title.

§ 8708. Government contributions

(a) For each period in which an employee is insured under a policy of insurance purchased by the Office of Personnel Management under section 8709 of this title, a sum equal to one-half the amount which is withheld from the pay of the employee under section 8707 of this title shall be contributed from the appropriation or fund which is used to pay him.

(b) When an employee is paid by the Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may contribute the sum required by subsection (a) of this section from the applicable accounts of the House of Representatives.

(c) When the employee is an elected official, the sum required by subsection (a) of this section is contributed from an appropriation or fund available for payment of other salaries of the same office or establishment.

(d)(1) Except as otherwise provided in this subsection, for each period in which an employee continues life insurance after retirement or while in receipt of compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, as provided under section 8706(b) of this title, a sum equal to one-half of the amount which is withheld from the employee's annuity or compensation under section 8707 of this title shall be contributed by the Office from annual appropriations which are authorized to be made for that purpose and which may be made available until expended.

(2) Contributions under this subsection—

(A) shall not be made other than with respect to individuals who retire, or commence receiving compensation, after December 31, 1989;

(B) shall not be made with respect to any individual for months after the calendar month in which such individual becomes 65 years of age; and

(C) shall, in the case of any individual who elects coverage under subparagraph (B) of section 8706(b)(3) of this title, be equal to the amount which would apply under this subsection if such individual had instead elected

coverage under subparagraph (A) of such section.

(3) The United States Postal Service shall pay the contributions required under this subsection with respect to any individual who—

(A) first becomes an annuitant by reason of retirement from employment with the United States Postal Service after December 31, 1989; or

(B) commences receiving compensation under subchapter I of chapter 81 of this title (because of disease or injury to the individual) after December 31, 1989, if the position last held by the individual before commencing to receive such compensation was within the United States Postal Service.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 595; Pub. L. 90-206, title IV, §403, Dec. 16, 1967, 81 Stat. 647; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 101-303, §2, May 29, 1990, 104 Stat. 250; Pub. L. 104-186, title II, §215(18), Aug. 20, 1996, 110 Stat. 1746.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a), (c)	5 U.S.C. 2094(b).	Aug. 17, 1954, ch. 752, §5(b), 68 Stat. 738.
(b)	2 U.S.C. 128.	Aug. 5, 1955, ch. 568, §101 (4th par. under "Administrative Provisions"), 69 Stat. 513.

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

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-186 substituted "Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may contribute the sum required by subsection (a) of this section from the applicable accounts of the House of Representatives." for "Clerk of the House of Representatives, the Clerk may contribute the sum required by subsection (a) of this section from the contingent fund of the House."

1990—Subsec. (d). Pub. L. 101-303 added subsec. (d).

1978—Subsec. (a). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

1967—Subsec. (a). Pub. L. 90-206 substituted provisions setting the sum to be withheld at one-half the amount withheld from the pay of the employee under section 8707 of this title for provisions setting the sum to be withheld at a rate to be determined by the Commission not to exceed one-half of the amount withheld under section 8707 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-206 effective on first day of first pay period which begins on or after sixtieth day following December 16, 1967, see section 405(a) of Pub. L. 90-206, set out as a note under section 8704 of this title.

RETROACTIVE EFFECT OF 1967 AMENDMENT

Amendment by Pub. L. 90-206 to have no effect in case of an employee who died, was finally separated, or retired prior to Dec. 16, 1967, see section 405(c) of Pub. L. 90-206, set out as a note under section 8704 of this title.

§ 8709. Insurance policies

(a) The Office of Personnel Management, without regard to section 6101(b) to (d) of title 41, may purchase from one or more life insurance companies a policy or policies of group life and accidental death and dismemberment insurance to provide the benefits specified by this chapter. A company must meet the following requirements:

(1) It must be licensed to transact life and accidental death and dismemberment insurance under the laws of 48 of the States and the District of Columbia.

(2) It must have in effect, on the most recent December 31 for which information is available to the Office, an amount of employee group life insurance equal to at least 1 percent of the total amount of employee group life insurance in the United States in all life insurance companies.

(b) A company issuing a policy under subsection (a) of this section shall establish an administrative office under a name approved by the Office.

(c) The Office at any time may discontinue a policy purchased from a company under subsection (a) of this section.

(d)(1) The provisions of any contract under this chapter which relate to the nature or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any law of any State or political subdivision thereof, or any regulation issued thereunder, which relates to group life insurance to the extent that the law or regulation is inconsistent with the contractual provisions.

(2) For the purpose of this section, "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 596; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-427, §5(a), Oct. 10, 1980, 94 Stat. 1834; Pub. L. 111-350, §5(a)(11), Jan. 4, 2011, 124 Stat. 3841.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 2096 (less (c)-(e)). Aug. 17, 1954, ch. 752, §7 (less (c)-(e)), 68 Stat. 739.

In subsection (a), the words "as determined by it" are 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.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111-350 substituted "section 6101(b) to (d) of title 41" for "section 5 of title 41" in introductory provisions.

1980—Subsec. (d). Pub. L. 96-427 added subsec. (d).

1978—Subsecs. (a) to (c). Pub. L. 95-454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively, wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-427 effective Oct. 10, 1980, with the amendment to have no effect in case of an em-

ployee who died, was separated, or retired before Oct. 10, 1980, see section 10(a) of Pub. L. 96-427, set out as a note under section 8701 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 8710. Reinsurance

(a) The Office of Personnel Management shall arrange with a company issuing a policy under this chapter for the reinsurance, under conditions approved by the Office, of portions of the total amount of insurance under the policy, determined under this section, with other life insurance companies which elect to participate in the reinsurance.

(b) The Office shall determine for and in advance of a policy year which companies are eligible to participate as reinsurers and the amount of insurance under a policy which is to be allocated to the issuing company and to reinsurers. The Office shall make this determination at least every 3 years and when a participating company withdraws.

(c) The Office shall establish a formula under which the amount of insurance retained by an issuing company after ceding reinsurance, and the amount of reinsurance ceded to each reinsurer, is in proportion to the total amount of each company's group life insurance, excluding insurance purchased under this chapter, in force in the United States on the determination date, which is the most recent December 31 for which information is available to the Office. In determining the proportions, the portion of a company's group life insurance in force on the determination date in excess of \$100,000,000 shall be reduced by—

- (1) 25 percent of the first \$100,000,000 of the excess;
(2) 50 percent of the second \$100,000,000 of the excess;
(3) 75 percent of the third \$100,000,000 of the excess; and
(4) 95 percent of the remaining excess.

However, the amount retained by or ceded to a company may not exceed 25 percent of the amount of the company's total life insurance in force in the United States on the determination date.

(d) A fraternal benefit association which is—

- (1) licensed to transact life insurance under the laws of a State or the District of Columbia; and
(2) engaged in issuing insurance certificates on the lives of employees of the United States exclusively;

is eligible to act as a reinsuring company and may be allocated an amount of reinsurance equal to 25 percent of its total life insurance in force on employees of the United States on the determination date named by subsection (c) of this section.

(e) An issuing company or reinsurer is entitled, as a minimum, to be allocated an amount of insurance under the policy equal to any reduction from December 31, 1953, to the determination date, in the amount of the company's

group life insurance under policies issued to associations of employees of the United States. However, any increase under this subsection in the amount allocated is reduced by the amount in force on the determination date of any policy covering life insurance agreements assumed by the Office.

(f) The Office may modify the computations under this section as necessary to carry out the intent of this section.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 596; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2096(c)-(e).	Aug. 17, 1954, ch. 752, §7(c)-(e), 68 Stat. 739. Aug. 11, 1955, ch. 794, §3, 69 Stat. 677.

The section is reorganized to clarify the steps in the computation of the insurance allocable to issuing and reinsuring companies.

In subsections (c) and (d), references to the first determination date, December 31, 1953, are omitted as executed.

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

AMENDMENTS

1978—Subsecs. (a) to (c), (e), (f). Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively, wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 8711. Basic tables of premium rates

(a) A policy purchased under this chapter shall include, for the first policy year, basic tables of premium rates as follows:

(1) For group life insurance, a schedule of basic premium rates by age which the Office of Personnel Management determines to be consistent with the lowest schedule of basic premium rates generally charged for new group life insurance policies issued to large employers.

(2) For group accidental death and dismemberment insurance, a basic premium rate which the Office determines is consistent with the lowest rate generally charged for new group accidental death and dismemberment policies issued to large employers.

The schedule for group life insurance, except as otherwise provided by this section, shall be applied to the distribution by age of the amounts of group life insurance under the policy at its date of issuance to determine an average basic premium rate per \$1,000 of life insurance.

(b) The policy shall provide that the basic premium rates determined for the first policy year continue for later policy years except as readjusted for a later year based on experience under the policy. The company issuing the policy may make the readjustment on a basis that the Of-

fice determines in advance of the policy year is consistent with the general practice of life insurance companies under policies of group life and group accidental death and dismemberment insurance issued to large employers.

(c) The policy shall provide that if the Office determines that ascertaining the actual age distribution of the amounts of group life insurance in force at the date of issue of the policy or at the end of the first or any later year of insurance thereunder would not be possible except at a disproportionately high expense, the Office may approve the determination of a tentative average group life premium rate, for the first or any later policy year, instead of using the actual age distribution. The Office, on request by the company issuing the policy, shall redetermine the tentative average premium rate during any policy year, if experience indicates that the assumptions made in determining that rate were incorrect for that year.

(d) The policy shall stipulate the maximum expense and risk charges for the first policy year. The Office shall determine these charges on a basis consistent with the general level of charges made by life insurance companies under policies of group life and accidental death and dismemberment insurance issued to large employers. The maximum charges continue from year to year, except that the Office may redetermine them for any year either by agreement with the company issuing the policy or on written notice given to the company at least 1 year before the beginning of the year for which the redetermined maximum charges will be effective.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 597; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2097 (less (d)).	Aug. 17, 1954, ch. 752, §8 (less (d)), 68 Stat. 740.

In subsection (a), the word “policy” is substituted for “policy or policies” on authority of 1 U.S.C. 1. In subsections (b) and (c), the words “The policy” are substituted for “Each policy so purchased”. In subsections (b), (c), and (d), the word “insurance”, preceding the word “company”, is omitted as unnecessary; and the word “company” is substituted for “company or companies” on authority of 1 U.S.C. 1.

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

AMENDMENTS

1978—Subsecs. (a) to (d). Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively, wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 8712. Annual accounting; special contingency reserve

A policy purchased under this chapter shall provide for an accounting to the Office of Per-

sonnel Management not later than 90 days after the end of each policy year. The accounting shall set forth, in a form approved by the Office—

- (1) the amounts of premiums actually accrued under the policy from its date of issue to the end of the policy year;
- (2) the total of all mortality and other claim charges incurred for that period; and
- (3) the amounts of the insurers' expense and risk charges for that period.

An excess of the total of paragraph (1) of this section over the sum of paragraphs (2) and (3) of this section shall be held by the company issuing the policy as a special contingency reserve to be used by the company only for charges under the policy. The reserve shall bear interest at a rate determined in advance of each policy year by the company and approved by the Office as being consistent with the rates generally used by the company for similar funds held under other group life insurance policies. When the Office determines that the special contingency reserve has attained an amount estimated by it to make satisfactory provision for adverse fluctuations in future charges under the policy, any further excess shall be deposited in the Treasury of the United States to the credit of the Employees' Life Insurance Fund. When a policy is discontinued, any balance remaining in the special contingency reserve after all charges have been made shall be deposited in the Treasury to the credit of the Fund. The company may make the deposit in equal monthly installments over a period of not more than 2 years.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 598; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2097(d).	Aug. 17, 1954, ch. 752, §8(d), 68 Stat. 741.

The words "A policy purchased under this chapter" are substituted for "Each such policy" for clarity. The word "insurance", preceding the word "company", is omitted as unnecessary; and the word "company" is substituted for "company or companies" on authority of 1 U.S.C. 1.

The words "Employees' Life Insurance Fund" are substituted for "fund".

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

AMENDMENTS

1978—Pub. L. 95-454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 8713. Effect of other statutes

Any provision of law outside of this chapter which provides coverage or any other benefit under this chapter to any individuals who (based on their being employed by an entity other than

the Government) would not otherwise be eligible for any such coverage or benefit shall not apply with respect to any individual appointed, transferred, or otherwise commencing that type of employment on or after October 1, 1988.

(Added Pub. L. 100-238, title I, § 108(a)(2)(A), Jan. 8, 1988, 101 Stat. 1747.)

PRIOR PROVISIONS

A prior section 8713, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 598; Pub. L. 90-83, §1(93), Sept. 11, 1967, 81 Stat. 219; Pub. L. 95-454, title IX, §906(a)(1), (4), Oct. 13, 1978, 92 Stat. 1224, 1225, provided for an advisory committee to be appointed by the Director of the Office of Personnel Management to be composed of five employees insured under this chapter, to serve without additional pay, to advise the Office regarding matters of concern to employees under this chapter, prior to repeal by Pub. L. 96-427, §9(a), Oct. 10, 1980, 94 Stat. 1837, effective Oct. 10, 1980, with the repeal to have no effect in the case of an employee who died, was separated, or retired before Oct. 10, 1980.

§ 8714. Employees' Life Insurance Fund

(a) The amounts withheld from employees under section 8707 of this title and the sums contributed from appropriations and funds under section 8708 of this title shall be deposited in the Treasury of the United States to the credit of the Employees' Life Insurance Fund. The Fund is available without fiscal year limitation for—

- (1) premium payments under an insurance policy purchased under this chapter; and
- (2) expenses incurred by the Office of Personnel Management in the administration of this chapter within the limitations that may be specified annually by appropriation acts.

(b) The Secretary of the Treasury may invest and reinvest any of the money in the Fund in interest-bearing obligations of the United States, and may sell these obligations for the purposes of the Fund. The interest on and the proceeds from the sale of these obligations, and the income derived from dividend or premium rate adjustments from insurers, become a part of the Fund.

(c)(1) No tax, fee, or other monetary payment may be imposed or collected by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority thereof, on, or with respect to, any premium paid under an insurance policy purchased under this chapter.

(2) Paragraph (1) of this subsection shall not be construed to exempt any company issuing a policy of insurance under this chapter from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by that company from business conducted under this chapter, if that tax, fee, or payment is applicable to a broad range of business activity.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 598; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-499, title IV, §405(a), Dec. 5, 1980, 94 Stat. 2606.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2094(c) (less applicability to 5 U.S.C. 2099), (d).	Aug. 17, 1954, ch. 752, §5(c) (less applicability to §10), 68 Stat. 739. Aug. 11, 1955, ch. 794, §1(a) “(c) (less applicability to §10)”, (b), 69 Stat. 676. Apr. 11, 1958, Pub. L. 85-377, §1 (less applicability to §10), 72 Stat. 87.

In subsection (a), the words “of the Employees’ Life Insurance Fund” are substituted for “of a fund which is hereby created”. The proviso which made appropriations available to the Commission for salaries and expenses for the fiscal year 1955 available on a reimbursable basis for necessary administrative expenses for carrying out the purposes of this chapter is omitted as executed.

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

AMENDMENTS

1980—Subsec. (c). Pub. L. 96-499 added subsec. (c).

1978—Subsec. (a)(2). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission”.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 405(b) of Pub. L. 96-499 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 5, 1980], and shall apply with respect to premiums paid on or after such date.”

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

FUNDING

Pub. L. 103-409, §4, Oct. 25, 1994, 108 Stat. 4232, provided that: “Notwithstanding section 8714(a)(1) of title 5, United States Code, the Office of Personnel Management shall retain in the Employees’ Life Insurance Fund such portion of premium payments otherwise due as will, no later than September 30, 1995, permanently reduce the contingency reserve established under the third sentence of section 8712 of such title 5 by an amount equal to the amount by which payments from the Employees’ Life Insurance Fund during the fiscal year ending September 30, 1995, exceed the payments that would have been paid had the amendments made by this Act [enacting section 8714d of this title] not been enacted.”

§ 8714a. Optional insurance

(a) Under the conditions, directives, and terms specified in sections 8709-8712 of this title, the Office of Personnel Management, without regard to section 6101(b) to (d) of title 41, may purchase a policy which shall make available to each insured employee equal amounts of optional life insurance and accidental death and dismemberment insurance in addition to the amounts provided in section 8704(a) of this title.

(b)(1) An employee who is deployed in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10) or an employee of the Department of Defense who is designated as emergency essential under section 1580 of title 10 shall be insured under the policy of insurance under this section if the employee,

within 60 days after the date of notification of deployment or designation, elects to be insured under the policy of insurance. An election under this paragraph shall be effective when provided to the Office in writing, in the form prescribed by the Office, within such 60-day period.

(2) The optional life insurance and accidental death and dismemberment insurance shall be made available to each insured employee under such conditions as the Office shall prescribe and in amounts approved by the Office but not more than the greater of \$10,000 or an amount which, when added to the amount provided in section 8704(a) of this title, makes the sum of his insurance equal to his annual pay.

(c)(1) Except as otherwise provided in this subsection, the optional insurance on an employee stops on his separation from service or 12 months after discontinuance of his pay, whichever is earlier, subject to a provision for temporary extension of life insurance coverage and for conversion to an individual policy of life insurance under conditions approved by the Office.

(2)(A) In the case of any employee who retires on an immediate annuity and has been insured under this section throughout—

(i) the 5 years of service immediately preceding the date of such retirement, or

(ii) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

the amount of optional life insurance only which has been in force throughout such period may be continued, under conditions determined by the Office.

(B) In the case of any employee who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and has been insured under this section throughout—

(i) the 5 years of service immediately preceding the date such employee becomes entitled to such compensation, or

(ii) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

the amount of optional life insurance only which has been in force throughout such period may be continued, under conditions determined by the Office, during the period the employee is receiving such compensation for disease or injury and is held by the Secretary of Labor or his delegate to be unable to return to duty.

(C) The amount of optional life insurance continued under subparagraph (A) or subparagraph (B) of this paragraph shall be reduced by 2 percent at the end of each full calendar month after the date the employee becomes 65 years of age and is retired or is receiving compensation for disease or injury. The Office shall prescribe minimum amounts, not less than 25 percent of the amount of life insurance in force before the first reduction, to which the insurance may be reduced.

(3) Notwithstanding paragraph (c)(1) of this section,¹ a justice or judge of the United States as defined by section 8701(a)(5) of this title who

¹ So in original. Probably should be “paragraph (1) of this subsection.”

resigns his office without meeting the requirements of section 371(a) of title 28, United States Code, for continuation of the judicial salary shall have the right to convert regular optional life insurance coverage issued under this section during his judicial service to an individual policy of life insurance under the same conditions approved by the Office governing conversion of basic life insurance coverage for employees eligible as provided in section 8706(a) of this title.

(d)(1) During each period in which an employee has the optional insurance the full cost thereof shall be withheld from his pay. During each period in which an employee continues optional life insurance after retirement or while in receipt of compensation for work injuries, as provided in section 8706(b) of this title, the full cost thereof shall be withheld from his annuity or compensation, except that, at the end of the calendar month in which he becomes 65 years of age, the optional life insurance shall be without cost to him. Amounts so withheld shall be deposited, used, and invested as provided in section 8714 of this title and shall be reported and accounted for separately from amounts withheld and contributed under sections 8707 and 8708 of this title.

(2) If an agency fails to withhold the proper cost of optional insurance from an individual's salary, compensation, or retirement annuity, the collection of amounts properly due may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of any unpaid amount, the agency shall submit an amount equal to the uncollected amount to the Office for deposit to the Employees' Life Insurance Fund.

(3) Notwithstanding paragraph (1), an employee who is subject to withholdings under this subsection and whose pay, annuity, or compensation is insufficient to cover such withholdings may nevertheless continue optional insurance if the employee arranges to pay currently into the Employees' Life Insurance Fund, through the agency or retirement system which administers pay, annuity, or compensation, an amount equal to the withholdings that would otherwise be required under this subsection.

(e) The cost of the optional insurance shall be determined from time to time by the Office on the basis of such age groups as it considers appropriate.

(f) The amount of optional life, or life and accidental death, insurance in force on an employee at the date of his death shall be paid as provided in section 8705 of this title.

(Added Pub. L. 90-206, title IV, § 404(1), Dec. 16, 1967, 81 Stat. 647; amended Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-583, § 1(c), Nov. 2, 1978, 92 Stat. 2481; Pub. L. 96-427, § 6, Oct. 10, 1980, 94 Stat. 1834; Pub. L. 98-353, title II, § 206, July 10, 1984, 98 Stat. 351, as amended by Pub. L. 99-336, § 7(1), June 19, 1986, 100 Stat. 639; Pub. L. 99-335, title II, § 207(k)(3), June 6, 1986, 100 Stat. 597; Pub. L. 99-336, § 7(1), June 19, 1986, 100 Stat. 639; Pub. L. 105-311, § 6(2), Oct. 30, 1998, 112 Stat. 2951; Pub. L. 110-417, [div. A], title XI, § 1103(b), Oct. 14, 2008, 122 Stat. 4616; Pub. L. 111-350, § 5(a)(12), Jan. 4, 2011, 124 Stat. 3841.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 111-350 substituted “section 6101(b) to (d) of title 41” for “section 5 of title 41”.

2008—Subsec. (b). Pub. L. 110-417 designated existing provisions as par. (2) and added par. (1).

1998—Subsec. (d)(3). Pub. L. 105-311 added par. (3).

1986—Subsec. (c)(1). Pub. L. 99-336 amended Pub. L. 98-353, § 206, generally. See 1984 Amendment note below.

Pub. L. 99-335 amended par. (1) generally, effective Jan. 1, 1987. Prior to such effective date, par. (1) read as follows: “The optional insurance on an employee stops on his separation from service, 12 months after discontinuance of his pay, or on his entry on active duty or active duty for training, as provided in sections 8706(a) and 8706(c) of this title. Justices and judges of the United States described in section 8701(a)(5)(ii) and (iii) of this chapter are deemed to continue in active employment for purposes of this chapter.”

1984—Subsec. (c)(1). Pub. L. 98-353, § 206, as amended generally by Pub. L. 99-336, inserted sentence which deemed justices and judges described in section 8701(a)(5)(ii) and (iii) of this chapter to continue in active employment for purposes of this chapter.

Subsec. (c)(3). Pub. L. 98-353, § 206, added par. (3).

1980—Subsec. (c)(2)(C). Pub. L. 96-427, § 6(a), substituted provisions that the amount of optional life insurance shall be reduced by 2% at the end of each calendar month after the date the employee becomes 65 years of age and is retired or is receiving compensation for disease or injury and that the Office shall prescribe minimum amount of life insurance in force before the first reduction to which the insurance may be reduced for provisions that such optional insurance be subject to the same monthly reductions as required for regular life insurance under section 8706(b)(3) of this title.

Subsec. (d). Pub. L. 96-427, § 6(b), designated existing provisions as par. (1) and added par. (2).

1978—Subsecs. (a), (b). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission” wherever appearing.

Subsec. (c)(1). Pub. L. 95-583, § 1(c)(1), substituted reference to section “8706(c)” for “8706(d)”.

Subsec. (c)(2). Pub. L. 95-583, § 1(c)(2), added par. (2) and struck out former par. (2) which read as follows: “So much of the optional life insurance in force on an employee on the date he retires on an immediate annuity or becomes entitled to receive compensation for work injuries which has been in force for not less than—

“(A) the full period or periods of service during which the optional insurance was available to him; or

“(B) the 12 years of service immediately preceding his retirement or beginning date of entitlement to compensation for work injuries and during which the optional insurance was available to him;

whichever is shorter, may be continued—

“(A) after retirement, under the same conditions (except with respect to cost but including reduction of the amount continued) as provided in section 8706(b) of this title; or

“(B) while in receipt of compensation for work injuries under the same conditions (except with respect to cost) as provided in section 8706(c) of this title.”

Pub. L. 95-454, which substituted “Office” for “Commission”, was executed to text of subsec. (c)(2) as amended by Pub. L. 95-583. See Effective Date of 1978 Amendments note below.

Subsec. (d). Pub. L. 95-583, § 1(c)(3), struck out “or 8706(c)” after “section 8706(b)”.

Subsec. (e). Pub. L. 95-454 substituted “Office” for “Commission”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-311 effective on the first day of the first applicable pay period beginning on or after Oct. 30, 1998, see section 11(d) of Pub. L. 105-311, set out as a note under section 8701 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353, §206, as amended generally by Pub. L. 99-336, §7(1), applicable to any justice or judge who retires under 28 U.S.C. 371(a) or (b) or 372(a) on or after January 1, 1982, see section 207 of Pub. L. 98-353, as amended generally by Pub. L. 99-336, §7(2), set out as a note under section 8706 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-427 effective Oct. 10, 1980, with amendment to have no effect in case of an employee who died, was separated, or retired before Oct. 10, 1980, see section 10(a) of Pub. L. 96-427, set out as a note under section 8701 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-583 effective Nov. 2, 1978, see section 3 of Pub. L. 95-583, set out as a note under section 8706 of this title.

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE

Section 405(b) of Pub. L. 90-206 provided that:
 “(1) The amendments made by section 404 of this Act [enacting this section and amending analysis preceding section 8701 of this title] shall take effect on the first day of the first pay period which begins on or after the one hundred and eightieth day following the date of enactment [Dec. 16, 1967], or on any earlier date that the Civil Service Commission may prescribe, which is at least sixty days after the date of enactment [Dec. 16, 1967]. In the case of an employee who dies during the period beginning on the date of enactment [Dec. 16, 1967] and ending on the effective date prescribed by or pursuant to this subsection, or during the sixty days immediately following such period if the Commission determines that he did not have a reasonable opportunity to elect the optional insurance made available by section 404, the insurance of such employee shall be determined as if the amendments made by section 404 had been in effect on the date of such death, and the employee had elected to receive the maximum amount of optional insurance available to him under such amendments. An employee who retires during the period beginning on the date of enactment and ending on the effective date prescribed by or pursuant to this subsection shall have an opportunity to elect the optional insurance made available by section 404.

“(2) In the case of an employee in the service on the effective date prescribed by or pursuant to this subsection, (i) the period during which such employee may elect to receive optional insurance under the amendment made by section 404 shall not expire prior to the sixtieth day after such effective date, and (ii) for the purpose of determining the amount of insurance to be continued after retirement, the period during which such optional insurance was available to such employee shall not be considered to have commenced prior to the expiration of sixty days following such effective date.”

RETROACTIVE EFFECT

Enactment of this section by Pub. L. 90-206 to have no effect in the case of an employee who died, was finally separated, or retired prior to Dec. 16, 1967, see section 405(c) of Pub. L. 90-206, set out as a Retroactive Effect of 1967 Amendment note under section 8704 of this title.

AVAILABILITY OF CERTAIN FUNDS IN EMPLOYEES' LIFE INSURANCE FUND

Section 11 of Pub. L. 96-427 provided that: “Amounts credited to the Employees' Life Insurance Fund under

section 8714a(d) of title 5, United States Code shall be available for expenses incurred by the Office of Personnel Management in implementing the amendments made by sections 7 and 8 of this Act [enacting sections 8714b, 8714c, and 8701(d) of this title].”

§ 8714b. Additional optional life insurance

(a) Under the conditions, directives, and terms specified in sections 8709 through 8712 of this title, the Office of Personnel Management, without regard to section 6101(b) to (d) of title 41, may purchase a policy which shall make available to each employee insured under section 8702 of this title amounts of additional optional life insurance (without accidental death and dismemberment insurance). An employee may elect coverage under this section without regard to whether the employee has elected coverage under optional insurance available under section 8714a of this title.

(b)(1) An employee who is deployed in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10) or an employee of the Department of Defense who is designated as emergency essential under section 1580 of title 10 shall be insured under the policy of insurance under this section if the employee, within 60 days after the date of notification of deployment or designation, elects to be insured under the policy of insurance. An election under this paragraph shall be effective when provided to the Office in writing, in the form prescribed by the Office, within such 60-day period.

(2) The additional optional insurance provided under this section shall be made available to each eligible employee who has elected coverage under this section, under conditions the Office shall prescribe, in multiples, at the employee's election, of 1, 2, 3, 4, or 5 times the annual rate of basic pay payable to the employee (rounded to the next higher multiple of \$1,000). An employee may reduce or stop coverage elected pursuant to this section at any time.

(c)(1) Except as otherwise provided in this subsection, the additional optional insurance elected by an employee pursuant to this section shall stop on separation from service or 12 months after discontinuance of his pay, whichever is earlier, subject to a provision for temporary extension of life insurance coverage and for conversion to an individual policy of life insurance under conditions approved by the Office. Justices and judges of the United States described in section 8701(a)(5)(ii) and (iii) of this chapter are deemed to continue in active employment for purposes of this chapter. A justice or judge of the United States as defined by section 8701(a)(5) of this title who resigns his office without meeting the requirements of section 371(a) of title 28, United States Code, for continuation of the judicial salary shall have the right to convert additional optional life insurance coverage issued under this section during his judicial service to an individual policy of life insurance under the same conditions approved by the Office governing conversion of basic life insurance coverage for employees eligible as provided in section 8706(a) of this title.

(2) In the case of any employee who retires on an immediate annuity or who becomes entitled to receive compensation under subchapter I of

chapter 81 of this title because of disease or injury to the employee, so much of the additional optional insurance as has been in force for not less than—

(A) the 5 years of service immediately preceding the date of retirement or entitlement to compensation, or

(B) the full period or periods of service during which the insurance was available to the employee, if fewer than 5 years,

may be continued under conditions determined by the Office after retirement or while the employee is receiving compensation under subchapter I of chapter 81 of this title and is held by the Secretary of Labor (or the Secretary's delegate) to be unable to return to duty.

(3) The amount of additional optional insurance continued under paragraph (2) shall be continued, with or without reduction, in accordance with the employee's written election at the time eligibility to continue insurance during retirement or receipt of compensation arises, as follows:

(A) The employee may elect to have withholdings cease in accordance with subsection (d), in which case—

(i) the amount of additional optional insurance continued under paragraph (2) shall be reduced each month by 2 percent effective at the beginning of the second calendar month after the date the employee becomes 65 years of age and is retired or is in receipt of compensation; and

(ii) the reduction under clause (i) shall continue for 50 months at which time the insurance shall stop.

(B) The employee may, instead of the option under subparagraph (A), elect to have the full cost of additional optional insurance continue to be withheld from such employee's annuity or compensation on and after the date such withholdings would otherwise cease pursuant to an election under subparagraph (A), in which case the amount of additional optional insurance continued under paragraph (2) shall not be reduced, subject to paragraph (4).

(C) An employee who does not make any election under the preceding provisions of this paragraph shall be treated as if such employee had made an election under subparagraph (A).

(4) If an employee makes an election under paragraph (3)(B), that individual may subsequently cancel such election, in which case additional optional insurance shall be determined as if the individual had originally made an election under paragraph (3)(A).

(5)(A) An employee whose additional optional insurance under this section would otherwise stop in accordance with paragraph (1) and who is not eligible to continue insurance under paragraph (2) may elect, under conditions prescribed by the Office of Personnel Management, to continue all or a portion of so much of the additional optional insurance as has been in force for not less than—

(i) the 5 years of service immediately preceding the date of the event which would cause insurance to stop under paragraph (1); or

(ii) the full period or periods of service during which the insurance was available to the employee, if fewer than 5 years,

at group rates established for purposes of this section, in lieu of conversion to an individual policy. The amount of insurance continued under this paragraph shall be reduced by 50 percent effective at the beginning of the second calendar month after the date the employee or former employee attains age 70 and shall stop at the beginning of the second calendar month after attainment of age 80, subject to a provision for temporary extension of life insurance coverage and for conversion to an individual policy of life insurance under conditions approved by the Office. Alternatively, insurance continued under this paragraph may be reduced or stopped at any time the employee or former employee elects.

(B) When an employee or former employee elects to continue additional optional insurance under this paragraph following separation from service or 12 months without pay, the insured individual shall submit timely payment of the full cost thereof, plus any amount the Office determines necessary to cover associated administrative expenses, in such manner as the Office shall prescribe by regulation. Amounts required under this subparagraph shall be deposited, used, and invested as provided under section 8714 and shall be reported and accounted for together with amounts withheld under section 8714a(d).

(C)(i) Subject to clause (ii), no election to continue additional optional insurance may be made under this paragraph 3 years after the effective date of this paragraph.

(ii) On and after the date on which an election may not be made under clause (i), all additional optional insurance under this paragraph for former employees shall terminate, subject to a provision for temporary extension of life insurance coverage and for conversion to an individual policy of life insurance under conditions approved by the Office.

(d)(1) During each period in which the additional optional insurance is in force on an employee the full cost thereof shall be withheld from the employee's pay. During each period in which an employee continues additional optional insurance after retirement or while in receipt of compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, as provided in subsection (c) of this section, the full cost thereof shall be withheld from the former employee's annuity or compensation, except that, if insurance is continued as provided under subsection (c)(3)(A), beginning at the end of the calendar month in which the former employee becomes 65 years of age, the additional optional life insurance shall be without cost to the former employee. Amounts so withheld (and any amounts withheld as provided in subsection (c)(3)(B)) shall be deposited, used, and invested as provided in section 8714 of this title and shall be reported and accounted for together with amounts withheld under section 8714a(d) of this title.

(2) If an agency fails to withhold the proper cost of additional optional insurance from an individual's salary, compensation, or retirement annuity, the collection of amounts properly due may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good

conscience. However, if the agency so waives the collection of any unpaid amount, the agency shall submit an amount equal to the uncollected amount to the Office for deposit to the Employees' Life Insurance Fund.

(3) Notwithstanding paragraph (1), an employee who is subject to withholdings under this subsection and whose pay, annuity, or compensation is insufficient to cover such withholdings may nevertheless continue additional optional insurance if the employee arranges to pay currently into the Employees' Life Insurance Fund, through the agency or retirement system which administers pay, annuity, or compensation, an amount equal to the withholdings that would otherwise be required under this subsection.

(e) The cost of the additional optional insurance shall be determined from time to time by the Office on the basis of the employee's age relative to such age groups as the Office establishes under section 8714a(e) of this title.

(f) The amount of additional optional life insurance in force on an employee at the date of his death shall be paid as provided in section 8705 of this title.

(Added Pub. L. 96-427, §7(a), Oct. 10, 1980, 94 Stat. 1834; amended Pub. L. 98-353, title II, §§206, 207, July 10, 1984, 98 Stat. 351, as amended by Pub. L. 99-336, §7(1), June 19, 1986, 100 Stat. 639; Pub. L. 99-335, title II, §207(k)(4), June 6, 1986, 100 Stat. 597; Pub. L. 99-336, §7(1), June 19, 1986, 100 Stat. 639; Pub. L. 105-311, §§3(2), 6(3), 7(a), (c), Oct. 30, 1998, 112 Stat. 2950-2953; Pub. L. 110-417, [div. A], title XI, §1103(c), Oct. 14, 2008, 122 Stat. 4617; Pub. L. 111-350, §5(a)(13), Jan. 4, 2011, 124 Stat. 3841.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 111-350 substituted “section 6101(b) to (d) of title 41” for “section 5 of title 41”.

2008—Subsec. (b). Pub. L. 110-417 designated existing provisions as par. (2) and added par. (1).

1998—Subsec. (b). Pub. L. 105-311, §3(2), in first sentence, struck out “except that coverage may not exceed an amount equal to 5 times the annual rate of basic pay payable for positions at level II of the Executive Schedule under section 5313 of this title (rounded to the next higher multiple of \$1,000)” after “\$1,000”.

Subsec. (c)(2). Pub. L. 105-311, §7(a)(1)(A), struck out at end “The amount of insurance continued under this paragraph shall be reduced each month by 2 percent effective at the beginning of the second calendar month after the date the employee becomes 65 years of age and is retired or is in receipt of compensation. The reduction shall continue for 50 months at which time the insurance stops.”

Subsec. (c)(3) to (5). Pub. L. 105-311, §7(a)(1)(B), added pars. (3) to (5).

Subsec. (d)(1). Pub. L. 105-311, §7(a)(2), (c), inserted “if insurance is continued as provided under subsection (c)(3)(A),” after “except that,” and “(and any amounts withheld as provided in subsection (c)(3)(B))” after “Amounts so withheld”.

Subsec. (d)(3). Pub. L. 105-311, §6(3), added par. (3).

1986—Subsec. (c)(1). Pub. L. 98-353, §206, as amended generally by Pub. L. 99-336, §7(1), inserted sentence which deemed justices and judges described in section 8701(a)(5)(ii) and (iii) of this chapter to continue in active employment for purposes of this chapter.

Pub. L. 99-335 substituted “Except as otherwise provided in this subsection, the additional optional insurance elected by an employee pursuant to this section shall stop on separation from service or 12 months after

discontinuance of his pay, whichever is earlier, subject to a provision for temporary extension of life insurance coverage and for conversion to an individual policy of life insurance under conditions approved by the Office” for “The additional optional insurance elected by an employee pursuant to this section shall stop on separation from service, 12 months after discontinuance of pay, or on entry on active military duty or active duty for training, subject to provision for a 31-day temporary extension of insurance coverage and for conversion to an individual policy, as provided in sections 8706(a) and 8706(c) of this title”.

1984—Subsec. (c)(1). Pub. L. 98-353 inserted “A justice or judge of the United States as defined by section 8701(a)(5) of this title who resigns his office without meeting the requirements of section 371(a) of title 28, United States Code, for continuation of the judicial salary shall have the right to convert additional optional life insurance coverage issued under this section during his judicial service to an individual policy of life insurance under the same conditions approved by the Office governing conversion of basic life insurance coverage for employees eligible as provided in section 8706(a) of this title.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by sections 3(2) and 6(3) of Pub. L. 105-311 effective on the first day of the first applicable pay period beginning on or after Oct. 30, 1998, and amendment by section 7(a), (c) of Pub. L. 105-311 effective on the first day of the first pay period that begins on or after the 180th day following Oct. 30, 1998, or on any earlier date that the Office of Personnel Management may prescribe that is at least 60 days after Oct. 30, 1998, see section 11(b), (d), (e)(1) of Pub. L. 105-311, set out as a note under section 8701 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 98-353, §206, as amended generally by Pub. L. 99-336, §7(1), applicable to any justice or judge who retires under 28 U.S.C. 371(a) or (b) or 372(a) on or after January 1, 1982, see section 207 of Pub. L. 98-353, as amended generally by Pub. L. 99-336, §7(2), set out as a note under section 8706 of this title.

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE

Section effective on first day of first pay period which begins on or after 180th day following Oct. 10, 1980, or on any earlier date that Office may prescribe which is at least 60 days after Oct. 10, 1980, and shall have no effect in case of an employee who died, was finally separated, or retired before effective date, see section 10(d) of Pub. L. 96-427 set out as an Effective Date of 1980 Amendment note under section 8701 of this title.

REPORT TO CONGRESS

Pub. L. 105-311, §7(b), Oct. 30, 1998, 112 Stat. 2953, provided that: “Not later than 3 years after the date of enactment of this Act [Oct. 30, 1998], the Office of Personnel Management shall submit a report to Congress on additional optional insurance provided under section 8714b(c)(5) of title 5, United States Code (as added by subsection (a) of this section). Such report shall include recommendations on whether continuation for such additional optional insurance should terminate as provided under such section, be extended, or be made permanent.”

§ 8714c. Optional life insurance on family members

(a) Under the conditions, directives, and terms specified in sections 8709 through 8712 of this title, the Office of Personnel Management, with- out regard to section 6101(b) to (d) of title 41,

may purchase a policy which shall make available to each employee insured under section 8702 of this title amounts of optional life insurance (without accidental death and dismemberment insurance) on the employee's family members.

(b)(1) The optional life insurance on family members provided under this section shall be made available to each eligible employee who has elected coverage under this section, under conditions the Office shall prescribe, in multiples, at the employee's election, of 1, 2, 3, 4, or 5 times—

(A) \$5,000 for a spouse; and

(B) \$2,500 for each child described under section 8701(d).

(2) An employee may reduce or stop coverage elected pursuant to this section at any time.

(c)(1) Except as otherwise provided in this subsection, the optional life insurance on family members shall stop at the earlier of the employee's death, the employee's separation from the service, or 12 months after discontinuance of pay, subject to a provision for temporary extension of life insurance coverage and for conversion to individual policies of life insurance under conditions approved by the Office.

(2) In the case of any employee who retires on an immediate annuity or who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and who has had in force insurance under this section for no less than—

(A) the 5 years of service immediately preceding the date of retirement or entitlement to compensation, or

(B) the full period or periods of service during which the insurance was available to the employee, if fewer than 5 years,

optional life insurance on family members may be continued under the same conditions as provided in section 8714b(c)(2) through (4).

(d)(1) During each period in which the optional life insurance on family members is in force the full cost thereof shall be withheld from the employee's pay. During each period in which an employee continues optional life insurance on family members after retirement or while in receipt of compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, as provided in subsection (c) of this section, the full cost shall be withheld from the annuity or compensation, except that, beginning at the end of the calendar month in which the former employee becomes 65 years of age, the optional life insurance on family members shall be without cost to the employee. Notwithstanding the preceding sentence, the full cost shall be continued after the calendar month in which the former employee becomes 65 years of age if, and for so long as, an election under this section corresponding to that described in section 8714b(c)(3)(B) remains in effect with respect to such former employee. Amounts so withheld shall be deposited, used, and invested as provided in section 8714 of this title and shall be reported and accounted for together with amounts withheld under section 8714a(d) of this title.

(2) If an agency fails to withhold the proper cost of optional life insurance on family mem-

bers from an individual's salary, compensation, or retirement annuity, the collection of amounts properly due may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of any unpaid amount, the agency shall submit an amount equal to the uncollected amount to the Office for deposit to the Employees' Life Insurance Fund.

(3) Notwithstanding paragraph (1), an employee who is subject to withholdings under this subsection and whose pay, annuity, or compensation is insufficient to cover such withholdings may nevertheless continue optional life insurance on family members if the employee arranges to pay currently into the Employees' Life Insurance Fund, through the agency or retirement system that administers pay, annuity, or compensation, an amount equal to the withholdings that would otherwise be required under this subsection.

(e) The cost of the optional life insurance on family members shall be determined from time to time by the Office on the basis of the employee's age relative to such age groups as the Office establishes under section 8714a(e) of this title.

(f) The amount of optional life insurance which is in force under this section on a family member of an employee or former employee on the date of the death of the family member shall be paid, on the establishment of a valid claim by the employee, to such employee or, in the event of the death of the employee before payment can be made, to the person or persons entitled to the group life insurance in force on the employee under section 8705 of this title.

(Added Pub. L. 96-427, § 8(a), Oct. 10, 1980, 94 Stat. 1836; amended Pub. L. 98-353, title II, § 206, as amended by Pub. L. 99-336, § 7(1), June 19, 1986, 100 Stat. 639; Pub. L. 99-335, title II, § 207(k)(5), June 6, 1986, 100 Stat. 598; Pub. L. 99-336, § 7(1), June 19, 1986, 100 Stat. 639; Pub. L. 105-311, §§ 6(4), 8, Oct. 30, 1998, 112 Stat. 2951, 2953; Pub. L. 111-350, § 5(a)(14), Jan. 4, 2011, 124 Stat. 3842.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 111-350 substituted "section 6101(b) to (d) of title 41" for "section 5 of title 41".

1998—Subsec. (b). Pub. L. 105-311, § 8(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The optional life insurance on family members provided under this section shall be made available to each eligible employee who elects coverage under this section, under conditions the Office shall prescribe, in the amount of \$5,000 for a spouse and \$2,500 for each child described in section 8701(d). The employee may stop coverage elected under this section at any time."

Subsec. (c)(2). Pub. L. 105-311, § 8(b)(1), substituted "section 8714b(c)(2) through (4)" for "section 8714b(c)(2) of this title".

Subsec. (d)(1). Pub. L. 105-311, § 8(b)(2), inserted before last sentence "Notwithstanding the preceding sentence, the full cost shall be continued after the calendar month in which the former employee becomes 65 years of age if, and for so long as, an election under this section corresponding to that described in section 8714b(c)(3)(B) remains in effect with respect to such former employee."

Subsec. (d)(3). Pub. L. 105-311, § 6(4), added par. (3).

1986—Subsec. (c)(1). Pub. L. 99-336 amended Pub. L. 98-353, § 206, generally. See 1984 Amendment note below.

Pub. L. 99-335 amended par. (1) generally, effective Jan. 1, 1977. Prior to such effective date, par. (1) read as follows: "Optional life insurance on family members shall stop at the earlier of the employee's death, the employee's separation from the service, 12 months after discontinuance of pay, or the employee's entry on active duty or active duty for training, as provided in sections 8706(a) and 8706(c) of this title, subject to provision for a 31-day temporary extension of insurance coverage and for conversion to individual policies under conditions approved by the Office. Justices and judges of the United States described in section 8701(a)(5)(ii) and (iii) of this chapter are deemed to continue in active employment for purposes of this chapter."

1984—Subsec. (c)(1). Pub. L. 98-353, §206, as amended generally by Pub. L. 99-336, inserted sentence which deemed justices and judges described in section 8701(a)(5)(ii) and (iii) of this chapter to continue in active employment for purposes of this chapter.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6(4) of Pub. L. 105-311 effective on the first day of the first applicable pay period beginning on or after Oct. 30, 1998, and amendment by section 8 of Pub. L. 105-311 effective on the first day of the first pay period which begins on or after the 180th day following Oct. 30, 1998, or on any earlier date that the Office of Personnel Management may prescribe, see section 11(d), (f) of Pub. L. 105-311, set out as a note under section 8701 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353, §206, as amended generally by Pub. L. 99-336, §7(1), applicable to any justice or judge who retires under 28 U.S.C. 371(a) or (b) or 372(a) on or after January 1, 1982, see section 207 of Pub. L. 98-353, as amended generally by Pub. L. 99-336, §7(2), set out as a note under section 8706 of this title.

EFFECTIVE DATE

Section effective on first day of first pay period which begins on or after 180th day following Oct. 10, 1980, or on any earlier date that Office may prescribe which is at least 60 days after Oct. 10, 1980, and shall have no effect in case of an employee who died, was finally separated, or retired before effective date, see section 10(d) of Pub. L. 96-427 set out as an Effective Date of 1980 Amendment note under section 8701 of this title.

§ 8714d. Option to receive "living benefits"

(a) For the purpose of this section, an individual shall be considered to be "terminally ill" if such individual has a medical prognosis that such individual's life expectancy is 9 months or less.

(b) The Office of Personnel Management shall prescribe regulations under which any individual covered by group life insurance under section 8704(a) may, if such individual is terminally ill, elect to receive a lump-sum payment equal to—

(1) the full amount of insurance under section 8704(a) (or portion thereof designated for this purpose under subsection (d)(4)) which would otherwise be payable under this chapter (on the establishment of a valid claim)—

(A) computed based on a date determined under regulations of the Office (but not later than 30 days after the date on which the individual's application for benefits under this

section is approved or deemed approved under subsection (d)(3)); and

(B) assuming continued coverage under this chapter at that time;

reduced by

(2) an amount necessary to assure that there is no increase in the actuarial value of the benefit paid (as determined under regulations of the Office).

(c)(1) If a lump-sum payment is taken under this section—

(A) no insurance under the provisions of section 8704(a) or (b) shall be payable based on the death or any loss of the individual involved, unless the lump-sum payment represents only a portion of the total benefits which could have been taken, in which case benefits under those provisions shall remain in effect, except that the basic insurance amount on which they are based—

(i) shall be reduced by the percentage which the designated portion comprised relative to the total benefits which could have been taken (rounding the result to the nearest multiple of \$1,000 or, if midway between multiples of \$1,000, to the next higher multiple of \$1,000); and

(ii) shall not be subject to further adjustment; and

(B) deductions and withholdings under section 8707, and contributions under section 8708, shall be terminated with respect to such individual (or reduced in a manner consistent with the percentage reduction in the individual's basic insurance amount, if applicable), effective with respect to any amounts which would otherwise become due on or after the date of payment under this section.

(2) An individual who takes a lump-sum payment under this section (whether full or partial) remains eligible for optional benefits under sections 8714a-8714c (subject to payment of the full cost of those benefits in accordance with applicable provisions of the section or sections involved, to the same extent as if no election under this section had been made).

(d)(1) The Office's regulations shall include provisions regarding the form and manner in which an application under this section shall be made and the procedures in accordance with which any such application shall be considered.

(2) An application shall not be considered to be complete unless it includes such information and supporting evidence as the regulations require, including certification by an appropriate medical authority as to the nature of the individual's illness and that the individual is not expected to live more than 9 months because of that illness.

(3)(A) In order to ascertain the reliability of any medical opinion or finding submitted as part of an application under this section, the covered individual may be required to submit to a medical examination under the direction of the agency or entity considering the application. The individual shall not be liable for the costs associated with any examination required under this subparagraph.

(B) Any decision by the reviewing agency or entity with respect to an application for bene-

fits under this section (including one relating to an individual's medical prognosis) shall not be subject to administrative review.

(4)(A) An individual making an election under this section may designate that only a limited portion (expressed as a multiple of \$1,000) of the total amount otherwise allowable under this section be paid pursuant to such election.

(B) A designation under this paragraph may not be made by an individual described in paragraph (1) or (2) of section 8706(b).

(5) An election to receive benefits under this section shall be irrevocable, and not more than one such election may be made by any individual.

(6) The regulations shall include provisions to address the question of how to apply section 8706(b)(3)(B) in the case of an electing individual who has attained 65 years of age.

(Added Pub. L. 103-409, §2(a), Oct. 25, 1994, 108 Stat. 4230.)

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-409, §3(a), Oct. 25, 1994, 108 Stat. 4232, provided that: "The amendments made by section 2 [enacting this section] shall take effect 9 months after the date of the enactment of this Act [Oct. 25, 1994]."

§ 8715. Jurisdiction of courts

The district courts of the United States have original jurisdiction, concurrent with the United States Court of Federal Claims, of a civil action or claim against the United States founded on this chapter.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 599; Pub. L. 97-164, title I, §160(a)(2), Apr. 2, 1982, 96 Stat. 48; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2103 (less applicability to 5 U.S.C. 2099).	Aug. 17, 1954, ch. 752, §14 (less applicability to §10), 68 Stat. 743.

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

AMENDMENTS

1992—Pub. L. 102-572 substituted "United States Court of Federal Claims" for "United States Claims Court".

1982—Pub. L. 97-164 substituted "United States Claims Court" for "Court of Claims".

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

§ 8716. Regulations

(a) The Office of Personnel Management may prescribe regulations necessary to carry out the purposes of this chapter.

(b) The regulations of the Office may prescribe the time at which and the conditions under which an employee is eligible for coverage under this chapter. The Office, after consulting the head of the agency or other employing authority concerned, may exclude an employee on the basis of the nature and type of his employment or conditions pertaining to it, such as short-term appointment, seasonal, intermittent employment, and employment of like nature. The Office may not exclude—

(1) an employee or group of employees solely on the basis of the hazardous nature of employment;

(2) a teacher in the employ of the Board of Education of the District of Columbia, whose pay is fixed by section 1501 of title 31, District of Columbia Code, on the basis of the fact that the teacher is serving under a temporary appointment if the teacher has been so employed by the Board for a period or periods totaling not less than two school years; or

(3) an employee who is occupying a position on a part-time career employment basis (as defined in section 3401(2) of this title).

(c) The Secretary of Agriculture shall prescribe regulations to effect the application and operation of this chapter to an individual named by section 8701(a)(8) of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 599; Pub. L. 95-437, §4(b), Oct. 10, 1978, 92 Stat. 1058; Pub. L. 95-454, title IX, §906(a)(2), (3), (c)(2)(F), (G), Oct. 13, 1978, 92 Stat. 1224, 1227.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 2100 (less applicability to 5 U.S.C. 2099).	Aug. 17, 1954, ch. 752, §11 (less applicability to §10), 68 Stat. 742.
(b), (c)	5 U.S.C. 2091(a) (words between 6th and 7th commas of 1st sentence and 2d sentence), (d) (words between 1st and 2d commas of 1st sentence, and 2d sentence).	Aug. 17, 1954, ch. 752, §2(a) (words between 6th and 7th commas of 1st sentence and 2d sentence), 68 Stat. 736. July 1, 1960, Pub. L. 86-568, §115(c) "(d) (words between 1st and 2d commas of 1st sentence, and 2d sentence)", 74 Stat. 302. Oct. 6, 1964, Pub. L. 88-631, §2, 78 Stat. 1007.

In subsection (a), the words "Except as otherwise provided herein" are omitted as unnecessary since the authority to prescribe regulations is carried into this section.

In subsection (b), the words "section 1501 of title 31, District of Columbia Code" are substituted for "section 1 of the District of Columbia Teachers' Salary Act of 1955 (69 Stat. 521), as amended (Sec. 31-1501, D.C. Code, 1961 edition)".

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

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454, §906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (b). Pub. L. 95-454, §906(a)(3), substituted "Office" for "Commission" wherever appearing.

Pub. L. 95-437 substituted "intermittent employment" for "intermittent or part-time employment" in provision preceding par. (1), and added par. (3).

Pub. L. 95-454, §906(c)(2)(F), (G), substituted “3401” for “3391” in par. (3).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

CHAPTER 89—HEALTH INSURANCE

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AMENDMENTS

2006—Pub. L. 109-435, title VIII, §803(a)(2), Dec. 20, 2006, 120 Stat. 3252, added item 8909a.

1998—Pub. L. 105-266, §6(a)(2), Oct. 19, 1998, 112 Stat. 2369, added item 8903b.

1988—Pub. L. 100-654, title I, §101(b), title II, §201(a)(2), title III, §301(b), Nov. 14, 1988, 102 Stat. 3841, 3845, 3846, added items 8902a, 8905a, and 8906a.

Pub. L. 100-238, title I, §108(a)(3)(B), Jan. 8, 1988, 101 Stat. 1748, added item 8914.

1985—Pub. L. 99-53, §§1(b)(2), 3(a)(2)(B), June 17, 1985, 99 Stat. 94, 95, added item 8903a and inserted “or disability” after “and survivor” in item 8908.

1984—Pub. L. 98-615, §3(8), Nov. 8, 1984, 98 Stat. 3204, substituted “Information to individuals eligible to enroll” for “Information to employees” in item 8907.

1976—Pub. L. 94-342, §1(b), July 6, 1976, 90 Stat. 808, substituted “employees and survivor annuitants” for “employee” in item 8908.

§ 8901. Definitions

For the purpose of this chapter—

(1) “employee” means—

(A) an employee as defined by section 2105 of this title;

(B) a Member of Congress as defined by section 2106 of this title;

(C) a Congressional employee as defined by section 2107 of this title;

(D) the President;

(E) an individual first employed by the government of the District of Columbia before October 1, 1987;

(F) an individual employed by Gallaudet College;¹

(G) an individual employed by a county committee established under section 590h(b) of title 16;

(H) an individual appointed to a position on the office staff of a former President

under section 1(b) of the Act of August 25, 1958 (72 Stat. 838);

(I) an individual appointed to a position on the office staff of a former President, or a former Vice President under section 4 of the Presidential Transition Act of 1963, as amended (78 Stat. 153), who immediately before the date of such appointment was an employee as defined under any other subparagraph of this paragraph; and

(J) an individual who is employed by the Roosevelt Campobello International Park Commission and is a citizen of the United States,

but does not include—

(i) an employee of a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;

(ii) an individual who is not a citizen or national of the United States and whose permanent duty station is outside the United States, unless the individual was an employee for the purpose of this chapter on September 30, 1979, by reason of service in an Executive agency, the United States Postal Service, or the Smithsonian Institution in the area which was then known as the Canal Zone;

(iii) an employee of the Tennessee Valley Authority; or

(iv) an employee excluded by regulation of the Office of Personnel Management under section 8913(b) of this title;

(2) “Government” means the Government of the United States and the government of the District of Columbia;

(3) “annuitant” means—

(A) an employee who retires—

(i) on an immediate annuity under subchapter III of chapter 83 of this title, or another retirement system for employees of the Government, after 5 or more years of service;

(ii) under section 8412 or 8414 of this title;

(iii) for disability under subchapter III of chapter 83 of this title, chapter 84 of this title, or another retirement system for employees of the Government; or

(iv) on an immediate annuity under a retirement system established for employees described in section 2105(c), in the case of an individual who elected under section 8347(q)(2) or 8461(n)(2) to remain subject to such a system;

(B) a member of a family who receives an immediate annuity as the survivor of an employee (including a family member entitled to an amount under section 8442(b)(1)(A), whether or not such family member is entitled to an annuity under section 8442(b)(1)(B)) or of a retired employee described by subparagraph (A) of this paragraph;

(C) an employee who receives monthly compensation under subchapter I of chapter 81 of this title and who is determined by the Secretary of Labor to be unable to return to duty; and

¹ So in original. Does not conform to section catchline.

¹ See Change of Name note below.

(D) a member of a family who receives monthly compensation under subchapter I of chapter 81 of this title as the surviving beneficiary of—

(i) an employee who dies as a result of injury or illness compensable under that subchapter; or

(ii) a former employee who is separated after having completed 5 or more years of service and who dies while receiving monthly compensation under that subchapter and who has been held by the Secretary to have been unable to return to duty;

(4) “service”, as used by paragraph (3) of this section, means service which is creditable under subchapter III of chapter 83 or chapter 84 of this title;

(5) “member of family” means the spouse of an employee or annuitant and an unmarried dependent child under 22 years of age, including—

(A) an adopted child or recognized natural child; and

(B) a stepchild or foster child but only if the child lives with the employee or annuitant in a regular parent-child relationship;

or such an unmarried dependent child regardless of age who is incapable of self-support because of mental or physical disability which existed before age 22;

(6) “health benefits plan” means a group insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangement provided by a carrier for the purpose of providing, paying for, or reimbursing expenses for health services;

(7) “carrier” means a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee organization and an association of organizations or other entities described in this paragraph sponsoring a health benefits plan;

(8) “employee organization” means—

(A) an association or other organization of employees which is national in scope, or in which membership is open to all employees of a Government agency who are eligible to enroll in a health benefits plan under this chapter and which, after December 31, 1978, and before January 1, 1980, applied to the Office for approval of a plan provided under section 8903(3) of this title; and

(B) an association or other organization which is national in scope, in which membership is open only to employees, annuitants, or former spouses, or any combination thereof, and which, during the 90-day period beginning on the date of enactment of section 8903a of this title, applied to the Of-

fice for approval of a plan provided under such section;

(9) “dependent”, in the case of any child, means that the employee or annuitant involved is either living with or contributing to the support of such child, as determined in accordance with such regulations as the Office shall prescribe;

(10) “former spouse” means a former spouse of an employee, former employee, or annuitant—

(A) who has not remarried before age 55 after the marriage to the employee, former employee, or annuitant was dissolved,

(B) who was enrolled in an approved health benefits plan under this chapter as a family member at any time during the 18-month period before the date of the dissolution of the marriage to the employee, former employee, or annuitant, and

(C)(i) who is receiving any portion of an annuity under section 8345(j) or 8467 of this title or a survivor annuity under section 8341(h) or 8445 of this title (or benefits similar to either of the aforementioned annuity benefits under a retirement system for Government employees other than the Civil Service Retirement System or the Federal Employees’ Retirement System),

(ii) as to whom a court order or decree referred to in section 8341(h), 8345(j), 8445, or 8467 of this title (or similar provision of law under any such retirement system other than the Civil Service Retirement System or the Federal Employees’ Retirement System) has been issued, or for whom an election has been made under section 8339(j)(3) or 8417(b) of this title (or similar provision of law), or

(iii) who is otherwise entitled to an annuity or any portion of an annuity as a former spouse under a retirement system for Government employees,

except that such term shall not include any such unremarried former spouse of a former employee whose marriage was dissolved after the former employee’s separation from the service (other than by retirement); and

(11) “qualified clinical social worker” means an individual—

(A) who is licensed or certified as a clinical social worker by the State in which such individual practices; or

(B) who, if such State does not provide for the licensing or certification of clinical social workers—

(i) is certified by a national professional organization offering certification of clinical social workers; or

(ii) meets equivalent requirements (as prescribed by the Office).

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 600; Pub. L. 90-83, §1(95), Sept. 11, 1967, 81 Stat. 219; Pub. L. 91-418, §§2, 3(b), Sept. 25, 1970, 84 Stat. 869; Pub. L. 93-160, §1(b), Nov. 27, 1973, 87 Stat. 635; Pub. L. 95-368, §2, Sept. 17, 1978, 92 Stat. 606; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-583, §2, Nov. 2, 1978, 92 Stat. 2482; Pub. L. 96-54, §2(a)(52), Aug. 14, 1979, 93 Stat. 384; Pub. L. 96-70, title I, §1209(c), Sept. 27, 1979, 93 Stat. 463; Pub. L. 96-179, §2, Jan. 2, 1980,

93 Stat. 1299; Pub. L. 98-615, §3(1), Nov. 8, 1984, 98 Stat. 3202; Pub. L. 99-53, §1(a), June 17, 1985, 99 Stat. 93; Pub. L. 99-251, title I, §105(a), Feb. 27, 1986, 100 Stat. 15; Pub. L. 99-335, title II, §207(I), June 6, 1986, 100 Stat. 598; Pub. L. 99-556, title V, §503, Oct. 27, 1986, 100 Stat. 3141; Pub. L. 100-679, §13(c), Nov. 17, 1988, 102 Stat. 4071; Pub. L. 101-508, title VII, §7202(I), Nov. 5, 1990, 104 Stat. 1388-339; Pub. L. 102-378, §2(75), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 105-266, §3(a), Oct. 19, 1998, 112 Stat. 2366; Pub. L. 110-74, §1, Aug. 9, 2007, 121 Stat. 723.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3001.	Sept. 28, 1959, Pub. L. 86-382, §2, 73 Stat. 709. July 8, 1963, Pub. L. 88-59, §1, 77 Stat. 76. Mar. 17, 1964, Pub. L. 88-284, §1(1)-(4), 78 Stat. 164. Aug. 31, 1964, Pub. L. 88-531, §1, 78 Stat. 737.
.....	5 U.S.C. 3002(f) (1st sentence, less words between 1st and 2d commas).	July 1, 1960, Pub. L. 86-568, §115(d) "(f) (1st sentence, less words between 1st and 2d commas)", 74 Stat. 303.

The definition of "employee" in section 2105 of this title is broad enough to cover the officers and employees covered by former section 3001 with the exception of a Member of Congress, the President, an individual employed by the government of the District of Columbia, an individual employed by Gallaudet College, a United States commissioner, and an Official Reporter of Debates of the Senate and an individual employed by him. The first five have been added in paragraphs (1)(B), (D), (E), (F), and (G). The latter are covered by the definition of "Congressional employee" in section 2107 of this title and are included by the addition of a Congressional employee in paragraph (1)(C).

In paragraph (1)(ii), the words "the United States" are substituted for "a State of the United States or the District of Columbia".

Paragraph (1)(iv) is added for clarity.

In paragraph (8), the words "before January 1, 1964" are substituted for "on or before December 31, 1963".

The definition of "Commission" in former section 3001(h) is omitted as unnecessary as the full title "Civil Service Commission" is set forth the first time it is used in a section.

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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8901(5)	5 App.: 3001(d).	July 18, 1966, Pub. L. 89-504, §601, 80 Stat. 303.

REFERENCES IN TEXT

Section 1(b) of the Act of August 25, 1958 (72 Stat. 838), referred to in par. (1)(H), is section 1(b) of Pub. L. 85-745 which is set out as a note under section 102 of Title 3, The President.

Section 4 of the Presidential Transition Act of 1963, referred to in par. (1)(I), is section 4 of Pub. L. 88-277, which is set out as a note under section 102 of Title 3.

The date of enactment of section 8903a of this title, referred to in par. (8)(B), means the date of enactment of Pub. L. 99-53, which enacted section 8903a and which was approved June 17, 1985.

AMENDMENTS

2007—Par. (1)(J). Pub. L. 110-74 added subpar. (J).

1998—Par. (7). Pub. L. 105-266 substituted "organization and an association of organizations or other entities described in this paragraph sponsoring a health benefits plan;" for "organization;"

1992—Par. (3)(A)(iv). Pub. L. 102-378, §2(75)(A), substituted "8347(q)(2)" for "8347(p)(2)".

Par. (10)(C)(ii). Pub. L. 102-378, §2(75)(B), inserted comma after "8341(h)".

1990—Par. (3)(A)(iv). Pub. L. 101-508 added cl. (iv).

1988—Par. (1)(H), (I). Pub. L. 100-679 added subpars. (H) and (I).

1986—Par. (1)(E). Pub. L. 99-335, §207(I)(1), amended subpar. (E) generally, substituting "first employed" for "employed" and inserting "before October 1, 1987".

Par. (3)(A). Pub. L. 99-335, §207(I)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "an employee who retires on an immediate annuity under subchapter III of chapter 83 of this title or another retirement system for employees of the Government, after 5 or more years of service or for disability".

Par. (3)(B). Pub. L. 99-556 inserted "(including a family member entitled to an amount under section 8442(b)(1)(A), whether or not such family member is entitled to an annuity under section 8442(b)(1)(B))".

Par. (4). Pub. L. 99-335, §207(I)(3), inserted "or chapter 84".

Par. (10)(C)(i). Pub. L. 99-335, §207(I)(4), inserted "or 8467", "or 8445", and "or the Federal Employees' Retirement System".

Par. (10)(C)(ii). Pub. L. 99-335, §207(I)(5), substituted "8345(j), 8445, or 8467" for "or 8345(j)" and inserted "or the Federal Employees' Retirement System" and "or 8417(b)".

Par. (11). Pub. L. 99-251 added par. (11).

1985—Par. (8). Pub. L. 99-53 amended par. (8) generally, designating existing provisions as subpar. (A) and adding subpar. (B).

1984—Par. (10). Pub. L. 98-615 added par. (10).

1980—Par. (5). Pub. L. 96-179, §2(1), inserted "dependent" after "unmarried" in provisions preceding subpar. (A) and in provisions following subpar. (B), inserted "or recognized natural child" after "child" in subpar. (A), and substituted "or foster child but only if the child;" for "foster child, or recognized natural child who" in subpar. (B).

Par. (9). Pub. L. 96-179, §2(2)-(4), added par. (9).

1979—Par. (1). Pub. L. 96-70 in cl. (ii) substituted provisions relating to an individual who was an employee for the purpose of this chapter on Sept. 30, 1979, by reason of service in an Executive agency, United States Postal Service, or Smithsonian Institution in area which was then known as Canal Zone for provisions relating to Panama Canal Zone.

Pub. L. 96-54 struck out cl. (G) which related to coverage of a United States Commissioner as an "employee", and redesignated cl. (H) as (G).

1978—Par. (1)(iv). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

Par. (3)(A). Pub. L. 95-583 reduced period of service to 5 from 12 years.

Par. (8). Pub. L. 95-454 substituted "Office" for "Commission".

Pub. L. 95-368 substituted "after December 31, 1978, and before January 1, 1980" for "before January 1, 1964".

1973—Par. (1)(ii). Pub. L. 93-160 excluded from definition of "employee" persons who are not nationals of United States and whose permanent duty station is outside United States and Panama Canal Zone.

1970—Par. (1)(ii). Pub. L. 91-418, §3(b), excluded from definition of "employee" a noncitizen employee whose permanent duty station is outside Panama Canal Zone.

Par. (3)(B). Pub. L. 91-418, §2(a), redefined "annuitant" to be a member of a family who receives an immediate annuity as the survivor of an employee rather

than as the survivor of an employee who dies after completing 5 or more years of service.

Par. (3)(D)(i). Pub. L. 91-418, §2(b), redefined “annuitant” to be a member of a family who receives monthly compensation as the surviving beneficiary of an employee who dies as a result of a compensable injury or illness rather than as the survivor of an employee who, having completed 5 or more years of service, so dies.

CHANGE OF NAME

Gallaudet College, referred to in par. (1)(F), was redesignated Gallaudet University by section 101(a) of Pub. L. 99-371, which is classified to section 4301(a) of Title 20, Education.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 2(75)(A) of Pub. L. 102-378 effective Nov. 5, 1990, and amendment by section 2(75)(B) of Pub. L. 102-378 effective Oct. 2, 1992, see section 9(a), (b)(6) of Pub. L. 102-378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101-508, set out as a note under section 2105 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

Section 105(c) of Pub. L. 99-251 provided that: “The amendments made by subsections (a) and (b) [amending this section and section 8902 of this title] shall be effective with respect to contracts entered into or renewed for calendar years beginning after December 31, 1986.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-179 effective Jan. 2, 1980, except that no benefits under this chapter that are made available by reason of amendment of this section and section 8341 of this title by Pub. L. 96-179 shall be payable for any period before Oct. 1, 1979, see section 5(a) of Pub. L. 96-179, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96-70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96-70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-583 effective Nov. 2, 1978, see section 3 of Pub. L. 95-583, set out as a note under section 8706 of this title.

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-394, §1, Oct. 30, 2000, 114 Stat. 1629, provided that: “This Act [amending sections 8421a and 8905 of this title and enacting provisions set out as a note under section 8421a of this title] may be cited as the ‘Federal Employees Health Benefits Children’s Equity Act of 2000.’”

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-266, §1, Oct. 19, 1998, 112 Stat. 2363, provided that: “This Act [enacting section 8903b of this title, amending this section and sections 8948, 8902 to 8903, and 8909 of this title, and enacting provisions set out as notes under this section and sections 5948, 8902, 8902a, 8903b, and 8909 of this title] may be cited as the ‘Federal Employees Health Care Protection Act of 1998.’”

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-654, §1, Nov. 14, 1988, 102 Stat. 3837, provided that: “This Act [enacting sections 8440a, 8902a, 8905a, and 8906a of this title, amending sections 8902, 8903, 8905, 8909, and 8913 of this title, and enacting provisions set out as notes under sections 8902, 8902a, and 8906a of this title] may be cited as the ‘Federal Employees Health Benefits Amendments Act of 1988.’”

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99-251 provided that: “This Act [amending this section, sections 1103, 3502, 5334, 5924, 6312, 8332, 8339 to 8342, 8345, 8902, 8903, 8905, and 8909 of this title, and section 35 of Title 24, Hospitals and Asylums, enacting provisions set out as notes under this section and sections 7901, 8339, 8341, 8345, 8902, 8904, 8905, and 8909 of this title, and amending provisions set out as notes under sections 8341 and 8902 of this title] may be cited as the ‘Federal Employees Benefits Improvement Act of 1986.’”

CONTINUATION OF HEALTH BENEFITS COVERAGE FOR INDIVIDUALS ENROLLED IN A PLAN ADMINISTERED BY THE OVERSEAS PRIVATE INVESTMENT CORPORATION

Pub. L. 107-304, §4, Nov. 27, 2002, 116 Stat. 2364, provided that:

“(a) ENROLLMENT IN CHAPTER 89 PLAN.—For purposes of the administration of chapter 89 of title 5, United States Code, any period of enrollment under a health benefits plan administered by the Overseas Private Investment Corporation before the effective date of this Act [probably means Nov. 27, 2002, the date of enactment of Pub. L. 107-304] shall be deemed to be a period of enrollment in a health benefits plan under chapter 89 of such title.

“(b) CONTINUED COVERAGE.—

“(1) IN GENERAL.—Any individual who, as of the enrollment eligibility date, is covered by a health benefits plan administered by the Overseas Private Investment Corporation may enroll in an approved health benefits plan described under section 8903 or 8903a of title 5, United States Code—

“(A) either as an individual or for self and family, if such individual is an employee, annuitant, or former spouse as defined under section 8901 of such title; and

“(B) for coverage effective on and after such date.

“(2) INDIVIDUALS CURRENTLY UNDER CONTINUED COVERAGE.—An individual who, as of the enrollment eligibility date, is entitled to continued coverage under a health benefits plan administered by the Overseas Private Investment Corporation—

“(A) shall be deemed to be entitled to continued coverage under section 8905a of title 5, United States Code, for the same period that would have been permitted under the plan administered by the Overseas Private Investment Corporation; and

“(B) may enroll in an approved health benefits plan described under section 8903 or 8903a of such title in accordance with section 8905a of such title for coverage effective on and after such date.

“(3) UNMARRIED DEPENDENT CHILDREN.—An individual who, as of the enrollment eligibility date, is covered as an unmarried dependent child under a health benefits plan administered by the Overseas Private Investment Corporation and who is not a member of family as defined under section 8901(5) of title 5, United States Code—

“(A) shall be deemed to be entitled to continued coverage under section 8905a of such title as though the individual had ceased to meet the requirements for being considered an unmarried dependent child under chapter 89 of such title as of such date; and

“(B) may enroll in an approved health benefits plan described under section 8903 or 8903a of such title in accordance with section 8905a for continued coverage effective on and after such date.

“(c) TRANSFERS TO THE EMPLOYEES HEALTH BENEFITS FUND.—

“(1) IN GENERAL.—The Overseas Private Investment Corporation shall transfer to the Employees Health Benefits Fund established under section 8909 of title 5, United States Code, amounts determined by the Director of the Office of Personnel Management, after consultation with the Overseas Private Investment Corporation, to be necessary to reimburse the Fund for the cost of providing benefits under this section not otherwise paid for by the individuals covered by this section.

“(2) AVAILABILITY OF FUNDS.—The amounts transferred under paragraph (1) shall be held in the Fund and used by the Office in addition to amounts available under section 8906(g)(1) of title 5, United States Code.

“(d) ADMINISTRATION AND REGULATIONS.—The Office of Personnel Management—

“(1) shall administer this section to provide for—

“(A) a period of notice and open enrollment for individuals affected by this section; and

“(B) no lapse of health coverage for individuals who enroll in a health benefits plan under chapter 89 of title 5, United States Code, in accordance with this section; and

“(2) may prescribe regulations to implement this section.

“(e) ENROLLMENT ELIGIBILITY DATE.—For purposes of this section, the term ‘enrollment eligibility date’ means the last day on which coverage under a health benefits plan administered by the Overseas Private Investment Corporation is available. Such date shall be determined by the Office of Personnel Management in consultation with the Overseas Private Investment Corporation.”

CONTINUED COVERAGE FOR INDIVIDUALS ENROLLED IN PLAN ADMINISTERED BY FEDERAL DEPOSIT INSURANCE CORPORATION OR FOR EMPLOYEES OF BOARD OF GOVERNORS OF FEDERAL RESERVE SYSTEM

Pub. L. 105-266, §4, Oct. 19, 1998, 112 Stat. 2367, provided that:

“(a) ENROLLMENT IN CHAPTER 89 PLAN.—For purposes of chapter 89 of title 5, United States Code, any period of enrollment—

“(1) in a health benefits plan administered by the Federal Deposit Insurance Corporation before the termination of such plan on or before January 2, 1999; or

“(2) subject to subsection (c), in a health benefits plan (not under chapter 89 of such title) with respect to which the eligibility of any employees or retired employees of the Board of Governors of the Federal Reserve System terminates on or before January 2, 1999,

shall be deemed to be a period of enrollment in a health benefits plan under chapter 89 of such title.

“(b) CONTINUED COVERAGE.—(1) Subject to subsection (c), any individual who, on or before January 2, 1999, is enrolled in a health benefits plan described in subsection (a)(1) or (2) may enroll in an approved health benefits plan under chapter 89 of title 5, United States Code, either as an individual or for self and family, if, after taking into account the provisions of subsection (a), such individual—

“(A) meets the requirements of such chapter for eligibility to become so enrolled as an employee, annuitant, or former spouse (within the meaning of such chapter); or

“(B) would meet those requirements if, to the extent such requirements involve either retirement system under such title 5, such individual satisfies similar requirements or provisions of the Retirement Plan for Employees of the Federal Reserve System.

Any determination under subparagraph (B) shall be made under guidelines which the Office of Personnel Management shall establish in consultation with the Board of Governors of the Federal Reserve System.

“(2) Subject to subsection (c), any individual who, on or before January 2, 1999, is entitled to continued coverage under a health benefits plan described in subsection (a)(1) or (2) shall be deemed to be entitled to continued coverage under section 8905a of title 5, United States Code, but only for the same remaining period as would have been allowable under the health benefits plan in which such individual was enrolled on or before January 2, 1999, if—

“(A) such individual had remained enrolled in such plan; and

“(B) such plan did not terminate, or the eligibility of such individual with respect to such plan did not terminate, as described in subsection (a).

“(3) Subject to subsection (c), any individual (other than an individual under paragraph (2)) who, on or before January 2, 1999, is covered under a health benefits plan described in subsection (a)(1) or (2) as an unmarried dependent child, but who does not then qualify for coverage under chapter 89 of title 5, United States Code, as a family member (within the meaning of such chapter) shall be deemed to be entitled to continued coverage under section 8905a of such title, to the same extent and in the same manner as if such individual had, on or before January 2, 1999, ceased to meet the requirements for being considered an unmarried dependent child of an enrollee under such chapter.

“(4) Coverage under chapter 89 of title 5, United States Code, pursuant to an enrollment under this section shall become effective on January 3, 1999 or such earlier date as established by the Office of Personnel Management after consultation with the Federal Deposit Insurance Corporation or the Board of Governors of the Federal Reserve System, as appropriate.

“(c) ELIGIBILITY FOR FEHBP LIMITED TO INDIVIDUALS LOSING ELIGIBILITY UNDER FORMER HEALTH PLAN.—Nothing in subsection (a)(2) or any paragraph of subsection (b) (to the extent such paragraph relates to the plan described in subsection (a)(2)) shall be considered to apply with respect to any individual whose eligibility for coverage under such plan does not involuntarily terminate on or before January 2, 1999.

“(d) TRANSFERS TO THE EMPLOYEES HEALTH BENEFITS FUND.—The Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System shall transfer to the Employees Health Benefits Fund under section 8909 of title 5, United States Code, amounts determined by the Director of the Office of Personnel Management, after consultation with the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System, to be necessary to reimburse the Fund for the cost of providing benefits under this section not otherwise paid for by the individuals covered by this section. The amounts so transferred shall be held in the Fund and used by the Office of Personnel Management in addition to amounts available under section 8906(g)(1) of such title.

“(e) ADMINISTRATION AND REGULATIONS.—The Office of Personnel Management—

“(1) shall administer the provisions of this section to provide for—

“(A) a period of notice and open enrollment for individuals affected by this section; and

“(B) no lapse of health coverage for individuals who enroll in a health benefits plan under chapter 89 of title 5, United States Code, in accordance with this section; and

“(2) may prescribe regulations to implement this section.”

CONTINUED COVERAGE FOR INDIVIDUALS ENROLLED IN PLAN ADMINISTERED BY FARM CREDIT ADMINISTRATION

Pub. L. 104-37, title VI, §601, Oct. 21, 1995, 109 Stat. 328, provided that:

“(a) For purposes of the administration of chapter 89 of title 5, United States Code, any period of enrollment under a health benefits plan administered by the Farm Credit Administration prior to the effective date of this Act [Oct. 21, 1995] shall be deemed to be a period of enrollment in a health benefits plan under chapter 89 of such title.

“(b)(1) An individual who, on September 30, 1995, is covered by a health benefits plan administered by the Farm Credit Administration may enroll in an approved health benefits plan described under section 8903 or 8903a of title 5, United States Code—

“(A) either as an individual or for self and family, if such individual is an employee, annuitant, or former spouse as defined under section 8901 of such title; and

“(B) for coverage effective on and after September 30, 1995.

“(2) An individual who, on September 30, 1995, is entitled to continued coverage under a health benefits plan administered by the Farm Credit Administration—

“(A) shall be deemed to be entitled to continued coverage under section 8905a of title 5, United States Code, for the same period that would have been permitted under the plan administered by the Farm Credit Administration; and

“(B) may enroll in an approved health benefits plan described under sections 8903 or 8903a of such title in accordance with section 8905A of such title for coverage effective on and after September 30, 1995.

“(3) An individual who, on September 30, 1995, is covered as an unmarried dependent child under a health benefits plan administered by the Farm Credit Administration and who is not a member of family as defined under section 8901(5) of title 5, United States Code—

“(A) shall be deemed to be entitled to continued coverage under section 8905a of such title as though the individual had, on September 30, 1995, ceased to meet the requirements for being considered an unmarried dependent child under chapter 89 of such title; and

“(B) may enroll in an approved health benefits plan described under section 8903 or 8903a of such title in accordance with section 8905a for continued coverage on and after September 30, 1995.

“(c) The Farm Credit Administration shall transfer to the Federal Employees Health Benefits Fund established under section 8909 of title 5, United States Code, amounts determined by the Director of the Office of Personnel Management, after consultation with the Farm Credit Administration, to be necessary to reimburse the Fund for the cost of providing benefits under this section not otherwise paid for by the individuals covered by this section. The amount so transferred shall be held in the Fund and used by the Office in addition to the amounts available under section 8906(g)(1) of such title.

“(d) The Office of Personnel Management—

“(1) shall administer the provisions of this section to provide for—

“(A) a period of notice and open enrollment for individuals affected by this section; and

“(B) no lapse of health coverage for individuals who enroll in a health benefits plan under chapter 89 of title 5, United States Code, in accordance with this section; and

“(2) may prescribe regulations to implement this section.”

CONTINUED COVERAGE FOR INDIVIDUALS ENROLLED IN PLAN ADMINISTERED BY OFFICE OF THE COMPTROLLER OF THE CURRENCY OR OFFICE OF THRIFT SUPERVISION

Pub. L. 103-409, §5, Oct. 25, 1994, 108 Stat. 4232, provided that:

“(a) ENROLLMENT IN CHAPTER 89 PLAN.—For purposes of the administration of chapter 89 of title 5, United States Code, any period of enrollment under a health benefits plan administered by the Office of the Comptroller of the Currency or the Office of Thrift Supervision before the termination of such plans on January 7, 1995, shall be deemed to be a period of enrollment in a health benefits plan under chapter 89 of such title.

“(b) CONTINUED COVERAGE.—(1) Any individual who, on January 7, 1995, is covered by a health benefits plan administered by the Office of the Comptroller of the Currency or the Office of Thrift Supervision may enroll in an approved health benefits plan described under section 8903 or 8903a of title 5, United States Code—

“(A) either as an individual or for self and family, if such individual is an employee, annuitant, or former spouse as defined under section 8901 of such title; and

“(B) for coverage effective on and after January 8, 1995.

“(2) An individual who, on January 7, 1995, is entitled to continued coverage under a health benefits plan administered by the Office of the Comptroller of the Currency or the Office of Thrift Supervision—

“(A) shall be deemed to be entitled to continued coverage under section 8905a of title 5, United States Code, for the same period that would have been permitted under the plan administered by the Office of the Comptroller of the Currency or the Office of Thrift Supervision; and

“(B) may enroll in an approved health benefits plan described under section 8903 or 8903a of such title in accordance with section 8905a of such title for coverage effective on and after January 8, 1995.

“(3) An individual who, on January 7, 1995, is covered as an unmarried dependent child under a health benefits plan administered by the Office of the Comptroller of the Currency or the Office of Thrift Supervision and who is not a member of family as defined under section 8901(5) of title 5, United States Code—

“(A) shall be deemed to be entitled to continued coverage under section 8905a of such title as though the individual had, on January 7, 1995, ceased to meet the requirements for being considered an unmarried dependent child under chapter 89 of such title; and

“(B) may enroll in an approved health benefits plan described under section 8903 or 8903a of such title in accordance with section 8905a for continued coverage effective on and after January 8, 1995.

“(c) TRANSFERS TO THE EMPLOYEES HEALTH BENEFITS FUND.—The Office of the Comptroller of the Currency and the Office of Thrift Supervision shall transfer to the Employees Health Benefits Fund established under section 8909 of title 5, United States Code, amounts determined by the Director of the Office of Personnel Management, after consultation with the Office of the Comptroller of the Currency and the Office of Thrift Supervision, to be necessary to reimburse the Fund for the cost of providing benefits under this section not otherwise paid for by the individuals covered by this section. The amounts so transferred shall be held in the Fund and used by the Office in addition to amounts available under section 8906(g)(1) of such title.

“(d) ADMINISTRATION AND REGULATIONS.—The Office of Personnel Management—

“(1) shall administer the provisions of this section to provide for—

“(A) a period of notice and open enrollment for individuals affected by this section; and

“(B) no lapse of health coverage for individuals who enroll in a health benefits plan under chapter 89 of title 5, United States Code, in accordance with this section; and

“(2) may prescribe regulations to implement this section.”

CONTINUED COVERAGE UNDER CERTAIN FEDERAL EMPLOYEE BENEFIT PROGRAMS FOR CERTAIN EMPLOYEES OF SAINT ELIZABETHS HOSPITAL

For provisions relating to treatment of certain Federal employees of Saint Elizabeths Hospital under cer-

tain Federal employee benefit programs, see section 207(o) of Pub. L. 99-335, set out as a note under section 8331 of this title.

§ 8902. Contracting authority

(a) The Office of Personnel Management may contract with qualified carriers offering plans described by section 8903 or 8903a of this title, without regard to section 6101(b) to (d) of title 41 or other statute requiring competitive bidding. Each contract shall be for a uniform term of at least 1 year, but may be made automatically renewable from term to term in the absence of notice of termination by either party.

(b) To be eligible as a carrier for the plan described by section 8903(2) of this title, a company must be licensed to issue group health insurance in all the States and the District of Columbia.

(c) A contract for a plan described by section 8903(1) or (2) of this title shall require the carrier—

(1) to reinsure with other companies which elect to participate, under an equitable formula based on the total amount of their group health insurance benefit payments in the United States during the latest year for which the information is available, to be determined by the carrier and approved by the Office; or

(2) to allocate its rights and obligations under the contract among its affiliates which elect to participate, under an equitable formula to be determined by the carrier and the affiliates and approved by the Office.

(d) Each contract under this chapter shall contain a detailed statement of benefits offered and shall include such maximums, limitations, exclusions, and other definitions of benefits as the Office considers necessary or desirable.

(e) The Office may prescribe reasonable minimum standards for health benefits plans described by section 8903 or 8903a of this title and for carriers offering the plans. Approval of a plan may be withdrawn only after notice and opportunity for hearing to the carrier concerned without regard to subchapter II of chapter 5 and chapter 7 of this title. The Office may terminate the contract of a carrier effective at the end of the contract term, if the Office finds that at no time during the preceding two contract terms did the carrier have 300 or more employees and annuitants, exclusive of family members, enrolled in the plan.

(f) A contract may not be made or a plan approved which excludes an individual because of race, sex, health status, or, at the time of the first opportunity to enroll, because of age.

(g) A contract may not be made or a plan approved which does not offer to each employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title whose enrollment in the plan is ended, except by a cancellation of enrollment, a temporary extension of coverage during which he may exercise the option to convert, without evidence of good health, to a nongroup contract providing health benefits. An employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title who exercises this option shall pay the full periodic charges of the nongroup contract.

(h) The benefits and coverage made available under subsection (g) of this section are noncancelable by the carrier except for fraud, over-insurance, or nonpayment of periodic charges.

(i) Rates charged under health benefits plans described by section 8903 or 8903a of this title shall reasonably and equitably reflect the cost of the benefits provided. Rates under health benefits plans described by section 8903(1) and (2) of this title shall be determined on a basis which, in the judgment of the Office, is consistent with the lowest schedule of basic rates generally charged for new group health benefit plans issued to large employers. The rates determined for the first contract term shall be continued for later contract terms, except that they may be readjusted for any later term, based on past experience and benefit adjustments under the later contract. Any readjustment in rates shall be made in advance of the contract term in which they will apply and on a basis which, in the judgment of the Office, is consistent with the general practice of carriers which issue group health benefit plans to large employers.

(j) Each contract under this chapter shall require the carrier to agree to pay for or provide a health service or supply in an individual case if the Office finds that the employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title is entitled thereto under the terms of the contract.

(k)(1) When a contract under this chapter requires payment or reimbursement for services which may be performed by a clinical psychologist, optometrist, nurse midwife, nursing school administered clinic, or nurse practitioner/clinical specialist, licensed or certified as such under Federal or State law, as applicable, or by a qualified clinical social worker as defined in section 8901(11), an employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title covered by the contract shall be free to select, and shall have direct access to, such a clinical psychologist, qualified clinical social worker, optometrist, nurse midwife, nursing school administered clinic, or nurse practitioner/nurse clinical specialist without supervision or referral by another health practitioner and shall be entitled under the contract to have payment or reimbursement made to him or on his behalf for the services performed.

(2) Nothing in this subsection shall be considered to preclude a health benefits plan from providing direct access or direct payment or reimbursement to a provider in a health care practice or profession other than a practice or profession listed in paragraph (1), if such provider is licensed or certified as such under Federal or State law.

(3) The provisions of this subsection shall not apply to comprehensive medical plans as described in section 8903(4) of this title.

(l) The Office shall contract under this chapter for a plan described in section 8903(4) of this title with any qualified health maintenance carrier which offers such a plan. For the purpose of this subsection, "qualified health maintenance carrier" means any qualified carrier which is a qualified health maintenance organization with-

in the meaning of section 1310(d)(1)¹ of title XIII of the Public Health Service Act (42 U.S.C. 300c-9(d)).

(m)(1) The terms of any contract under this chapter which relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to health insurance or plans.

(2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, if a contract under this chapter provides for the provision of, the payment for, or the reimbursement of the cost of health services for the care and treatment of any particular health condition, the carrier shall provide, pay, or reimburse up to the limits of its contract for any such health service properly provided by any person licensed under State law to provide such service if such service is provided to an individual covered by such contract in a State where 25 percent or more of the population is located in primary medical care manpower shortage areas designated pursuant to section 332 of the Public Health Service Act (42 U.S.C. 254e).

(B) The provisions of subparagraph (A) shall not apply to contracts entered into providing prepayment plans described in section 8903(4) of this title.

(n) A contract for a plan described by section 8903(1), (2), or (3), or section 8903a, shall require the carrier—

(1) to implement hospitalization-cost-containment measures, such as measures—

(A) for verifying the medical necessity of any proposed treatment or surgery;

(B) for determining the feasibility or appropriateness of providing services on an outpatient rather than on an inpatient basis;

(C) for determining the appropriate length of stay (through concurrent review or otherwise) in cases involving inpatient care; and

(D) involving case management, if the circumstances so warrant; and

(2) to establish incentives to encourage compliance with measures under paragraph (1).

(o) A contract may not be made or a plan approved which includes coverage for any benefit, item, or service for which funds may not be used under the Assisted Suicide Funding Restriction Act of 1997.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 601; Pub. L. 93-246, § 3, Jan. 31, 1974, 88 Stat. 4; Pub. L. 93-363, § 1, July 30, 1974, 88 Stat. 398; Pub. L. 94-183, § 2(43), Dec. 31, 1975, 89 Stat. 1059; Pub. L. 94-460, title I, § 110(b), Oct. 8, 1976, 90 Stat. 1952; Pub. L. 95-368, § 1, Sept. 17, 1978, 92 Stat. 606; Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-179, § 3, Jan. 2, 1980, 93 Stat. 1299; Pub. L. 98-615, § 3(2), Nov. 8, 1984, 98 Stat. 3203; Pub. L. 99-53, § 2(a), June 17, 1985, 99 Stat. 94; Pub. L. 99-251, title I, §§ 105(b), 106(a)(3), Feb. 27, 1986, 100 Stat. 15, 16; Pub. L. 100-202, § 101(m) [title VI, § 626], Dec. 22, 1987, 101 Stat. 1329-390, 1329-430; Pub. L. 100-654, title II, §§ 201(b), 202(a), Nov. 14, 1988, 102 Stat. 3845; Pub. L. 101-508, title VII, § 7002(a), Nov. 5, 1990, 104 Stat. 1388-329; Pub.

L. 101-509, title IV, § 1, Nov. 5, 1990, 104 Stat. 1421; Pub. L. 102-393, title V, § 537(a), (b), Oct. 6, 1992, 106 Stat. 1765; Pub. L. 105-12, § 9(g), Apr. 30, 1997, 111 Stat. 27; Pub. L. 105-266, §§ 3(c), 8, Oct. 19, 1998, 112 Stat. 2366, 2370; Pub. L. 111-350, § 5(a)(15), Jan. 4, 2011, 124 Stat. 3842.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3005.	Sept. 28, 1959, Pub. L. 86-382, § 6, 73 Stat. 712. Mar. 17, 1964, Pub. L. 88-284, § 1(7)-(9), 78 Stat. 165.

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

REFERENCES IN TEXT

Section 1310(d)(1) of title XIII of the Public Health Service Act (42 U.S.C. 300c-9(d)), referred to in subsec. (l), probably is intended as a reference to section 300e-9(d) of Title 42, The Public Health and Welfare. Section 300e-9(d) of Title 42 was redesignated section 300e-9(c) of Title 42 by Pub. L. 100-517, § 7(b), Oct. 24, 1988, 102 Stat. 2580.

The Assisted Suicide Funding Restriction Act of 1997, referred to in subsec. (o), is Pub. L. 105-12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§ 14401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of Title 42 and Tables.

CODIFICATION

Another section 1 of title IV of Pub. L. 101-509, 104 Stat. 1416, enacted sections 2701 to 2706 of Title 44, Public Printing and Documents, and provisions set out as a note under section 2102 of Title 44.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111-350 substituted “section 6101(b) to (d) of title 41” for “section 5 of title 41”.

1998—Subsec. (k)(2), (3). Pub. L. 105-266, § 8, added par. (2) and redesignated former par. (2) as (3).

Subsec. (m)(1). Pub. L. 105-266, § 3(c), added par. (1) and struck out former par. (1) which read as follows: “The provisions of any contract under this chapter which relate to the nature or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to health insurance or plans to the extent that such law or regulation is inconsistent with such contractual provisions.”

1997—Subsec. (o). Pub. L. 105-12 added subsec. (o).

1992—Pub. L. 102-393 amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows:

“(1) When a contract under this chapter requires payment or reimbursement for services which may be performed by a clinical psychologist, optometrist, nurse midwife, or nurse practitioner/clinical specialist, licensed or certified as such under Federal or State law, as applicable, or by a qualified clinical social worker as defined in section 8901(11), an employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title covered by the contract shall be free to select, and shall have direct access to, such a clinical psychologist, qualified clinical social worker, optometrist, nurse midwife, or nurse practitioner/nurse clinical specialist without supervision or referral by another health practitioner and shall be entitled under the contract to have payment or reimbursement made to him or on his behalf for the services performed.

“(2) The provisions of this subsection shall not apply to group practice prepayment plans.”

¹ See References in Text note below.

1990—Subsec. (k)(1). Pub. L. 101-509 substituted “performed by a clinical psychologist, optometrist, nurse midwife, or nurse practitioner/clinical specialist” for “performed by a clinical psychologist or optometrist” and “qualified clinical social worker, optometrist, nurse midwife, or nurse practitioner/nurse clinical specialist” for “qualified clinical social worker or optometrist”.

Subsec. (n). Pub. L. 101-508 added subsec. (n).

1988—Subsecs. (g), (j), (k)(1). Pub. L. 100-654 substituted “former spouse, or person having continued coverage under section 8905a of this title” for “or former spouse” wherever appearing.

1987—Subsec. (k)(1). Pub. L. 100-202, §101(m) [title VI, §626(1), (2)], inserted “or by a qualified clinical social worker as defined in section 8901(1),” after “as applicable,” and “, qualified clinical social worker” after “such a clinical psychologist”.

Subsec. (k)(2), (3). Pub. L. 100-202, §101(m) [title VI, §626(3)], redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “When a contract under this chapter requires payment or reimbursement for services which may be performed by a qualified clinical social worker, an employee, annuitant, family member, or former spouse covered by the contract shall be entitled under the contract to have payment or reimbursement made to him or on his behalf for the services performed. As a condition for the payment or reimbursement, the contract—

“(A) may require that the services be performed pursuant to a referral by a psychiatrist; but

“(B) may not require that the services be performed under the supervision of a psychiatrist or other health practitioner.”

Subsec. (m)(2)(A). Pub. L. 100-202, §101(m) [title VI, §626(4)], struck out “This paragraph shall apply with respect to a qualified clinical social worker covered by subsection (k)(2) of this section without regard to whether such contract contains the requirement authorized by clause (i) of the second sentence of subparagraph (A) of such subsection (k)(2).”

1986—Subsec. (k). Pub. L. 99-251, §105(b), designated existing provisions as par. (1), struck out last sentence providing that the provisions of this subsection shall not apply to group practice prepayment plans, and added pars. (2) and (3).

Subsec. (m)(2)(A). Pub. L. 99-251, §106(a)(3), inserted last sentence relating to applicability of this paragraph with respect to a qualified clinical social worker covered by subsection (k)(2) of this section.

1985—Subsecs. (a), (e), (i). Pub. L. 99-53 inserted reference to section 8903a of this title.

1984—Subsec. (g). Pub. L. 98-615, §3(2)(A), substituted “employee, annuitant, family member, or former spouse” for “employee or annuitant” in two places.

Subsecs. (j), (k). Pub. L. 98-615, §3(2)(B), substituted “family member, or former spouse” for “or family member”.

1980—Subsec. (m)(2)(A). Pub. L. 96-179 substituted “in a State where 25 percent or more of the population is located in primary medical care manpower shortage areas designated pursuant to section 332 of the Public Health Service Act (42 U.S.C. 254e)” for “who is a member of a medically underserved population (within the meaning of section 1302(7) of the Public Health Service Act (42 U.S.C. 300e-17))”.

1978—Subsecs. (a), (c) to (e), (i), (j), (l). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission” wherever appearing.

Subsec. (m). Pub. L. 95-368 added subsec. (m).

1976—Subsec. (l). Pub. L. 94-460 added subsec. (l).

1975—Subsecs. (j), (k). Pub. L. 94-183 redesignated subsec. (j), added by Pub. L. 93-363 and relating to services performed by a clinical psychologist or optometrist, as (k).

1974—Subsec. (j). Pub. L. 93-363 added subsec. (j) covering services performed by a clinical psychologist or optometrist.

Pub. L. 93-246 added subsec. (j) requiring the carrier to pay for or provide a health service or supply in specified cases.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105-12, set out as an Effective Date note under section 14401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 537(c) of Pub. L. 102-393 provided that: “The amendments made by this section [amending this section] shall be effective with respect to contract years beginning after the date of enactment of this Act [Oct. 6, 1992].”

EFFECTIVE DATE OF 1990 AMENDMENT

Section 7002(g) of Pub. L. 101-508 provided that: “Except as provided in subsection (f) [set out as a note under section 8904 of this title], the amendments made by this section [amending this section, sections 8904, 8909, and 8910 of this title, and provisions set out as a note under section 8906 of this title] shall apply with respect to contract years beginning on or after January 1, 1991.”

EFFECTIVE DATE OF 1988 AMENDMENT

Section 203 of title II of Pub. L. 100-654 provided that: “(a) IN GENERAL.—The amendments made by this title [enacting section 8905a of this title and amending this section and sections 8903, 8905, and 8909 of this title] shall apply with respect to—

“(1) any calendar year beginning, and contracts entered into or renewed for any calendar year beginning, after the end of the 9-month period beginning on the date of the enactment of this Act [Nov. 14, 1988]; and

“(2) any qualifying event occurring on or after the first day of the first calendar year beginning after the end of the 9-month period referred to in paragraph (1).

“(b) DEFINITION.—For the purpose of this section, the term ‘qualifying event’ means any of the following events:

“(1) A separation from Government service.

“(2) A divorce, annulment, or legal separation.

“(3) Any change in circumstances which causes an individual to become ineligible to be considered an unmarried dependent child under chapter 89 of such title [section 8901 et seq. of this title].”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 105(b) of Pub. L. 99-251 effective with respect to contracts entered into or renewed for calendar years beginning after Dec. 31, 1986, see section 105(c) of Pub. L. 99-251, set out as a note under section 8901 of this title.

Section 106(b) of Pub. L. 99-251 provided that: “The amendments made by subsection (a) [amending this section and provisions set out as notes under this section] shall take effect with respect to services provided after December 31, 1984.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 5(b) of Pub. L. 96-179, as amended by Pub. L. 99-251, title I, §106(a)(2), Feb. 27, 1986, 100 Stat. 16, provided that: “The amendments made by section 3 [amending this section] shall apply to services provided

after December 31, 1979, under any contract entered into or renewed after December 31, 1979.”

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

Section 3 of Pub. L. 95-368, as amended by Pub. L. 99-251, title I, §106(a)(1), Feb. 27, 1986, 100 Stat. 16, provided that: “The provisions of section 8902(m)(2) of title 5, United States Code, as added by the first section of this Act, shall apply to services provided under any contract entered into or renewed after December 31, 1979.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-460 effective Oct. 8, 1976, see section 118 of Pub. L. 94-460, set out as a note under section 300e of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1974 AMENDMENTS

Section 2 of Pub. L. 93-363 provided that: “The amendment made by this Act [amending this section] shall become effective with respect to any contract entered into or renewed on or after the date of enactment of this Act [July 30, 1974].”

Section 4(c) of Pub. L. 93-246 provided that: “Section 3 [amending this section] shall become effective with respect to any contract entered into or renewed on or after the date of enactment of this Act [Jan. 31, 1974].”

FULL DISCLOSURE IN HEALTH PLAN CONTRACTS

Pub. L. 105-266, §5, Oct. 19, 1998, 112 Stat. 2368, provided that: “The Office of Personnel Management shall encourage carriers offering health benefits plans described by section 8903 or section 8903a of title 5, United States Code, with respect to contractual arrangements made by such carriers with any person for purposes of obtaining discounts from providers for health care services or supplies furnished to individuals enrolled in such plan, to seek assurance that the conditions for such discounts are fully disclosed to the providers who grant them.”

RATE REDUCTION FOR MEDICARE ELIGIBLE FEDERAL ANNUITANTS

Pub. L. 100-360, title IV, §422, July 1, 1988, 102 Stat. 810, which directed the Office of Personnel Management to reduce the rates charged medicare eligible individuals participating in health benefit plans by a prorated amount, was repealed by Pub. L. 101-234, title III, §301(a), Dec. 13, 1989, 103 Stat. 1985.

AUTHORITY OF CARRIER TO CONTRACT FOR COMPREHENSIVE MEDICAL SERVICES FROM A GROUP PRACTICE UNIT OR ORGANIZATION

Pub. L. 91-515, title IV, §401, Oct. 30, 1970, 84 Stat. 1309, authorized Secretary of Health, Education, and Welfare to permit any carrier which is a party to a contract entered into under this chapter or under the Retired Federal Employees Health Benefits Act, or which participates in carrying out of any such contract, to issue in any State contracts entitling any person as a beneficiary to receive comprehensive medical services from a group practice unit or organization with which such carrier has contracted or otherwise arranged for the provision of such services.

§ 8902a. Debarment and other sanctions

(a)(1) For the purpose of this section—

(A) the term “provider of health care services or supplies” or “provider” means a physician, hospital, or other individual or entity which furnishes health care services or supplies;

(B) the term “individual covered under this chapter” or “covered individual” means an

employee, annuitant, family member, or former spouse covered by a health benefits plan described by section 8903 or 8903a;

(C) an individual or entity shall be considered to have been “convicted” of a criminal offense if—

(i) a judgment of conviction for such offense has been entered against the individual or entity by a Federal, State, or local court;

(ii) there has been a finding of guilt against the individual or entity by a Federal, State, or local court with respect to such offense;

(iii) a plea of guilty or nolo contendere by the individual or entity has been accepted by a Federal, State, or local court with respect to such offense; or

(iv) in the case of an individual, the individual has entered a first offender or other program pursuant to which a judgment of conviction for such offense has been withheld;

without regard to the pendency or outcome of any appeal (other than a judgment of acquittal based on innocence) or request for relief on behalf of the individual or entity; and

(D) the term “should know” means that a person, with respect to information, acts in deliberate ignorance of, or in reckless disregard of, the truth or falsity of the information, and no proof of specific intent to defraud is required;¹

(2)(A) Notwithstanding section 8902(j) or any other provision of this chapter, if, under subsection (b), (c), or (d) a provider is barred from participating in the program under this chapter, no payment may be made by a carrier pursuant to any contract under this chapter (either to such provider or by reimbursement) for any service or supply furnished by such provider during the period of the debarment.

(B) Each contract under this chapter shall contain such provisions as may be necessary to carry out subparagraph (A) and the other provisions of this section.

(b) The Office of Personnel Management shall bar the following providers of health care services or supplies from participating in the program under this chapter:

(1) Any provider that has been convicted, under Federal or State law, of a criminal offense relating to fraud, corruption, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a health care service or supply.

(2) Any provider that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care service or supply.

(3) Any provider that has been convicted, under Federal or State law, in connection with the interference with or obstruction of an investigation or prosecution of a criminal offense described in paragraph (1) or (2).

(4) Any provider that has been convicted, under Federal or State law, of a criminal offense relating to the unlawful manufacture,

¹ So in original. The semicolon probably should be a period.

distribution, prescription, or dispensing of a controlled substance.

(5) Any provider that is currently debarred, suspended, or otherwise excluded from any procurement or nonprocurement activity (within the meaning of section 2455 of the Federal Acquisition Streamlining Act of 1994).

(c) The Office may bar the following providers of health care services from participating in the program under this chapter:

(1) Any provider—

(A) whose license to provide health care services or supplies has been revoked, suspended, restricted, or not renewed, by a State licensing authority for reasons relating to the provider's professional competence, professional performance, or financial integrity; or

(B) that surrendered such a license while a formal disciplinary proceeding was pending before such an authority, if the proceeding concerned the provider's professional competence, professional performance, or financial integrity.

(2) Any provider that is an entity directly or indirectly owned, or with a control interest of 5 percent or more held, by an individual who has been convicted of any offense described in subsection (b), against whom a civil monetary penalty has been assessed under subsection (d), or who has been debarred from participation under this chapter.

(3) Any individual who directly or indirectly owns or has a control interest in a sanctioned entity and who knows or should know of the action constituting the basis for the entity's conviction of any offense described in subsection (b), assessment with a civil monetary penalty under subsection (d), or debarment from participation under this chapter.

(4) Any provider that the Office determines, in connection with claims presented under this chapter, has charged for health care services or supplies in an amount substantially in excess of such provider's customary charge for such services or supplies (unless the Office finds there is good cause for such charge), or charged for health care services or supplies which are substantially in excess of the needs of the covered individual or which are of a quality that fails to meet professionally recognized standards for such services or supplies.

(5) Any provider that the Office determines has committed acts described in subsection (d).

Any determination under paragraph (4) relating to whether a charge for health care services or supplies is substantially in excess of the needs of the covered individual shall be made by trained reviewers based on written medical protocols developed by physicians. In the event such a determination cannot be made based on such protocols, a physician in an appropriate specialty shall be consulted.

(d) Whenever the Office determines—

(1) in connection with claims presented under this chapter, that a provider has charged for a health care service or supply which the provider knows or should have known involves—

(A) an item or service not provided as claimed;

(B) charges in violation of applicable charge limitations under section 8904(b); or

(C) an item or service furnished during a period in which the provider was debarred from participation under this chapter pursuant to a determination by the Office under this section, other than as permitted under subsection (g)(2)(B);

(2) that a provider of health care services or supplies has knowingly made, or caused to be made, any false statement or misrepresentation of a material fact which is reflected in a claim presented under this chapter; or

(3) that a provider of health care services or supplies has knowingly failed to provide any information required by a carrier or by the Office to determine whether a payment or reimbursement is payable under this chapter or the amount of any such payment or reimbursement;

the Office may, in addition to any other penalties that may be prescribed by law, and after consultation with the Attorney General, impose a civil monetary penalty of not more than \$10,000 for any item or service involved. In addition, such a provider shall be subject to an assessment of not more than twice the amount claimed for each such item or service. In addition, the Office may make a determination in the same proceeding to bar such provider from participating in the program under this chapter.

(e) The Office—

(1) may not initiate any debarment proceeding against a provider, based on such provider's having been convicted of a criminal offense, later than 6 years after the date on which such provider is so convicted; and

(2) may not initiate any action relating to a civil penalty, assessment, or debarment under this section, in connection with any claim, later than 6 years after the date the claim is presented, as determined under regulations prescribed by the Office.

(f) In making a determination relating to the appropriateness of imposing or the period of any debarment under this section (where such debarment is not mandatory), or the appropriateness of imposing or the amount of any civil penalty or assessment under this section, the Office shall take into account—

(1) the nature of any claims involved and the circumstances under which they were presented;

(2) the degree of culpability, history of prior offenses or improper conduct of the provider involved; and

(3) such other matters as justice may require.

(g)(1)(A) Except as provided in subparagraph (B), debarment of a provider under subsection (b) or (c) shall be effective at such time and upon such reasonable notice to such provider, and to carriers and covered individuals, as shall be specified in regulations prescribed by the Office. Any such provider that is debarred from participation may request a hearing in accordance with subsection (h)(1).

(B) Unless the Office determines that the health or safety of individuals receiving health care services warrants an earlier effective date, the Office shall not make a determination adverse to a provider under subsection (c)(5) or (d) until such provider has been given reasonable notice and an opportunity for the determination to be made after a hearing as provided in accordance with subsection (h)(1).

(2)(A) Except as provided in subparagraph (B), a debarment shall be effective with respect to any health care services or supplies furnished by a provider on or after the effective date of such provider's debarment.

(B) A debarment shall not apply with respect to inpatient institutional services furnished to an individual who was admitted to the institution before the date the debarment would otherwise become effective until the passage of 30 days after such date, unless the Office determines that the health or safety of the individual receiving those services warrants that a shorter period, or that no such period, be afforded.

(3) Any notice of debarment referred to in paragraph (1) shall specify the date as of which debarment becomes effective and the minimum period of time for which such debarment is to remain effective. In the case of a debarment under paragraph (1), (2), (3), or (4) of subsection (b), the minimum period of debarment shall not be less than 3 years, except as provided in paragraph (4)(B)(ii).

(4)(A) A provider barred from participating in the program under this chapter may, after the expiration of the minimum period of debarment referred to in paragraph (3), apply to the Office, in such manner as the Office may by regulation prescribe, for termination of the debarment.

(B) The Office may—

(i) terminate the debarment of a provider, pursuant to an application filed by such provider after the end of the minimum debarment period, if the Office determines, based on the conduct of the applicant, that—

(I) there is no basis under subsection (b), (c), or (d) for continuing the debarment; and

(II) there are reasonable assurances that the types of actions which formed the basis for the original debarment have not recurred and will not recur; or

(ii) notwithstanding any provision of subparagraph (A), terminate the debarment of a provider, pursuant to an application filed by such provider before the end of the minimum debarment period, if the Office determines that—

(I) based on the conduct of the applicant, the requirements of subclauses (I) and (II) of clause (i) have been met; and

(II) early termination under this clause is warranted based on the fact that the provider is the sole community provider or the sole source of essential specialized services in a community, or other similar circumstances.

(5) The Office shall—

(A) promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of a provider barred from participation in the program

under this chapter of the fact of the debarment, as well as the reasons for such debarment;

(B) request that appropriate investigations be made and sanctions invoked in accordance with applicable law and policy; and

(C) request that the State or local agency or authority keep the Office fully and currently informed with respect to any actions taken in response to the request.

(h)(1) Any provider of health care services or supplies that is the subject of an adverse determination by the Office under this section shall be entitled to reasonable notice and an opportunity to request a hearing of record, and to judicial review as provided in this subsection after the Office renders a final decision. The Office shall grant a request for a hearing upon a showing that due process rights have not previously been afforded with respect to any finding of fact which is relied upon as a cause for an adverse determination under this section. Such hearing shall be conducted without regard to subchapter II of chapter 5 and chapter 7 of this title by a hearing officer who shall be designated by the Director of the Office and who shall not otherwise have been involved in the adverse determination being appealed. A request for a hearing under this subsection shall be filed within such period and in accordance with such procedures as the Office shall prescribe by regulation.

(2) Any provider adversely affected by a final decision under paragraph (1) made after a hearing to which such provider was a party may seek review of such decision in the United States District Court for the District of Columbia or for the district in which the plaintiff resides or has his or her principal place of business by filing a notice of appeal in such court within 60 days after the date the decision is issued, and by simultaneously sending copies of such notice by certified mail to the Director of the Office and to the Attorney General. In answer to the appeal, the Director of the Office shall promptly file in such court a certified copy of the transcript of the record, if the Office conducted a hearing, and other evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and evidence of record, a judgment affirming, modifying, or setting aside, in whole or in part, the decision of the Office, with or without remanding the case for a rehearing. The district court shall not set aside or remand the decision of the Office unless there is not substantial evidence on the record, taken as whole, to support the findings by the Office of a cause for action under this section or unless action taken by the Office constitutes an abuse of discretion.

(3) Matters that were raised or that could have been raised in a hearing under paragraph (1) or an appeal under paragraph (2) may not be raised as a defense to a civil action by the United States to collect a penalty or assessment imposed under this section.

(i) A civil action to recover civil monetary penalties or assessments under subsection (d) shall be brought by the Attorney General in the name of the United States, and may be brought in the United States district court for the district where the claim involved was presented or

where the person subject to the penalty resides. Amounts recovered under this section shall be paid to the Office for deposit into the Employees Health Benefits Fund. The amount of a penalty or assessment as finally determined by the Office, or other amount the Office may agree to in compromise, may be deducted from any sum then or later owing by the United States to the party against whom the penalty or assessment has been levied.

(j) The Office shall prescribe regulations under which, with respect to services or supplies furnished by a debarred provider to a covered individual during the period of such provider's debarment, payment or reimbursement under this chapter may be made, notwithstanding the fact of such debarment, if such individual did not know or could not reasonably be expected to have known of the debarment. In any such instance, the carrier involved shall take appropriate measures to ensure that the individual is informed of the debarment and the minimum period of time remaining under the terms of the debarment.

(Added Pub. L. 100-654, title I, §101(a), Nov. 14, 1988, 102 Stat. 3837; amended Pub. L. 105-266, §2(a), Oct. 19, 1998, 112 Stat. 2363.)

REFERENCES IN TEXT

Section 2455 of the Federal Acquisition Streamlining Act of 1994, referred to in subsec. (b)(5), is section 2455 of Pub. L. 103-355, which is set out as a note under section 6101 of Title 31, Money and Finance.

AMENDMENTS

1998—Subsec. (a)(1)(D). Pub. L. 105-266, §2(a)(1)(A), added subpar. (D).

Subsec. (a)(2)(A). Pub. L. 105-266, §2(a)(1)(B), substituted "subsection (b), (c), or (d)" for "subsection (b) or (c)".

Subsec. (b). Pub. L. 105-266, §2(a)(2)(A), substituted "shall" for "may" in introductory provisions.

Subsec. (b)(5). Pub. L. 105-266, §2(a)(2)(B), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "Any provider—

"(A) whose license to provide health care services or supplies has been revoked, suspended, restricted, or not renewed, by a State licensing authority for reasons relating to the provider's professional competence, professional performance, or financial integrity; or

"(B) that surrendered such a license while a formal disciplinary proceeding was pending before such an authority, if the proceeding concerned the provider's professional competence, professional performance, or financial integrity."

Subsec. (c). Pub. L. 105-266, §2(a)(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105-266, §2(a)(3), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 105-266, §2(a)(4), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "in connection with a claim presented under this chapter, that a provider of health care services or supplies—

"(A) has charged for health care services or supplies that the provider knows or should have known were not provided as claimed; or

"(B) has charged for health care services or supplies in an amount substantially in excess of such provider's customary charges for such services or supplies, or charged for health care services or supplies which are substantially in excess of the needs of the covered individual or which are of a quality that fails to meet professionally recognized standards for such services or supplies;"

Subsec. (e). Pub. L. 105-266, §2(a)(3), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 105-266, §2(a)(3), (5), redesignated subsec. (e) as (f) and inserted "(where such debarment is not mandatory)" after "debarment under this section". Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 105-266, §2(a)(3), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (g)(1). Pub. L. 105-266, §2(a)(6)(A), added par. (1) and struck out former par. (1) which read as follows: "The debarment of a provider under subsection (b) or (c) shall be effective at such time and upon such reasonable notice to such provider, and to carriers and covered individuals, as may be specified in regulations prescribed by the Office."

Subsec. (g)(3). Pub. L. 105-266, §2(a)(6)(B), inserted "of debarment" after "notice" and inserted at end "In the case of a debarment under paragraph (1), (2), (3), or (4) of subsection (b), the minimum period of debarment shall not be less than 3 years, except as provided in paragraph (4)(B)(ii)."

Subsec. (g)(4)(B)(i)(I). Pub. L. 105-266, §2(a)(6)(C), substituted "subsection (b), (c), or (d)" for "subsection (b) or (c)".

Subsec. (g)(6). Pub. L. 105-266, §2(a)(6)(D), struck out par. (6) which read as follows: "The Office shall, upon written request and payment of a reasonable charge to defray the cost of complying with such request, furnish a current list of any providers barred from participating in the program under this chapter, including the minimum period of time remaining under the terms of each provider's debarment."

Subsec. (h). Pub. L. 105-266, §2(a)(3), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (h)(1), (2). Pub. L. 105-266, §2(a)(7), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

"(1) The Office may not make a determination under subsection (b) or (c) adverse to a provider of health care services or supplies until such provider has been given written notice and an opportunity for a hearing on the record. A provider is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the provider in any such hearing.

"(2) Notwithstanding section 8912, any person adversely affected by a final decision under paragraph (1) may obtain review of such decision in the United States Court of Appeals for the Federal Circuit. A written petition requesting that the decision be modified or set aside must be filed within 60 days after the date on which such person is notified of such decision."

Subsec. (i). Pub. L. 105-266, §2(a)(3), (8), redesignated subsec. (h) as (i), substituted "subsection (d)" for "subsection (c)", and inserted at end "The amount of a penalty or assessment as finally determined by the Office, or other amount the Office may agree to in compromise, may be deducted from any sum then or later owing by the United States to the party against whom the penalty or assessment has been levied." Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 105-266, §2(a)(3), redesignated subsec. (i) as (j).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-266, §2(b), Oct. 19, 1998, 112 Stat. 2366, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 19, 1998].

"(2) EXCEPTIONS.—(A) Paragraphs (2), (3), and (5) of section 8902a(c) of title 5, United States Code, as amended by subsection (a)(3), shall apply only to the extent that the misconduct which is the basis for debarment under paragraph (2), (3), or (5), as applicable, occurs after the date of the enactment of this Act.

"(B) Paragraph (1)(B) of section 8902a(d) of title 5, United States Code, as amended by subsection (a)(4), shall apply only with respect to charges which violate section 8904(b) of such title for items or services furnished after the date of the enactment of this Act.

“(C) Paragraph (3) of section 8902a(g) of title 5, United States Code, as amended by subsection (a)(6)(B), shall apply only with respect to debarments based on convictions occurring after the date of the enactment of this Act.”

EFFECTIVE DATE; PRIOR CONDUCT

Section 102 of title I of Pub. L. 100-654 provided that:“(a) APPLICABILITY.—The amendments made by this title [enacting this section] shall be effective with respect to any calendar year beginning, and contracts entered into or renewed for any calendar year beginning, after the date of the enactment of this Act [Nov. 14, 1988].

“(b) PRIOR CONDUCT NOT TO BE CONSIDERED.—In carrying out section 8902a of title 5, United States Code, as added by this title, no debarment, civil monetary penalty, or assessment may be imposed under such section based on any criminal or other conduct occurring before the beginning of the first calendar year which begins after the date of the enactment of this Act [Nov. 14, 1988].”

§ 8903. Health benefits plans

The Office of Personnel Management may contract for or approve the following health benefits plans:

(1) **SERVICE BENEFIT PLAN.**—One Government-wide plan, which may be underwritten by participating affiliates licensed in any number of States, offering two levels of benefits, under which payment is made by a carrier under contracts with physicians, hospitals, or other providers of health services for benefits of the types described by section 8904(1) of this title given to employees, annuitants, members of their families, former spouses, or persons having continued coverage under section 8905a of this title, or, under certain conditions, payment is made by a carrier to the employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title.

(2) **INDEMNITY BENEFIT PLAN.**—One Government-wide plan, offering two levels of benefits, under which a carrier agrees to pay certain sums of money, not in excess of the actual expenses incurred, for benefits of the types described by section 8904(2) of this title.

(3) **EMPLOYEE ORGANIZATION PLANS.**—Employee organization plans which offer benefits of the types referred to by section 8904(3) of this title, which are sponsored or underwritten, and are administered, in whole or substantial part, by employee organizations described in section 8901(8)(A) of this title, which are available only to individuals, and members of their families, who at the time of enrollment are members of the organization.

(4) **COMPREHENSIVE MEDICAL PLANS.**—

(A) **GROUP-PRACTICE PREPAYMENT PLANS.**—Group-practice prepayment plans which offer health benefits of the types referred to by section 8904(4) of this title, in whole or in substantial part on a prepaid basis, with professional services thereunder provided by physicians practicing as a group in a common center or centers. The group shall include at least 3 physicians who receive all or a substantial part of their professional income from the prepaid funds and who represent 1 or more medical specialties appropriate and necessary for the population proposed to be served by the plan.

(B) **INDIVIDUAL-PRACTICE PREPAYMENT PLANS.**—Individual-practice prepayment plans which offer health services in whole or substantial part on a prepaid basis, with professional services thereunder provided by individual physicians who agree, under certain conditions approved by the Office, to accept the payments provided by the plans as full payment for covered services given by them including, in addition to in-hospital services, general care given in their offices and the patients' homes, out-of-hospital diagnostic procedures, and preventive care, and which plans are offered by organizations which have successfully operated similar plans before approval by the Office of the plan in which employees may enroll.

(C) **MIXED MODEL PREPAYMENT PLANS.**—Mixed model prepayment plans which are a combination of the type of plans described in subparagraph (A) and the type of plans described in subparagraph (B).

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 602; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 98-615, §3(3), Nov. 8, 1984, 98 Stat. 3203; Pub. L. 99-53, §2(b), June 17, 1985, 99 Stat. 94; Pub. L. 99-251, title I, §§102, 111, Feb. 27, 1986, 100 Stat. 14, 19; Pub. L. 100-654, title II, §202(b), Nov. 14, 1988, 102 Stat. 3845; Pub. L. 105-266, §3(b), Oct. 19, 1998, 112 Stat. 2366.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3003.	Sept. 28, 1959, Pub. L. 86-382, §4, 73 Stat. 711. July 8, 1963, Pub. L. 88-59, §1(b), 77 Stat. 77.

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

AMENDMENTS

1998—Par. (1). Pub. L. 105-266 substituted “plan, which may be underwritten by participating affiliates licensed in any number of States,” for “plan.”

1988—Par. (1). Pub. L. 100-654 substituted “former spouses, or persons having continued coverage under section 8905a of this title,” for “or former spouses,” and “former spouse, or person having continued coverage under section 8905a of this title.” for “or former spouse.”

1986—Par. (4)(A). Pub. L. 99-251, §102, amended second sentence generally, substituting “at least 3 physicians” for “physicians representing at least three major medical specialties” and inserted “and who represent 1 or more medical specialties appropriate and necessary for the population proposed to be served by the plan”.

Par. (4)(C). Pub. L. 99-251, §111, added subpar. (C).

1985—Par. (3). Pub. L. 99-53 inserted “described in section 8901(8)(A) of this title” after “employee organizations”.

1984—Par. (1). Pub. L. 98-615, §3(3), substituted “employees, annuitants, members of their families, or former spouses” for “employees or annuitants, or members of their families” and “employee, annuitant, family member, or former spouse” for “employee or annuitant or member of his family”.

1978—Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively, wherever appearing.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-654 applicable with respect to any calendar year beginning, and contracts entered into or renewed for any calendar year beginning, after end of 9-month period beginning Nov. 14, 1988, and with respect to any qualifying event occurring on or after first day of first calendar year beginning after end of such 9-month period, see section 203 of Pub. L. 100-654, set out as a note under section 8902 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 8903a. Additional health benefits plans

(a) In addition to any plan under section 8903 of this title, the Office of Personnel Management may contract for or approve one or more health benefits plans under this section.

(b) A plan under this section may not be contracted for or approved unless it—

(1) is sponsored or underwritten, and administered, in whole or substantial part, by an employee organization described in section 8901(8)(B) of this title;

(2) offers benefits of the types named by paragraph (1) or (2) of section 8904 of this title or both;

(3) provides for benefits only by paying for, or providing reimbursement for, the cost of such benefits (as provided for under paragraph (1) or (2) of section 8903 of this title) or a combination thereof; and

(4) is available only to individuals who, at the time of enrollment, are full members of the organization and to members of their families.

(c) A contract for a plan approved under this section shall require the carrier—

(1) to enter into an agreement approved by the Office with an underwriting subcontractor licensed to issue group health insurance in all the States and the District of Columbia; or

(2) to demonstrate ability to meet reasonable minimum financial standards prescribed by the Office.

(d) For the purpose of this section, an individual shall be considered a full member of an organization if such individual is eligible to exercise all rights and privileges incident to full membership in such organization (determined without regard to the right to hold elected office).

(Added Pub. L. 99-53, §1(b)(1), June 17, 1985, 99 Stat. 93.)

§ 8903b. Authority to readmit an employee organization plan

(a) In the event that a plan described by section 8903(3) or 8903a is discontinued under this chapter (other than in the circumstance described in section 8909(d)), that discontinuation shall be disregarded, for purposes of any deter-

mination as to that plan's eligibility to be considered an approved plan under this chapter, but only for purposes of any contract year later than the third contract year beginning after such plan is so discontinued.

(b) A contract for a plan approved under this section shall require the carrier—

(1) to demonstrate experience in service delivery within a managed care system (including provider networks) throughout the United States; and

(2) if the carrier involved would not otherwise be subject to the requirement set forth in section 8903a(c)(1), to satisfy such requirement.

(Added Pub. L. 105-266, §6(a)(1), Oct. 19, 1998, 112 Stat. 2368.)

EFFECTIVE DATE

Pub. L. 105-266, §6(a)(3), Oct. 19, 1998, 112 Stat. 2369, provided that:

“(A) IN GENERAL.—The amendments made by this subsection [enacting this section] shall apply as of the date of the enactment of this Act [Oct. 19, 1998], including with respect to any plan which has been discontinued as of such date.

“(B) TRANSITION RULE.—For purposes of applying section 8903b(a) of title 5, United States Code (as amended by this subsection) with respect to any plan seeking to be readmitted for purposes of any contract year beginning before January 1, 2000, such section shall be applied by substituting ‘second contract year’ for ‘third contract year.’”

§ 8904. Types of benefits

(a) The benefits to be provided under plans described by section 8903 of this title may be of the following types:

(1) SERVICE BENEFIT PLAN.—

- (A) Hospital benefits.
- (B) Surgical benefits.
- (C) In-hospital medical benefits.
- (D) Ambulatory patient benefits.
- (E) Supplemental benefits.
- (F) Obstetrical benefits.

(2) INDEMNITY BENEFIT PLAN.—

- (A) Hospital care.
- (B) Surgical care and treatment.
- (C) Medical care and treatment.
- (D) Obstetrical benefits.
- (E) Prescribed drugs, medicines, and prosthetic devices.
- (F) Other medical supplies and services.

(3) EMPLOYEE ORGANIZATION PLANS.—Benefits of the types named under paragraph (1) or (2) of this subsection or both.

(4) COMPREHENSIVE MEDICAL PLANS.—Benefits of the types named under paragraph (1) or (2) of this subsection or both.

All plans contracted for under paragraphs (1) and (2) of this subsection shall include benefits both for costs associated with care in a general hospital and for other health services of a catastrophic nature.

(b)(1)(A) A plan, other than a prepayment plan described in section 8903(4) of this title, may not provide benefits, in the case of any retired enrolled individual who is age 65 or older and is not covered to receive Medicare hospital and insurance benefits under part A of title XVIII of

the Social Security Act (42 U.S.C. 1395c et seq.), to pay a charge imposed by any health care provider, for inpatient hospital services which are covered for purposes of benefit payments under this chapter and part A of title XVIII of the Social Security Act, to the extent that such charge exceeds applicable limitations on hospital charges established for Medicare purposes under section 1886 of the Social Security Act (42 U.S.C. 1395ww). Hospital providers who have in force participation agreements with the Secretary of Health and Human Services consistent with sections 1814(a) and 1866 of the Social Security Act (42 U.S.C. 1395f(a) and 1395cc), whereby the participating provider accepts Medicare benefits as full payment for covered items and services after applicable patient copayments under section 1813 of such Act (42 U.S.C. 1395e) have been satisfied, shall accept equivalent benefit payments and enrollee copayments under this chapter as full payment for services described in the preceding sentence. The Office of Personnel Management shall notify the Secretary of Health and Human Services if a hospital is found to knowingly and willfully violate this subsection on a repeated basis and the Secretary may invoke appropriate sanctions in accordance with section 1866(b)(2) of the Social Security Act (42 U.S.C. 1395cc(b)(2)) and applicable regulations.

(B)(i) A plan, other than a prepayment plan described in section 8903(4), may not provide benefits, in the case of any retired enrolled individual who is age 65 or older and is not entitled to Medicare supplementary medical insurance benefits under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.), to pay a charge imposed for physicians' services (as defined in section 1848(j) of such Act, 42 U.S.C. 1395w-4(j)) which are covered for purposes of benefit payments under this chapter and under such part, to the extent that such charge exceeds the fee schedule amount under section 1848(a) of such Act (42 U.S.C. 1395w-4(a)).

(ii) Physicians and suppliers who have in force participation agreements with the Secretary of Health and Human Services consistent with section 1842(h)(1) of such Act (42 U.S.C. 1395u(h)(1)), whereby the participating provider accepts Medicare benefits (including allowable deductible and coinsurance amounts) as full payment for covered items and services shall accept equivalent benefit and enrollee cost-sharing under this chapter as full payment for services described in clause (i). Physicians and suppliers who are nonparticipating physicians and suppliers for purposes of part B of title XVIII of such Act shall not impose charges that exceed the limiting charge under section 1848(g) of such Act (42 U.S.C. 1395w-4(g)) with respect to services described in clause (i) provided to enrollees described in such clause. The Office of Personnel Management shall notify a physician or supplier who is found to have violated this clause and inform them of the requirements of this clause and sanctions for such a violation. The Office of Personnel Management shall notify the Secretary of Health and Human Services if a physician or supplier is found to knowingly and willfully violate this clause on a repeated basis and the Secretary of Health and Human Services

may invoke appropriate sanctions in accordance with sections 1128A(a) and 1848(g)(1) of such Act (42 U.S.C. 1320a-7a(a), 1395w-4(g)(1)) and applicable regulations.

(C) If the Secretary of Health and Human Services determines that a violation of this subsection warrants excluding a provider from participation for a specified period under title XVIII of the Social Security Act, the Office shall enforce a corresponding exclusion of such provider for purposes of this chapter.

(2) Notwithstanding any other provision of law, the Secretary of Health and Human Services and the Director of the Office of Personnel Management, and their agents, shall exchange any information necessary to implement this subsection.

(3)(A) Not later than December 1, 1991, and periodically thereafter, the Secretary of Health and Human Services (in consultation with the Director of the Office of Personnel Management) shall supply to carriers of plans described in paragraphs (1) through (3) of section 8903 the Medicare program information necessary for them to comply with paragraph (1).

(B) For purposes of this paragraph, the term "Medicare program information" includes (i) the limitations on hospital charges established for Medicare purposes under section 1886 of the Social Security Act (42 U.S.C. 1395ww) and the identity of hospitals which have in force agreements with the Secretary of Health and Human Services consistent with section 1814(a) and 1866 of the Social Security Act (42 U.S.C. 1395f(a) and 1395cc), and (ii) the fee schedule amounts and limiting charges for physicians' services established under section 1848 of such Act (42 U.S.C. 1395w-4) and the identity of participating physicians and suppliers who have in force agreements with such Secretary under section 1842(h) of such Act (42 U.S.C. 1395u(h)).

(4) The Director of the Office of Personnel Management shall enter into an arrangement with the Secretary of Health and Human Services, to be effective before the first day of the fifth month that begins before each contract year, under which—

(A) physicians and suppliers (whether or not participating) under the Medicare program will be notified of the requirements of paragraph (1)(B);

(B) enforcement procedures will be in place to carry out such paragraph (including enforcement of protections against overcharging of beneficiaries); and

(C) Medicare program information described in paragraph (3)(B)(ii) will be supplied to carriers under paragraph (3)(A).

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 603; Pub. L. 101-508, title VII, §7002(f)(1), Nov. 5, 1990, 104 Stat. 1388-330; Pub. L. 102-378, §2(76), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 103-66, title XI, §11003(a), Aug. 10, 1993, 107 Stat. 409.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3004.	Sept. 28, 1959, Pub. L. 86-382, §5, 73 Stat. 712.

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

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Parts A and B of title XVIII of the Act are classified generally to part A (§1395c et seq.) and part B (§1395j et seq.), respectively, of subchapter XVIII of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103-66, §11003(a)(1), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (b)(3)(B). Pub. L. 103-66, §11003(a)(2), inserted cl. (i) designation and added cl. (ii).

Subsec. (b)(4). Pub. L. 103-66, §11003(a)(3), added par. (4).

1992—Subsec. (a). Pub. L. 102-378 substituted “this subsection” for “this section” in pars. (3) and (4) and in last sentence.

1990—Pub. L. 101-508 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 11003(b) of Pub. L. 103-66 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to contract years beginning on or after January 1, 1995.”

EFFECTIVE DATE OF 1990 AMENDMENT

Section 7002(f)(2) of Pub. L. 101-508 provided that: “The amendments made by this subsection [amending this section] shall apply with respect to contract years beginning on or after January 1, 1992.”

MENTAL HEALTH, ALCOHOLISM, AND DRUG ADDICTION BENEFITS; CONGRESSIONAL FINDINGS; SENSE OF CONGRESS

Pub. L. 99-251, title I, §107, Feb. 27, 1986, 100 Stat. 16, provided that:

“(a) FINDINGS.—The Congress finds that—

“(1) the treatment of mental illness, alcoholism, and drug addiction are basic health care services which are needed by approximately 40,000,000 Americans each year;

“(2) treatment of mental illness, alcoholism, and drug addiction is increasingly successful;

“(3) timely and appropriate treatment of mental illness, alcoholism, and drug addiction is cost effective in terms of restored productivity, reduced utilization of other health services, and reduced social dependence; and

“(4) mental illness is a problem of grave concern to the people of the United States and is widely but unnecessarily feared and misunderstood.

“(b) SENSE OF THE CONGRESS.—It is the sense of the Congress—

“(1) that participants in the Federal employees health benefits program should receive adequate benefits coverage for treatment of mental illness, alcoholism, and drug addiction; and

“(2) that the Office of Personnel Management should encourage participating health benefits plans to provide adequate benefits relating to treatment of mental illness, alcoholism, and drug addiction (including benefits relating to coverage for inpatient and outpatient treatment and catastrophic protection benefits).”

§ 8905. Election of coverage

(a) An employee may enroll in an approved health benefits plan described by section 8903 or

8903a of this title either as an individual or for self and family.

(b) An annuitant who at the time he becomes an annuitant was enrolled in a health benefits plan under this chapter—

(1) as an employee for a period of not less than—

(A) the 5 years of service immediately before retirement;

(B) the full period or periods of service between the last day of the first period, as prescribed by regulations of the Office of Personnel Management, in which he is eligible to enroll in the plan and the date on which he becomes an annuitant; or

(C) the full period or periods of service beginning with the enrollment which became effective before January 1, 1965, and ending with the date on which he becomes an annuitant;

whichever is shortest; or

(2) as a member of the family of an employee or annuitant;

may continue his enrollment under the conditions of eligibility prescribed by regulations of the Office. The Office may, in its sole discretion, waive the requirements of this subsection in the case of an individual who fails to satisfy such requirements if the Office determines that, due to exceptional circumstances, it would be against equity and good conscience not to allow such individual to be enrolled as an annuitant in a health benefits plan under this chapter¹

(c)(1) A former spouse may—

(A) within 60 days after the dissolution of the marriage, or

(B) in the case of a former spouse of a former employee whose marriage was dissolved after the employee's retirement, within 60 days after the dissolution of the marriage or, if later, within 60 days after an election is made under section 8339(j)(3) or 8417(b) of this title for such former spouse by the retired employee,

enroll in an approved health benefits plan described by section 8903 or 8903a of this title as an individual or for self and family as provided in paragraph (2) of this subsection, subject to agreement to pay the full subscription charge of the enrollment, including the amounts determined by the Office to be necessary for administration and reserves pursuant to section 8909(b) of this title. The former spouse shall submit an enrollment application and make premium payments to the agency which, at the time of divorce or annulment, employed the employee to whom the former spouse was married or, in the case of a former spouse who is receiving annuity payments under section 8341(h), 8345(j), 8445, or 8467 of this title, to the Office of Personnel Management.

(2) Coverage for self and family under this subsection shall be limited to—

(A) the former spouse; and

(B) unmarried dependent natural or adopted children of the former spouse and the employee who are—

(i) under 22 years of age; or

¹ So in original. Probably should be followed by a period.

(ii) incapable of self-support because of mental or physical disability which existed before age 22.

(d) An individual whom the Secretary of Defense determines is an eligible beneficiary under subsection (b) of section 1108 of title 10 may enroll, as part of the demonstration project under such section, in a health benefits plan under this chapter in accordance with the agreement under subsection (a) of such section between the Secretary and the Office and applicable regulations under this chapter.

(e) If an employee, annuitant, or other individual eligible to enroll in a health benefits plan under this chapter has a spouse who is also eligible to enroll, either spouse, but not both, may enroll for self and family, or each spouse may enroll as an individual. However, an individual may not be enrolled both as an employee, annuitant, or other individual eligible to enroll and as a member of the family.

(f) An employee, annuitant, former spouse, or person having continued coverage under section 8905a of this title enrolled in a health benefits plan under this chapter may change his coverage or that of himself and members of his family by an application filed within 60 days after a change in family status or at other times and under conditions prescribed by regulations of the Office.

(g)(1) Under regulations prescribed by the Office, the Office shall, before the start of any contract term in which—

(A) an adjustment is made in any of the rates charged or benefits provided under a health benefits plan described by section 8903 or 8903a of this title,

(B) a newly approved health benefits plan is offered, or

(C) an existing plan is terminated,

provide a period of not less than 3 weeks during which any employee, annuitant, former spouse, or person having continued coverage under section 8905a of this title enrolled in a health benefits plan described by such section shall be permitted to transfer that individual's enrollment to another such plan or to cancel such enrollment.

(2) In addition to any opportunity afforded under paragraph (1) of this subsection, an employee, annuitant, former spouse, or person having continued coverage under section 8905a of this title enrolled in a health benefits plan under this chapter shall be permitted to transfer that individual's enrollment to another such plan, or to cancel such enrollment, at such other times and subject to such conditions as the Office may prescribe in regulations.

(3)(A) In addition to any informational requirements otherwise applicable under this chapter, the regulations shall include provisions to ensure that each employee eligible to enroll in a health benefits plan under this chapter (whether actually enrolled or not) is notified in writing as to the rights afforded under section 8905a of this title.

(B) Notification under this paragraph shall be provided by employing agencies at an appropriate point in time before each period under paragraph (1) so that employees may be aware of

their rights under section 8905a of this title when making enrollment decisions during such period.

(h)(1) An unenrolled employee who is required by a court or administrative order to provide health insurance coverage for a child who meets the requirements of section 8901(5) may enroll for self and family coverage in a health benefits plan under this chapter. If such employee fails to enroll for self and family coverage in a health benefits plan that provides full benefits and services in the location in which the child resides, and the employee does not provide documentation showing that such coverage has been provided through other health insurance, the employing agency shall enroll the employee in a self and family enrollment in the option which provides the lower level of coverage under the Service Benefit Plan.

(2) An employee who is enrolled as an individual in a health benefits plan under this chapter and who is required by a court or administrative order to provide health insurance coverage for a child who meets the requirements of section 8901(5) may change to a self and family enrollment in the same or another health benefits plan under this chapter. If such employee fails to change to a self and family enrollment and the employee does not provide documentation showing that such coverage has been provided through other health insurance, the employing agency shall change the enrollment of the employee to a self and family enrollment in the plan in which the employee is enrolled if that plan provides full benefits and services in the location where the child resides. If the plan in which the employee is enrolled does not provide full benefits and services in the location in which the child resides, or, if the employee fails to change to a self and family enrollment in a plan that provides full benefits and services in the location where the child resides, the employing agency shall change the coverage of the employee to a self and family enrollment in the option which provides the lower level of coverage under the Service Benefits Plan.

(3) The employee may not discontinue the self and family enrollment in a plan that provides full benefits and services in the location in which the child resides for so long as the court or administrative order remains in effect and the child continues to meet the requirements of section 8901(5), unless the employee provides documentation showing that such coverage has been provided through other health insurance.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 603; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 98-615, §3(4), Nov. 8, 1984, 98 Stat. 3203; Pub. L. 99-53, §2(a), (c), June 17, 1985, 99 Stat. 94; Pub. L. 99-251, title I, §§103, 104(a), Feb. 27, 1986, 100 Stat. 14; Pub. L. 99-335, title II, §207(m), June 6, 1986, 100 Stat. 598; Pub. L. 100-654, title II, §§201(c), (d), 202(c), Nov. 14, 1988, 102 Stat. 3845; Pub. L. 102-378, §2(77), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 105-261, div. A, title VII, §721(b)(1), Oct. 17, 1998, 112 Stat. 2065; Pub. L. 106-394, §2, Oct. 30, 2000, 114 Stat. 1629.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3002(a) (1st sentence, less words between 1st and 4th commas), (b)-(e).	Sept. 28, 1959, Pub. L. 86-382, §3(a) (1st sentence, less words between 1st and 4th commas), (b)-(e), 73 Stat. 710. Mar. 17, 1964, Pub. L. 88-284, §1(5), 78 Stat. 164.

In subsection (b)(1), the words "as an employee" are inserted for clarity.

In subsection (b)(1)(C), the words "before January 1, 1965" are substituted for "not later than December 31, 1964".

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

AMENDMENTS

2000—Subsec. (h). Pub. L. 106-394 added subsec. (h).
1998—Subsecs. (d) to (g). Pub. L. 105-261 added subsec. (d) and redesignated former subsecs. (d) to (f) as (e) to (g), respectively.

1992—Subsec. (b). Pub. L. 102-378, §2(77)(A), substituted "this chapter" for "this subchapter." at end.

Subsec. (c)(1). Pub. L. 102-378, §2(77)(B), inserted comma after "8341(h)" in last sentence.

1988—Subsec. (d). Pub. L. 100-654, §202(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "If an employee has a spouse who is an employee, either spouse, but not both, may enroll for self and family, or each spouse may enroll as an individual. However, an individual may not be enrolled both as an employee or annuitant and as a member of the family."

Subsecs. (e), (f)(1), (2). Pub. L. 100-654, §201(c), (d)(1), substituted "former spouse, or person having continued coverage under section 8905a of this title" for "or former spouse".

Subsec. (f)(3). Pub. L. 100-654, §201(d)(2), added par. (3).

1986—Subsec. (b). Pub. L. 99-251, §103, inserted last sentence relating to waiver of the requirements of this subsection if it would be against equity to prohibit enrollment.

Subsec. (c)(1). Pub. L. 99-335 inserted in subpar. (B) "or 8417(b)" and substituted in provision following subpar. (B) "8345(j), 8445, or 8467" for "or 8345(j)".

Subsec. (f). Pub. L. 99-251, §104(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "An employee, annuitant, or former spouse enrolled in a health benefits plan under this chapter may change his coverage or that of himself and members of his family by an application filed within 60 days after a change in family status or at other times and under conditions prescribed by regulations of the Office."

1985—Subsecs. (a), (c)(1). Pub. L. 99-53, §2(a), inserted reference to section 8903a of this title.

Subsec. (f). Pub. L. 99-53, §2(a), (c), inserted reference to section 8903a of this title and substituted "such plan" for "plan described by that section".

1984—Subsec. (c). Pub. L. 98-615, §3(4)(A), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98-615, §3(4)(A), redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 98-615, §3(4), redesignated former subsec. (d) as (e) and substituted "An employee, annuitant, or former spouse" for "An employee or annuitant". Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 98-615, §3(4), redesignated former subsec. (e) as (f) and substituted "An employee, annuitant, or former spouse" for "An employee or annuitant".

1978—Subsecs. (b), (d), (e). Pub. L. 95-454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively, wherever appearing.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-654 applicable with respect to any calendar year beginning, and contracts entered into or renewed for any calendar year beginning, after end of 9-month period beginning Nov. 14, 1988, and with respect to any qualifying event occurring on or after first day of first calendar year beginning after end of such 9-month period, see section 203 of Pub. L. 100-654, set out as a note under section 8902 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

Section 104(b) of Pub. L. 99-251 provided that: "The amendment made by subsection (a) [amending this section] shall be effective with respect to contracts entered into or renewed for calendar years beginning after December 31, 1986."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

ELECTION OF HEALTH BENEFITS COVERAGE AND ENTITLEMENT TO HEALTH BENEFITS UNDER THIS CHAPTER RATHER THAN UNDER RETIRED FEDERAL EMPLOYEES HEALTH BENEFITS ACT

Pub. L. 93-246, §§2, 4(b), Jan. 31, 1974, 88 Stat. 4, provided that:

"SEC. 2. (a) Notwithstanding any other provision of law, an annuitant, as defined under section 8901(3) of title 5, United States Code, who is participating or who is eligible to participate in the health benefits program offered under the Retired Federal Employees Health Benefits Act (74 Stat. 849; Public Law 86-724), may elect, in accordance with regulations prescribed by the United States Civil Service Commission, to be covered under the provisions of chapter 89 of title 5, United States Code [this chapter], in lieu of coverage under such Act.

"(b) An annuitant who elects to be covered under the provisions of chapter 89 of title 5, United States Code [this chapter], in accordance with subsection (a) of this section, shall be entitled to the benefits under such chapter 89.

"[Sec. 4] (b) Section 2 [set out above] shall take effect on the one hundred and eightieth day following the date of enactment [Jan. 1, 1974] or on such earlier date as the United States Civil Service Commission may prescribe."

§ 8905a. Continued coverage

(a) Any individual described in subsection (b) may elect to continue coverage under this chapter in accordance with the provisions of this section.

(b) This section applies with respect to—

(1) any employee who—

(A) is separated from service, whether voluntarily or involuntarily, except that if the separation is involuntary, this section shall not apply if the separation is for gross misconduct (as defined under regulations which the Office of Personnel Management shall prescribe); and

(B) would not otherwise be eligible for any benefits under this chapter (determined

without regard to any temporary extension of coverage and without regard to any benefits available under a nongroup contract);

(2) any individual who—

(A) ceases to meet the requirements for being considered an unmarried dependent child under this chapter;

(B) on the day before so ceasing to meet the requirements referred to in subparagraph (A), was covered under a health benefits plan under this chapter as a member of the family of an employee or annuitant; and

(C) would not otherwise be eligible for any benefits under this chapter (determined without regard to any temporary extension of coverage and without regard to any benefits available under a nongroup contract); and

(3) any employee who—

(A) is enrolled in a health benefits plan under this chapter;

(B) is a member of a reserve component of the armed forces;

(C) is called or ordered to active duty in support of a contingency operation (as defined in section 101(a)(13) of title 10);

(D) is placed on leave without pay or separated from service to perform active duty; and

(E) serves on active duty for a period of more than 30 consecutive days.

(c)(1) The Office shall prescribe regulations and provide for the inclusion of appropriate terms in contracts with carriers to provide that—

(A) with respect to an employee who becomes (or will become) eligible for continued coverage under this section as a result of separation from service, the separating agency shall, before the end of the 30-day period beginning on the date as of which coverage (including any temporary extensions of coverage) would otherwise end, notify the individual of such individual's rights under this section; and

(B) with respect to a child of an employee or annuitant who becomes eligible for continued coverage under this section as a result of ceasing to meet the requirements for being considered a member of the employee's or annuitant's family—

(i) the employee or annuitant may provide written notice of the child's change in status (complete with the child's name, address, and such other information as the Office may by regulation require)—

(I) to the employee's employing agency; or

(II) in the case of an annuitant, to the Office; and

(ii) if the notice referred to in clause (i) is received within 60 days after the date as of which the child involved first ceases to meet the requirements involved, the employing agency or the Office (as the case may be) must, within 14 days after receiving such notice, notify the child of such child's rights under this section.

(2) In order to obtain continued coverage under this section, an appropriate written elec-

tion (submitted in such manner as the Office by regulation prescribes) must be made—

(A) in the case of an individual seeking continued coverage based on a separation from service, before the end of the 60-day period beginning on the later of—

(i) the effective date of the separation; or

(ii) the date the separated individual receives the notice required under paragraph (1)(A); or

(B) in the case of an individual seeking continued coverage based on a change in circumstances making such individual ineligible for coverage as an unmarried dependent child, before the end of the 60-day period beginning on the later of—

(i) the date as of which such individual first ceases to meet the requirements for being considered an unmarried dependent child; or

(ii) the date such individual receives notice under paragraph (1)(B)(i);

except that if a parent fails to provide the notice required under paragraph (1)(B)(i) in timely fashion, the 60-day period under this subparagraph shall be based on the date under clause (i), irrespective of whether or not any notice under paragraph (1)(B)(ii) is provided.

(d)(1)(A) Except as provided in paragraphs (4), (5), and (6), an individual receiving continued coverage under this section shall be required to pay currently into the Employees Health Benefits Fund, under arrangements satisfactory to the Office, an amount equal to the sum of—

(i) the employee and agency contributions which would be required in the case of an employee enrolled in the same health benefits plan and level of benefits; and

(ii) an amount, determined under regulations prescribed by the Office, necessary for administrative expenses, but not to exceed 2 percent of the total amount under clause (i).

(B) Payments under this section to the Fund shall—

(i) in the case of an individual whose continued coverage is based on such individual's separation, be made through the agency which last employed such individual; or

(ii) in the case of an individual whose continued coverage is based on a change in circumstances referred to in subsection (c)(2)(B), be made through—

(I) the Office, if, at the time coverage would (but for this section) otherwise have been discontinued, the individual was covered as the child of an annuitant; or

(II) if, at the time referred to in subclause (I), the individual was covered as the child of an employee, the employee's employing agency as of such time.

(2) If an individual elects to continue coverage under this section before the end of the applicable period under subsection (c)(2), but after such individual's coverage under this chapter (including any temporary extensions of coverage) expires, coverage shall be restored retroactively, with appropriate contributions (determined in accordance with paragraph (1), (4), or (5), as the case may be) and claims (if any), to the same ex-

tent and effect as though no break in coverage had occurred.

(3)(A) An individual making an election under subsection (c)(2)(B) may, at such individual's option, elect coverage either as an individual or, if appropriate, for self and family.

(B) For the purpose of this paragraph, members of an individual's family shall be determined in the same way as would apply under this chapter in the case of an enrolled employee.

(C) Nothing in this paragraph shall be considered to limit an individual making an election under subsection (c)(2)(A) to coverage for self alone.

(4)(A) If the basis for continued coverage under this section is an involuntary separation from a position, or a voluntary separation from a surplus position, in or under the Department of Defense due to a reduction in force, or the Department of Energy due to a reduction in force resulting from the establishment of the National Nuclear Security Administration—

(i) the individual shall be liable for not more than the employee contributions referred to in paragraph (1)(A)(i); and

(ii) the agency which last employed the individual shall pay the remaining portion of the amount required under paragraph (1)(A).

(B) This paragraph shall apply with respect to any individual whose continued coverage is based on a separation occurring on or after the date of enactment of this paragraph and before—

(i) December 31, 2016; or

(ii) February 1, 2017, if specific notice of such separation was given to such individual before December 31, 2016.

(C) For the purpose of this paragraph, "surplus position" means a position which is identified in pre-reduction-in-force planning as no longer required, and which is expected to be eliminated under formal reduction-in-force procedures.

(5)(A) If the basis for continued coverage under this section is an involuntary separation from a position in or under the Department of Veterans Affairs due to a reduction in force or a title 38 staffing readjustment, or a voluntary or involuntary separation from a Department of Energy position at a Department of Energy facility at which the Secretary is carrying out a closure project selected under section 4421 of the Atomic Energy Defense Act—

(i) the individual shall be liable for not more than the employee contributions referred to in paragraph (1)(A)(i); and

(ii) the agency which last employed the individual shall pay the remaining portion of the amount required under paragraph (1)(A).

(B) This paragraph shall only apply with respect to individuals whose continued coverage is based on a separation occurring on or after the date of the enactment of this paragraph.

(6)(A) If the basis for continued coverage under this section is, as a result of the termination of the Space Shuttle Program, an involuntary separation from a position due to a reduction-in-force or declination of a directed reassignment or transfer of function, or a voluntary separation from a surplus position in the National Aeronautics and Space Administration—

(i) the individual shall be liable for not more than the employee contributions referred to in paragraph (1)(A)(i); and

(ii) the National Aeronautics and Space Administration shall pay the remaining portion of the amount required under paragraph (1)(A).

(B) This paragraph shall only apply with respect to individuals whose continued coverage is based on a separation occurring on or after the date of enactment of this paragraph and before December 31, 2010.

(C) For purposes of this paragraph, "surplus position" means a position which is—

(i) identified in pre-reduction-in-force planning as no longer required, and which is expected to be eliminated under formal reduction-in-force procedures as a result of the termination of the Space Shuttle Program; or

(ii) encumbered by an employee who has received official certification from the National Aeronautics and Space Administration consistent with the Administration's career transition assistance program regulations that the position is being abolished as a result of the termination of the Space Shuttle Program.

(e)(1) Continued coverage under this section may not extend beyond—

(A) in the case of an individual whose continued coverage is based on separation from service, the date which is 18 months after the effective date of the separation;

(B) in the case of an individual whose continued coverage is based on ceasing to meet the requirements for being considered an unmarried dependent child, the date which is 36 months after the date on which the individual first ceases to meet those requirements, subject to paragraph (2); or

(C) in the case of an employee described in subsection (b)(3), the date which is 24 months after the employee is placed on leave without pay or separated from service to perform active duty.

(2) In the case of an individual who—

(A) ceases to meet the requirements for being considered an unmarried dependent child;

(B) as of the day before so ceasing to meet the requirements referred to in subparagraph (A), was covered as the child of a former employee receiving continued coverage under this section based on the former employee's separation from service; and

(C) so ceases to meet the requirements referred to in subparagraph (A) before the end of the 18-month period beginning on the date of the former employee's separation from service,

extended coverage under this section may not extend beyond the date which is 36 months after the separation date referred to in subparagraph (C).

(f)(1) The Office shall prescribe regulations under which, in addition to any individual otherwise eligible for continued coverage under this section, and to the extent practicable, continued coverage may also, upon appropriate written application, be afforded under this section—

(A) to any individual who—

(i) if subparagraphs (A) and (C) of paragraph (10) of section 8901 were disregarded, would be eligible to be considered a former spouse within the meaning of such paragraph; but

(ii) would not, but for this subsection, be eligible to be so considered; and

(B) to any individual whose coverage as a family member would otherwise terminate as a result of a legal separation.

(2) The terms and conditions for coverage under the regulations shall include—

(A) consistent with subsection (c), any necessary notification provisions, and provisions under which an election period of at least 60 days' duration is afforded;

(B) terms and conditions identical to those under subsection (d), except that contributions to the Employees Health Benefits Fund shall be made through such agency as the Office by regulation prescribes;

(C) provisions relating to the termination of continued coverage, except that continued coverage under this section may not (subject to paragraph (3)) extend beyond the date which is 36 months after the date on which the qualifying event under this subsection (the date of divorce, annulment, or legal separation, as the case may be) occurs; and

(D) provisions designed to ensure that any coverage pursuant to this subsection does not adversely affect any eligibility for coverage which the individual involved might otherwise have under this chapter (including as a result of any change in personal circumstances) if this subsection had not been enacted.

(3) In the case of an individual—

(A) who becomes eligible for continued coverage under this subsection based on a divorce, annulment, or legal separation from a person who, as of the day before the date of the divorce, annulment, or legal separation (as the case may be) was receiving continued coverage under this section for self and family based on such person's separation from service; and

(B) whose divorce, annulment, or legal separation (as the case may be) occurs before the end of the 18-month period beginning on the date of the separation from service referred to in subparagraph (A),

extended coverage under this section may not extend beyond the date which is 36 months after the date of the separation from service, as referred to in subparagraph (A).

(Added Pub. L. 100-654, title II, §201(a)(1), Nov. 14, 1988, 102 Stat. 3841; amended Pub. L. 102-484, div. D, title XLIV, §4438(a), Oct. 23, 1992, 106 Stat. 2725; Pub. L. 103-337, div. A, title III, §341(d), Oct. 5, 1994, 108 Stat. 2720; Pub. L. 104-106, div. A, title X, §1036, Feb. 10, 1996, 110 Stat. 431; Pub. L. 106-65, div. A, title XI, §1104(c), div. C, title XXXII, §3244, Oct. 5, 1999, 113 Stat. 777, 965; Pub. L. 106-117, title XI, §1106, Nov. 30, 1999, 113 Stat. 1598; Pub. L. 107-314, div. A, title XI, §1103, Dec. 2, 2002, 116 Stat. 2661; Pub. L. 107-314, div. D, title XLVI, §4603(h), formerly Pub. L. 106-398, §1 [div. C, title XXXI, §3136(h)], Oct. 30, 2000, 114 Stat. 1654, 1654A-459, renu-

bered §4603(h) of Pub. L. 107-314 by Pub. L. 108-136, div. C, title XXXI, §3141(i)(4)(A)-(C), Nov. 24, 2003, 117 Stat. 1777; Pub. L. 108-136, div. C, title XXXI, §3141(m)(3), Nov. 24, 2003, 117 Stat. 1787; Pub. L. 108-375, div. A, title XI, §1101(a), Oct. 28, 2004, 118 Stat. 2072; Pub. L. 109-163, div. A, title XI, §1101, Jan. 6, 2006, 119 Stat. 3447; Pub. L. 110-422, title VI, §615, Oct. 15, 2008, 122 Stat. 4800; Pub. L. 111-242, §151, as added Pub. L. 111-322, title I, §1(a)(2), Dec. 22, 2010, 124 Stat. 3519; Pub. L. 112-81, div. A, title XI, §1123, Dec. 31, 2011, 125 Stat. 1617.)

REFERENCES IN TEXT

The date of enactment of this paragraph, referred to in subsec. (d)(4)(B), is the date of enactment of Pub. L. 102-484, which was approved Oct. 23, 1992.

Section 4421 of the Atomic Energy Defense Act, referred to in subsec. (d)(5)(A), is classified to section 2601 of Title 50, War and National Defense.

The date of the enactment of this paragraph, referred to in subsec. (d)(5)(B), is the date of enactment of Pub. L. 106-117, which was approved Nov. 30, 1999.

The date of enactment of this paragraph, referred to in subsec. (d)(6)(B), is the date of enactment of Pub. L. 110-422, which was approved Oct. 15, 2008.

AMENDMENTS

2011—Subsec. (d)(4)(B). Pub. L. 112-81 substituted “December 31, 2016” for “December 31, 2011” in cls. (i) and (ii) and substituted “February 1, 2017” for “February 1, 2012” in cl. (ii).

2010—Subsec. (d)(4)(B)(i). Pub. L. 111-242, §151(1), as added by Pub. L. 111-322, substituted “December 31, 2011” for “October 1, 2010”.

Subsec. (d)(4)(B)(ii). Pub. L. 111-242, §151(2), as added by Pub. L. 111-322, substituted “February 1, 2012” for “February 1, 2011” and “December 31, 2011” for “October 1, 2010”.

2008—Subsec. (d)(1)(A). Pub. L. 110-422, §615(b), substituted “(4), (5), and (6)” for “(4) and (5)” in introductory provisions.

Subsec. (d)(6). Pub. L. 110-422, §615(a), added par. (6).

2006—Subsec. (d)(4)(B)(i). Pub. L. 109-163, §1101(1), substituted “October 1, 2010” for “October 1, 2006”.

Subsec. (d)(4)(B)(ii). Pub. L. 109-163, §1101(2), substituted “February 1, 2011” for “February 1, 2007” and “October 1, 2010” for “October 1, 2006”.

2004—Subsec. (a). Pub. L. 108-375, §1101(a)(1), struck out “paragraph (1) or (2) of” after “Any individual described in”.

Subsec. (b)(3). Pub. L. 108-375, §1101(a)(2), added par. (3).

Subsec. (e)(1)(C). Pub. L. 108-375, §1101(a)(4), added subpar. (C).

2003—Subsec. (d)(5)(A). Pub. L. 108-136, §3141(m)(3), substituted “section 4421 of the Atomic Energy Defense Act” for “section 3143 of the National Defense Authorization Act for Fiscal Year 1997 (42 U.S.C. 7274n)”.

2002—Subsec. (d)(4)(B)(i). Pub. L. 107-314, §1103(1), substituted “2006” for “2003”.

Subsec. (d)(4)(B)(ii). Pub. L. 107-314, §1103(2), substituted “2007” and “2006” for “2004” and “2003”, respectively.

2000—Subsec. (d)(5)(A). Pub. L. 107-314, §4603(h), formerly Pub. L. 106-398, §1 [div. C, title XXXI, §3136(h)], as renumbered by Pub. L. 108-136, §3141(i)(4)(A)-(C), in introductory provisions, inserted “, or a voluntary or involuntary separation from a Department of Energy position at a Department of Energy facility at which the Secretary is carrying out a closure project selected under section 3143 of the National Defense Authorization Act for Fiscal Year 1997 (42 U.S.C. 7274n)” after “readjustment”.

1999—Subsec. (d)(1)(A). Pub. L. 106-117, §1106(1), substituted “paragraphs (4) and (5)” for “paragraph (4)” in introductory provisions.

Subsec. (d)(2). Pub. L. 106-117, §1106(2), substituted “(1), (4), or (5)” for “(1) or (4)”.

Subsec. (d)(4)(A). Pub. L. 106-65, §3244, inserted “, or the Department of Energy due to a reduction in force resulting from the establishment of the National Nuclear Security Administration” after “reduction in force” in introductory provisions.

Subsec. (d)(4)(B). Pub. L. 106-65, §1104(c), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

“(i) October 1, 1999; or

“(ii) February 1, 2000, if specific notice of such separation was given to such individual before October 1, 1999.”

Subsec. (d)(5). Pub. L. 106-117, §1106(3), added par. (5). 1996—Subsec. (d)(4)(A). Pub. L. 104-106, §1036(1), inserted “, or a voluntary separation from a surplus position,” after “an involuntary separation from a position” in introductory provisions.

Subsec. (d)(4)(C). Pub. L. 104-106, §1036(2), added subpar. (C).

1994—Subsec. (d)(4)(B). Pub. L. 103-337 substituted “October 1, 1999” for “October 1, 1997” in cls. (i) and (ii) and “February 1, 2000” for “February 1, 1998” in cl. (ii).

1992—Subsec. (d)(1)(A). Pub. L. 102-484, §4438(a)(1), substituted “Except as provided in paragraph (4), an individual” for “An individual”.

Subsec. (d)(2). Pub. L. 102-484, §4438(a)(2), substituted “in accordance with paragraph (1) or (4), as the case may be” for “in accordance with paragraph (1)”.

Subsec. (d)(4). Pub. L. 102-484, §4438(a)(3), added par. (4).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-375, div. A, title XI, §1101(c), Oct. 28, 2004, 118 Stat. 2072, provided that: “The amendments made by this section [amending this section and section 8906 of this title] shall apply with respect to Federal employees called or ordered to active duty on or after September 14, 2001.”

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 3244 of Pub. L. 106-65 effective Mar. 1, 2000, see section 3299 of Pub. L. 106-65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

EFFECTIVE DATE

Section applicable with respect to any calendar year beginning, and contracts entered into or renewed for any calendar year beginning, after the end of the 9-month period beginning Nov. 14, 1988, and with respect to any qualifying event occurring on or after the first day of the first calendar year beginning after the end of such 9-month period, see section 203 of Pub. L. 100-654, set out as an Effective Date of 1988 Amendment note under section 8902 of this title.

SOURCE OF PAYMENTS

Section 4438(b)(1) of Pub. L. 102-484 provided that: “Any amount which becomes payable by an agency as a result of the enactment of subsection (a) [amending this section] shall be paid out of funds or appropriations available for salaries and expenses of such agency.”

§ 8906. Contributions

(a)(1) Not later than October 1 of each year, the Office of Personnel Management shall determine the weighted average of the subscription charges that will be in effect during the following contract year with respect to—

(A) enrollments under this chapter for self alone; and

(B) enrollments under this chapter for self and family.

(2) In determining each weighted average under paragraph (1), the weight to be given to a

particular subscription charge shall, with respect to each plan (and option) to which it is to apply, be commensurate with the number of enrollees enrolled in such plan (and option) as of March 31 of the year in which the determination is being made.

(3) For purposes of paragraph (2), the term “enrollee” means any individual who, during the contract year for which the weighted average is to be used under this section, will be eligible for a Government contribution for health benefits.

(b)(1) Except as provided in paragraphs (2), (3), and (4), the biweekly Government contribution for health benefits for an employee or annuitant enrolled in a health benefits plan under this chapter is adjusted to an amount equal to 72 percent of the weighted average under subsection (a)(1)(A) or (B), as applicable. For an employee, the adjustment begins on the first day of the employee’s first pay period of each year. For an annuitant, the adjustment begins on the first day of the first period of each year for which an annuity payment is made.

(2) The biweekly Government contribution for an employee or annuitant enrolled in a plan under this chapter shall not exceed 75 percent of the subscription charge.

(3) In the case of an employee who is occupying a position on a part-time career employment basis (as defined in section 3401(2) of this title), the biweekly Government contribution shall be equal to the percentage which bears the same ratio to the percentage determined under this subsection (without regard to this paragraph) as the average number of hours of such employee’s regularly scheduled workweek bears to the average number of hours in the regularly scheduled workweek of an employee serving in a comparable position on a full-time career basis (as determined under regulations prescribed by the Office).

(4) In the case of persons who are enrolled in a health benefits plan as part of the demonstration project under section 1108 of title 10, the Government contribution shall be subject to the limitation set forth in subsection (i) of that section.

(c) There shall be withheld from the pay of each enrolled employee and (except as provided in subsection (i) of this section) the annuity of each enrolled annuitant and there shall be contributed by the Government, amounts, in the same ratio as the contributions of the employee or annuitant and the Government under subsection (b) of this section, which are necessary for the administrative costs and the reserves provided for by section 8909(b) of this title.

(d) The amount necessary to pay the total charge for enrollment, after the Government contribution is deducted, shall be withheld from the pay of each enrolled employee and (except as provided in subsection (i) of this section) from the annuity of each enrolled annuitant. The withholding for an annuitant shall be the same as that for an employee enrolled in the same health benefits plan and level of benefits.

(e)(1)(A) An employee enrolled in a health benefits plan under this chapter who is placed in a leave without pay status may have his coverage and the coverage of members of his family con-

tinued under the plan for not to exceed 1 year under regulations prescribed by the Office.

(B) During each pay period in which an enrollment continues under subparagraph (A)—

(i) employee and Government contributions required by this section shall be paid on a current basis; and

(ii) if necessary, the head of the employing agency shall approve advance payment, recoverable in the same manner as under section 5524a(c), of a portion of basic pay sufficient to pay current employee contributions.

(C) Each agency shall establish procedures for accepting direct payments of employee contributions for the purposes of this paragraph.

(2) An employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8901 of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to continue his health benefits enrollment and arrange to pay currently into the Employees Health Benefits Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the enrollment charges so paid to the Fund. If the employee does not so elect, his enrollment will continue during nonpay status and end as provided by paragraph (1) of this subsection and implementing regulations.

(3)(A) An employing agency may pay both the employee and Government contributions, and any additional administrative expenses otherwise chargeable to the employee, with respect to health care coverage for an employee described in subparagraph (B) and the family of such employee.

(B) An employee referred to in subparagraph (A) is an employee who—

(i) is enrolled in a health benefits plan under this chapter;

(ii) is a member of a reserve component of the armed forces;

(iii) is called or ordered to active duty in support of a contingency operation (as defined in section 101(a)(13) of title 10);

(iv) is placed on leave without pay or separated from service to perform active duty; and

(v) serves on active duty for a period of more than 30 consecutive days.

(C) Notwithstanding the one-year limitation on coverage described in paragraph (1)(A), payment may be made under this paragraph for a period not to exceed 24 months.

(f) The Government contribution, and any additional payments under subsection (e)(3)(A), for health benefits for an employee shall be paid—

(1) in the case of employees generally, from the appropriation or fund which is used to pay the employee;

(2) in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment;

(3) in the case of an employee of the legislative branch who is paid by the Chief Administrative Officer of the House of Representatives, from the applicable accounts of the House of Representatives; and

(4) in the case of an employee in a leave without pay status, from the appropriation or fund which would be used to pay the employee if he were in a pay status.

(g)(1) Except as provided in paragraphs (2) and (3), the Government contributions authorized by this section for health benefits for an annuitant shall be paid from annual appropriations which are authorized to be made for that purpose and which may be made available until expended.

(2)(A) The Government contributions authorized by this section for health benefits for an individual who first becomes an annuitant by reason of retirement from employment with the United States Postal Service on or after July 1, 1971, or for a survivor of such an individual or of an individual who died on or after July 1, 1971, while employed by the United States Postal Service, shall through September 30, 2016, be paid by the United States Postal Service, and thereafter shall be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service.

(B) In determining any amount for which the Postal Service is liable under this paragraph, the amount of the liability shall be prorated to reflect only that portion of total service which is attributable to civilian service performed (by the former postal employee or by the deceased individual referred to in subparagraph (A), as the case may be) after June 30, 1971, as estimated by the Office of Personnel Management.

(3) The Government contribution for persons enrolled in a health benefits plan as part of the demonstration project under section 1108 of title 10 shall be paid as provided in subsection (i) of that section.

(h) The Office shall provide for conversion of biweekly rates of contribution specified by this section to rates for employees and annuitants paid on other than a biweekly basis, and for this purpose may provide for the adjustment of the converted rate to the nearest cent.

(i) An annuitant whose annuity is insufficient to cover the withholdings required for enrollment in a particular health benefits plan may enroll (or remain enrolled) in such plan, notwithstanding any other provision of this section, if the annuitant elects, under conditions prescribed by regulations of the Office, to pay currently into the Employees Health Benefits Fund, through the retirement system that administers the annuitant's health benefits enrollment, an amount equal to the withholdings that would otherwise be required under this section.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 604; Pub. L. 90-83, §1(96), Sept. 11, 1967, 81 Stat. 219; Pub. L. 91-418, §1(a), Sept. 25, 1970, 84 Stat. 869; Pub. L. 93-246, §1, Jan. 31, 1974, 88 Stat. 3; Pub. L. 94-310, §3(a), June 15, 1976, 90 Stat. 687; Pub. L. 95-437, §4(c)(2)(A), Oct. 10, 1978, 92 Stat. 1059; Pub. L. 95-454, title IX, §906(a)(15), (c)(2)(F), Oct. 13, 1978, 92 Stat. 1226, 1227; Pub. L. 96-54, §2(a)(53), Aug. 14, 1979, 93 Stat. 384; Pub. L. 99-272, title XV, §15202(b), Apr. 7, 1986, 100 Stat. 334; Pub. L. 101-239, title IV, §4003(a), Dec. 19, 1989, 103 Stat. 2135; Pub. L. 101-303, §1(a), (b), May 29, 1990, 104 Stat. 250; Pub. L. 101-508, title VII, §7102(a), (b),

Nov. 5, 1990, 104 Stat. 1388–333; Pub. L. 102–378, §2(78), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 104–186, title II, §215(19), Aug. 20, 1996, 110 Stat. 1747; Pub. L. 104–208, div. A, title I, §101(f) [title IV, §422], Sept. 30, 1996, 110 Stat. 3009–314, 3009–343; Pub. L. 105–33, title VII, §7002(a), Aug. 5, 1997, 111 Stat. 662; Pub. L. 105–261, div. A, title VII, §721(b)(2), (3), Oct. 17, 1998, 112 Stat. 2065; Pub. L. 107–107, div. A, title V, §519(a), (b), Dec. 28, 2001, 115 Stat. 1096; Pub. L. 108–375, div. A, title XI, §1101(b), Oct. 28, 2004, 118 Stat. 2072; Pub. L. 109–435, title VIII, §803(a)(1)(A), Dec. 20, 2006, 120 Stat. 3251.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3006.	Sept. 28, 1959, Pub. L. 86–382, §7, 73 Stat. 713. Mar. 17, 1964, Pub. L. 88–284, §1(10), (11), 78 Stat. 165.

In subsection (f)(1), the words “in the case of employees generally” are inserted for clarity.

In subsection (h), the word “biweekly” is inserted for clarity.

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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8906(a)	5 App.: 3006(a)(1).	July 18, 1966, Pub. L. 89–504,
8906(b)	5 App.: 3006(a)(2).	§§406(b), 602, 80 Stat. 298,
8906(e)(2) ...	5 App.: 3006(b)(2).	303.

In subsection (a), the words “subsection (b) of this section”, “this chapter”, and “subsection (c) of this section” are substituted for “paragraph (2) of this subsection”, “this Act”, and “paragraph (3)”, respectively, to reflect the codification of title 5, United States Code.

In subsection (e)(2), the words “as defined by section 8901 of this title” are substituted for “as defined in section 2 of this Act” to reflect the codification of that section in 5 U.S.C. 8901. The words “Employees Health Benefits Fund” and “Fund” are substituted for “fund” and “fund”, respectively. In the penultimate sentence, the words “will continue during nonpay status and end” are substituted for “will terminate” for clarity and on authority of 5 U.S.C. 8906(e)(1).

AMENDMENTS

2006—Subsec. (g)(2)(A). Pub. L. 109–435 substituted “shall through September 30, 2016, be paid by the United States Postal Service, and thereafter shall be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service” for “shall be paid by the United States Postal Service”.

2004—Subsec. (e)(3)(C). Pub. L. 108–375 substituted “24 months” for “18 months”.

2001—Subsec. (e)(3). Pub. L. 107–107, §519(a), added par. (3).

Subsec. (f). Pub. L. 107–107, §519(b), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: “The Government contributions for health benefits for an employee shall be paid—”.

1998—Subsec. (b)(1). Pub. L. 105–261, §721(b)(2)(A), substituted “paragraphs (2), (3), and (4)” for “paragraphs (2) and (3)”.

Subsec. (b)(4). Pub. L. 105–261, §721(b)(2)(B), added par. (4).

Subsec. (g)(1). Pub. L. 105–261, §721(b)(3)(A), substituted “paragraphs (2) and (3)” for “paragraph (2)”.

Subsec. (g)(3). Pub. L. 105–261, §721(b)(3)(B), added par. (3).

1997—Subsec. (a). Pub. L. 105–33 added subsec. (a) and struck out former subsec. (a) which read as follows: “The Office of Personnel Management shall determine the average of the subscription charges in effect on the beginning date of each contract year with respect to self alone or self and family enrollments under this chapter, as applicable, for the highest level of benefits offered by—

- “(1) the service benefit plan;
- “(2) the indemnity benefit plan;
- “(3) the two employee organization plans with the largest number of enrollments, as determined by the Office; and
- “(4) the two comprehensive medical plans with the largest number of enrollments, as determined by the Office.”

Subsec. (b)(1). Pub. L. 105–33 added par. (1) and struck out former par. (1) which read as follows: “Except as provided by paragraphs (2) and (3) of this subsection, the biweekly Government contribution for health benefits for an employee or annuitant enrolled in a health benefits plan under this chapter is adjusted to an amount equal to 60 percent of the average subscription charge determined under subsection (a) of this section. For an employee, the adjustment begins on the first day of the employee’s first pay period of each year. For an annuitant, the adjustment begins on the first day of the first period of each year for which an annuity payment is made.”

1996—Subsec. (e)(1). Pub. L. 104–208 struck out at end “The regulations may provide for the waiving of contributions by the employee and the Government.”, inserted subpar. (A) designation, and added subpars. (B) and (C).

Subsec. (f)(3). Pub. L. 104–186 substituted “Chief Administrative Officer of the House of Representatives, from the applicable accounts of the House of Representatives” for “Clerk of the House of Representatives, from the contingent fund of the House”.

1992—Subsec. (b)(3). Pub. L. 102–378, §2(78)(A), inserted period after “Office”.

Subsec. (c). Pub. L. 102–378, §2(78)(B), substituted “and (except)” for “and except”.

1990—Subsec. (c). Pub. L. 101–303, §1(b)(1), inserted “except as provided in subsection (i) of this section)” after “enrolled employee and”.

Subsec. (d). Pub. L. 101–303, §1(b)(2), inserted “(except as provided in subsection (i) of this section)” after “enrolled employee and”.

Subsec. (g)(2). Pub. L. 101–508 designated existing provisions as subpar. (A), substituted “July 1, 1971,” for “October 1, 1986,” in two places, and added subpar. (B).

Subsec. (i). Pub. L. 101–303, §1(a), added subsec. (i).

1989—Subsec. (g)(2). Pub. L. 101–239 inserted “or for a survivor of such an individual or of an individual who died on or after October 1, 1986, while employed by the United States Postal Service,” after “1986”.

1986—Subsec. (g). Pub. L. 99–272 designated existing provisions as par. (1) and added par. (2).

1979—Subsec. (b)(1). Pub. L. 96–54 substituted provisions setting forth adjustment amount of the Government contribution of equal to 60 percent of the average subscription charge under subsec. (a) and determinations respecting the commencement date of the adjustment, for provisions setting forth adjustment amounts of the Government contribution of equal to 50 percent of the average subscription charge under subsec. (a) for applicable pay periods beginning in 1974, and equal to 60 percent for pay periods beginning in 1975 and after, and determinations respecting the commencement date of the adjustment.

1978—Subsec. (a). Pub. L. 95–454, §906(a)(15), substituted “Office of Personnel Management” for “Commission” in introductory material, and “Office” for “Commission” in cls. (3) and (4).

Subsec. (b)(1). Pub. L. 95–437, §4(c)(2)(A)(i), substituted “paragraphs (2) and (3)” for “paragraph (2)”.

Subsec. (b)(3). Pub. L. 95–454, §906(a)(15), (c)(2)(F), substituted “Office” for “Commission”, and “3401” for “3391”.

Pub. L. 95-437, §4(c)(2)(A)(ii), added par. (3).

Subsecs. (e)(1), (h). Pub. L. 95-454, §906(a)(15), substituted "Office" for "Commission".

1976—Subsec. (g). Pub. L. 94-310 provided for payment of Government contributions from annual appropriations which may be made available until expended.

1974—Subsec. (a). Pub. L. 93-246, §1(a), struck out introductory text "Except as provided by subsection (b) of this section, the biweekly Government contribution for health benefits for employees or annuitants enrolled in health benefits plans under this chapter shall be adjusted", now incorporated in subsec. (b)(1) of this section, required Commission determination of average of subscription charges, and reenacted remainder of existing provisions, substituting "beginning date of each contract year" for "beginning date of the adjustment".

Subsec. (b)(1). Pub. L. 93-246, §1(a), incorporated introductory text of former subsec. (a) reading "Except as provided by subsection (b) of this section, the biweekly Government contribution for health benefits for employees or annuitants enrolled in health benefits plans under this chapter shall be adjusted", as initial text of provisions designated as subsec. (b)(1), substituted provision for amount of biweekly Government contribution equal to 50 percent of average subscription charge for applicable pay periods commencing in 1974 and 60 percent for applicable pay periods commencing in 1975, and annually thereafter, for former subsec. (a) provision for an amount equal to 40 percent of average of subscription charges and former subsec. (b) provision for 50 percent of subscription charge where the biweekly subscription charge was less than twice the Government contribution.

Subsec. (b)(2). Pub. L. 93-246, §1(a), added par. (2).

Subsec. (c). Pub. L. 93-246, §1(b), struck out reference to subsec. (a).

Subsec. (g). Pub. L. 93-246, §1(c), substituted "by this section" for "by subsection (a) of this section".

1970—Subsec. (a). Pub. L. 91-418, in increasing the Government contribution to the cost of health benefits insurance, substituted provision for adjustment of such contribution, beginning on the first day of the first pay period of each year, to an amount equal to 40 percent of the adjustment, with respect to self alone or self and family enrollments, as applicable, for the highest level of benefits offered by the service benefit plan, the indemnity benefit plan, the two employee organization plans, and the two comprehensive medical plans, for prior provision for a contribution, in addition to requirement of subsec. (c) of this section, of \$1.62 if the enrollment is for self or \$3.94 if the enrollment is for self and family.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-435 effective Oct. 1, 2006, see section 805(a) of Pub. L. 109-435, set out as a note under section 8334 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-375 applicable with respect to Federal employees called or ordered to active duty on or after Sept. 14, 2001, see section 1101(c) of Pub. L. 108-375, set out as a note under section 8905a of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title V, §519(c), Dec. 28, 2001, 115 Stat. 1096, provided that: "The amendments made by this section [amending this section] apply with respect to employees called to active duty on or after December 8, 1995, and an agency may make retroactive payments to such employees for premiums paid on or after such date."

EFFECTIVE DATE OF 1997 AMENDMENT

Section 7002(b) of Pub. L. 105-33 provided that: "This section [amending this section] shall take effect on the first day of the contract year that begins in 1999. Nothing in this subsection shall prevent the Office of Per-

sonnel Management from taking any action, before such first day, which it considers necessary in order to ensure the timely implementation of this section."

EFFECTIVE DATE OF 1990 AMENDMENTS

Section 7102(c) of Pub. L. 101-508 provided that: "The amendments made by this section [amending this section] shall take effect on October 1, 1990, and shall apply with respect to amounts payable for periods beginning on or after that date."

Section 1(c) of Pub. L. 101-303 provided that: "The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [May 29, 1990]. Any annuitant whose enrollment was terminated at any time before such date on account of such annuitant's annuity being insufficient to cover the amount of the required withholdings may, under regulations prescribed by the Office of Personnel Management, be prospectively reinstated in any available health benefits plan upon application of the annuitant."

EFFECTIVE DATE OF 1989 AMENDMENT

Section 4003(b) of Pub. L. 101-239 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1989, and shall apply with respect to amounts payable for periods beginning on or after that date."

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-310 effective Oct. 1, 1976, see section 4 of Pub. L. 94-310, set out as a note under section 130b of Title 2, The Congress.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 4(a) of Pub. L. 93-246 provided that: "The first section of this Act [amending this section] shall take effect on the first day of the first applicable pay period which begins on or after January 1, 1974."

Section 4(d) of Pub. L. 93-246 provided that: "The determination of the average of subscription charges and the adjustment of the Government contributions for 1973, under section 8906 of title 5, United States Code, as amended by the first section of this Act [amending this section], shall take effect on the first day of the first applicable pay period which begins on or after the thirtieth day following the date of enactment of this Act [Jan. 31, 1974]."

EFFECTIVE DATE OF 1970 AMENDMENT

Section 1(b) of Pub. L. 91-418 provided that: "The amendment made by subsection (a) of this section [amending this section] shall become effective at the beginning of the first applicable pay period which commences after December 31, 1970."

PAYMENTS BY POSTAL SERVICE RELATING TO CORRECTED CALCULATIONS FOR PAST HEALTH BENEFITS

Pub. L. 103-66, title XI, §11101(b), Aug. 10, 1993, 107 Stat. 413, provided that: "In addition to any other payments required under section 8906(g)(2) of title 5, United States Code, or any other provision of law, the United States Postal Service shall pay into the Employees Health Benefits Fund a total of \$348,000,000, of which—

"(1) at least one-third shall be paid not later than September 30, 1996;

"(2) at least two-thirds shall be paid not later than September 30, 1997; and

“(3) any remaining balance shall be paid not later than September 30, 1998.”

COMPUTATION OF GOVERNMENT CONTRIBUTIONS TO FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM FOR 1990 THROUGH 1993

Pub. L. 101-76, Aug. 11, 1989, 103 Stat. 556, as amended by Pub. L. 101-508, title VII, §7002(e), Nov. 5, 1990, 104 Stat. 1388-330; Pub. L. 103-66, title XI, §11005, Aug. 10, 1993, 107 Stat. 412, provided: “That (a)(1) in the administration of chapter 89 of title 5, United States Code, for each of contract years 1990 through 1998 (inclusive), in order to compute the average subscription charges under section 8906(a) of such title for such contract years, the subscription charges in effect for the indemnity benefit plan on the beginning date of each such contract year—

“(A) shall be deemed to be the subscription charges which were in effect for such plan on the beginning date of the preceding contract year as adjusted under paragraph (2); or

“(B) if subparagraph (A) does not apply, shall be deemed to be—

“(i) the subscription charges which were deemed under this Act to have been in effect for such plan with respect to the preceding contract year as adjusted under paragraph (2), except as provided in clause (ii); or

“(ii) for each of contract years 1997 and 1998, the subscription charges which would be derived by applying the terms of clause (i), reduced by 1 percent.

“(2) The subscription charges under paragraph (1) shall be increased or decreased (as appropriate) by the average percentage by which the respective subscription charges taken into account under paragraphs (1), (3), and (4) of such section 8906(a) for that contract year increased or decreased from the subscription charges taken into account under such paragraphs (1), (3), and (4) for the preceding contract year.

“(b) Separate percentages shall be computed under subsection (a)(2) with respect to enrollments for self alone and enrollments for self and family, respectively.

“(c) The provisions of this Act shall not apply to a contract year (or any period thereafter), if comprehensive reform legislation is enacted to amend section 8906 of title 5, United States Code, and such amendment is required to be implemented by the commencement of negotiations pertaining to rates and benefits for such contract year.

“(d) Any reference in this Act to a ‘contract year’ shall be considered to be a reference to a contract year under chapter 89 of title 5, United States Code.

“(e) No later than 180 days after the date of the enactment of this Act [Aug. 11, 1989], the Director of the Office of Personnel Management shall transmit recommendations to the Congress for comprehensive reform of the Federal Employee Health Benefits Program.”

CONTRIBUTIONS BY UNITED STATES POSTAL SERVICE TO EMPLOYEES HEALTH BENEFITS FUND

Pub. L. 100-203, title VI, §6003, Dec. 22, 1987, 101 Stat. 1330-277, directed Postal Service to pay \$160,000,000 in fiscal year 1988 and \$270,000,000 in fiscal year 1989 into Employee Health Benefits Fund in addition to any amount deposited into Fund pursuant to this section in each such fiscal year.

EMPLOYEES SERVING ON PART-TIME CAREER EMPLOYMENT BASIS ON OCTOBER 10, 1978

Section 4(c)(2)(B) of Pub. L. 95-437 provided that: “The amendments made by subparagraph (A) [amending subsec. (b)(1) and (3) of this section] shall not apply with respect to any employee serving in a position on a part-time career employment basis on the date of the enactment of this Act [Oct. 10, 1978] for such period as the employee continues to serve without a break in

service in that or any other position on such part-time basis.”

CALCULATION AND PAYMENT BY GOVERNMENT OF CONTRIBUTIONS TO CONTINGENCY RESERVES OF ALL HEALTH BENEFIT PLANS

Pub. L. 97-346, §4, Oct. 15, 1982, 96 Stat. 1650, directed Office of Personnel Management to determine amount by which Government contribution under 5 U.S.C. 8906(b) for the 1983 contract year was less than the Government contribution which would have been determined under such section for such contract year if Government contribution had been calculated by using the two employee organization plans which in 1981 satisfied the standard set forth in 5 U.S.C. 8906(a)(3) directed Government to pay amount of difference thus determined to contingency reserves of all health benefits plans for contract year 1983 in proportion to estimated number of individuals enrolled in such plans during 1983, and directed such payments be paid by appropriate agencies (including Postal Service and Postal Rate Commission) from appropriations referred to in 5 U.S.C. 8906(f) and (g) in same manner as if such payments were Government contributions, and in amounts determined appropriate by Office of Personnel Management.

ELECTION OF HEALTH BENEFITS DURING PERIOD OF SERVICE AS OFFICER OR EMPLOYEE OF AN EMPLOYEE ORGANIZATION; CONTRIBUTIONS INTO EMPLOYEES HEALTH BENEFITS FUND; NON-ELECTION; REGULATIONS

Election of health benefits within sixty days after July 18, 1966, by certain employees on leave without pay for service as officer or employee of an employee organization, contributions into Fund, effect of non-election of benefits, and regulations, see note set out under section 8706 of this title.

§ 8906a. Temporary employees

(a)(1) The Office of Personnel Management shall prescribe regulations to provide for offering health benefits plans to temporary employees (who meet the requirements of paragraph (2)) under the provisions of this chapter.

(2) To be eligible to participate in a health benefits plan offered under this section a temporary employee shall have completed 1 year of current continuous employment, excluding any break in service of 5 days or less.

(b) Notwithstanding the provisions of section 8906—

(1) any temporary employee enrolled in a health benefits plan under this section shall have an amount withheld from the pay of such employee, as determined by the Office of Personnel Management, equal to—

(A) the amount withheld from the pay of an employee under the provisions of section 8906; and

(B) the amount of the Government contribution for an employee under section 8906; and

(2) the employing agency of any such temporary employee shall not pay the Government contribution under the provisions of section 8906.

(Added Pub. L. 100-654, title III, §301(a), Nov. 14, 1988, 102 Stat. 3846.)

EFFECTIVE DATE

Section 301(d) of Pub. L. 100-654 provided that: “The amendments made by this section [enacting this section and amending section 8913 of this title] shall be ef-

fective 120 days after the date of enactment of this section [Nov. 14, 1988].”

§ 8907. Information to individuals eligible to enroll

(a) The Office of Personnel Management shall make available to each individual eligible to enroll in a health benefits plan under this chapter such information, in a form acceptable to the Office after consultation with the carrier, as may be necessary to enable the individual to exercise an informed choice among the types of plans described by sections 8903 and 8903a of this title.

(b) Each enrollee in a health benefits plan shall be issued an appropriate document setting forth or summarizing the—

- (1) services or benefits, including maximums, limitations, and exclusions, to which the enrollee or the enrollee and any eligible family members are entitled thereunder;
(2) procedure for obtaining benefits; and
(3) principal provisions of the plan affecting the enrollee and any eligible family members.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 605; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 98-615, §3(5), Nov. 8, 1984, 98 Stat. 3204; Pub. L. 99-53, §2(d), June 17, 1985, 99 Stat. 94.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 3009(d), Sept. 28, 1959, Pub. L. 86-382, §10(d), 73 Stat. 715.

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

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-53 inserted reference to section 8903a of this title.

1984—Pub. L. 98-615, §3(5)(C), substituted “individuals eligible to enroll” for “employees” in section catchline.

Subsec. (a). Pub. L. 98-615, §3(5)(A), substituted “individual” for “employee” in two places.

Subsec. (b). Pub. L. 98-615, §3(5)(B)(i), substituted “enrollee” for “employee enrolled” in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98-615, §3(5)(B)(ii), substituted “enrollee or the enrollee and any eligible family members” for “employee or the employee and members of his family”.

Subsec. (b)(3). Pub. L. 98-615, §3(5)(B)(iii), substituted “the enrollee and any eligible family members” for “the employee or members of his family”.

1978—Subsec. (a). Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 8908. Coverage of restored employees and survivor or disability annuitants

(a) An employee enrolled in a health benefits plan under this chapter who is removed or suspended without pay and later reinstated or restored to duty on the ground that the removal or suspension was unjustified or unwarranted may, at his option, enroll as a new employee or have his coverage restored, with appropriate adjustments made in contributions and claims, to the same extent and effect as though the removal or suspension had not taken place.

(b) A surviving spouse whose survivor annuity under this title was terminated because of remarriage and is later restored may, under such regulations as the Office of Personnel Management may prescribe, enroll in a health benefits plan described by section 8903 or 8903a of this title if such spouse was covered by any such plan immediately before such annuity was terminated.

(c) A disability annuitant whose disability annuity under section 8337 of this title was terminated and is later restored under the second or third sentence of subsection (e) of such section may, under regulations prescribed by the Office, enroll in a health benefits plan described by section 8903 or 8903a of this title if such annuitant was covered by any such plan immediately before such annuity was terminated.

(d) A surviving child whose survivor annuity under section 8341(e) or 8443(b) was terminated and is later restored under paragraph (4) of section 8341(e) or the last sentence of section 8443(b) may, under regulations prescribed by the Office, enroll in a health benefits plan described by section 8903 or 8903a if such surviving child was covered by any such plan immediately before such annuity was terminated.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 605; Pub. L. 94-342, §1(a), July 6, 1976, 90 Stat. 808; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 99-53, §2(a), 3(a)(1), (2)(A), June 17, 1985, 99 Stat. 94, 95; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §633(a)(3)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-363.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 3009(c), Sept. 28, 1959, Pub. L. 86-382, §10(c), 73 Stat. 715; Mar. 17, 1964, Pub. L. 88-284, §1 (less (1)-(13)), 78 Stat. 165.

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

AMENDMENTS

1996—Subsec. (d). Pub. L. 104-208 added subsec. (d).

1985—Pub. L. 99-53, §3(a)(2)(A), inserted “or disability” after “and survivor” in section catchline.

Subsec. (b). Pub. L. 99-53, §2(a), inserted reference to section 8903a of this title.

Subsec. (c). Pub. L. 99-53, §3(a)(1), added subsec. (c).

1978—Subsec. (b). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission”.

1976—Pub. L. 94-342 designated existing provisions as subsec. (a), added subsec. (b), and substituted “employ-

ees and survivor annuitants” for “employee” in section catchline.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 applicable with respect to termination of marriage taking effect before, on, or after Sept. 30, 1996, except that benefits are payable only with respect to amounts accruing for periods beginning on first day of month beginning after the later of termination of marriage or Sept. 30, 1996, see section 101(f) [title VI, §633(b)] of Pub. L. 104-208, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2 of Pub. L. 94-342 provided that: “The amendments made by the first section of this Act [amending this section] shall take effect on October 1, 1976, or on the date of the enactment of this Act [July 6, 1976], whichever date is later. Such amendments shall apply with respect to individuals whose survivor annuities are restored before, on, or after such date.”

INSURANCE COVERAGE FOR RESTORED DISABILITY ANNUITANTS

For provisions directing that subsec. (c) of this section shall apply with respect to any individual whose disability annuity is or was restored under section 8337(e) of this title after December 31, 1983, directing that the Office of Personnel Management notify each individual of any rights which such individual may have under subsec. (c) of this section, including any procedures or deadlines which might apply with respect to the exercise of those rights, directing that such notification be provided to any individual who, as of the 90th day after June 17, 1985, is receiving a disability annuity which was restored to such individual under section 8337(e) of this title after December 31, 1983, directing that nothing in subsec. (c) of this section be construed to authorize coverage under this chapter in the case of any individual who becomes enrolled in a health benefits plan under subsec. (c) of this section for any period before the date as of which such individual becomes so enrolled, and directing that such rule of construction apply with respect to any individual receiving a disability annuity which is or was restored under section 8337(e) of this title after December 31, 1983, and before the expiration of the 90-day period beginning on June 17, 1985, see section 3(c) of Pub. L. 99-53, set out as a note under section 8706 of this title.

§ 8909. Employees Health Benefits Fund

(a) There is in the Treasury of the United States an Employees Health Benefits Fund which is administered by the Office of Personnel Management. The contributions of enrollees and the Government described by section 8906 of this title shall be paid into the Fund. The Fund is available—

- (1) without fiscal year limitation for all payments to approved health benefits plans; and
- (2) to pay expenses for administering this chapter within the limitations that may be specified annually by Congress.

Payments from the Fund to a plan participating in a letter-of-credit arrangement under this chapter shall, in connection with any payment or reimbursement to be made by such plan for a health service or supply, be made, to the maximum extent practicable, on a checks-presented basis (as defined under regulations of the Department of the Treasury).

(b) Portions of the contributions made by enrollees and the Government shall be regularly set aside in the Fund as follows:

(1) A percentage, not to exceed 1 percent of all contributions, determined by the Office to be reasonably adequate to pay the administrative expenses made available by subsection (a) of this section.

(2) For each health benefits plan, a percentage, not to exceed 3 percent of the contributions toward the plan, determined by the Office to be reasonably adequate to provide a contingency reserve.

The Office, from time to time and in amounts it considers appropriate, may transfer unused funds for administrative expenses to the contingency reserves of the plans then under contract with the Office. When funds are so transferred, each contingency reserve shall be credited in proportion to the total amount of the subscription charges paid and accrued to the plan for the contract term immediately before the contract term in which the transfer is made. The income derived from dividends, rate adjustments, or other refunds made by a plan shall be credited to its contingency reserve. The contingency reserves may be used to defray increases in future rates, or may be applied to reduce the contributions of enrollees and the Government to, or to increase the benefits provided by, the plan from which the reserves are derived, as the Office from time to time shall determine.

(c) The Secretary of the Treasury may invest and reinvest any of the money in the Fund in interest-bearing obligations of the United States, and may sell these obligations for the purposes of the Fund. The interest on and the proceeds from the sale of these obligations become a part of the Fund.

(d) When the assets, liabilities, and membership of employee organizations sponsoring or underwriting plans approved under section 8903(3) or 8903a of this title are merged, the assets (including contingency reserves) and liabilities of the plans sponsored or underwritten by the merged organizations shall be transferred at the beginning of the contract term next following the date of the merger to the plan sponsored or underwritten by the successor organization. Each employee, annuitant, former spouse, or person having continued coverage under section 8905a of this title affected by a merger shall be transferred to the plan sponsored or underwritten by the successor organization unless he enrolls in another plan under this chapter. If the successor organization is an organization described in section 8901(8)(B) of this title, any employee, annuitant, former spouse, or person having continued coverage under section 8905a of this title so transferred may not remain enrolled in the plan after the end of the contract term in which the merger occurs unless that individual is a full member of such organization (as determined under section 8903a(d) of this title).

(e)(1) Except as provided by subsection (d) of this section, when a plan described by section 8903(3) or (4) or 8903a of this title is discontinued under this chapter, the contingency reserve of that plan shall be credited to the contingency reserves of the plans continuing under this chap-

ter for the contract term following that in which termination occurs, each reserve to be credited in proportion to the amount of the subscription charges paid and accrued to the plan for the year of termination.

(2) Any crediting required under paragraph (1) pursuant to the discontinuation of any plan under this chapter shall be completed by the end of the second contract year beginning after such plan is so discontinued.

(3) The Office shall prescribe regulations in accordance with which this subsection shall be applied in the case of any plan which is discontinued before being credited with the full amount to which it would otherwise be entitled based on the discontinuation of any other plan.

(f)(1) No tax, fee, or other monetary payment may be imposed, directly or indirectly, on a carrier or an underwriting or plan administration subcontractor of an approved health benefits plan by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority thereof, with respect to any payment made from the Fund.

(2) Paragraph (1) shall not be construed to exempt any carrier or underwriting or plan administration subcontractor of an approved health benefits plan from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by such carrier or underwriting or plan administration subcontractor from business conducted under this chapter, if that tax, fee, or payment is applicable to a broad range of business activity.

(g) The fund described in subsection (a) is available to pay costs that the Office incurs for activities associated with implementation of the demonstration project under section 1108 of title 10.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 605; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 98-615, §3(6), Nov. 8, 1984, 98 Stat. 3204; Pub. L. 99-53, §2(e), (f), June 17, 1985, 99 Stat. 94; Pub. L. 99-251, title I, §101, Feb. 27, 1986, 100 Stat. 14; Pub. L. 100-654, title II, §202(a), Nov. 14, 1988, 102 Stat. 3845; Pub. L. 101-508, title VII, §7002(b), (c), Nov. 5, 1990, 104 Stat. 1388-330; Pub. L. 105-261, div. A, title VII, §721(b)(4), Oct. 17, 1998, 112 Stat. 2065; Pub. L. 105-266, §6(b)(1), Oct. 19, 1998, 112 Stat. 2369.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3007.	Sept. 23, 1959, Pub. L. 86-382, § 8, 73 Stat. 714. Mar. 17, 1964, Pub. L. 88-284, §1(12), (13), 78 Stat. 165.
.....	5 U.S.C. 3008(b).	Sept. 23, 1959, Pub. L. 86-382, §9(b), 73 Stat. 715.

In subsection (a), the words “hereby created” are omitted as executed. The words “hereinafter referred to as the ‘Fund’” are omitted as unnecessary. The words “to reimburse the Employees Health Benefits Fund for sums expended by the Commission in administering the provisions of this chapter for the fiscal years 1960 and 1961” in former section 3008(b) are omitted as executed.

In subsection (d), the requirement that the assets and liabilities of plans of organizations that have been

merged be transferred at the beginning of the contract term next following the date of the merger or enactment of this subsection is omitted as executed. The next beginning contract term referred to was November 1, 1964, and the transfers have been made. In the last sentence, the word “hereafter” is omitted as unnecessary.

In subsection (e), the word “is” is substituted for “is or has been” as this title is stated prospectively, and any existing rights and duties are preserved by technical section 8.

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

AMENDMENTS

1998—Subsec. (e). Pub. L. 105-266 designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (g). Pub. L. 105-261 added subsec. (g).

1990—Subsec. (a). Pub. L. 101-508, §7002(b), inserted at end “Payments from the Fund to a plan participating in a letter-of-credit arrangement under this chapter shall, in connection with any payment or reimbursement to be made by such plan for a health service or supply, be made, to the maximum extent practicable, on a checks-presented basis (as defined under regulations of the Department of the Treasury).”

Subsec. (f). Pub. L. 101-508, §7002(c), added subsec. (f).

1988—Subsec. (d). Pub. L. 100-654 substituted “former spouse, or person having continued coverage under section 8905a of this title” for “or former spouse” in two places.

1986—Subsec. (b). Pub. L. 99-251 substituted “enrollees” for “employees” in last sentence.

1985—Subsec. (d). Pub. L. 99-53, §2(e), substituted “section 8903(3) or 8903a” for “section 8903(3)” and inserted provision directing that if the successor organization is an organization described in section 8901(8)(B) of this title, any transferred employee, annuitant, or former spouse may not remain enrolled in the plan after the end of the contract term in which the merger occurs unless the individual is a full member of such organization (as determined under section 8903a(d) of this title).

Subsec. (e). Pub. L. 99-53, §2(f), inserted “or 8903a” before “of this title”.

1984—Subsecs. (a), (b). Pub. L. 98-615, §3(6)(A), substituted “enrollees” for “employees, annuitants,” in provisions preceding par. (1).

Subsec. (d). Pub. L. 98-615, §3(6)(B), substituted “Each employee, annuitant, or former spouse” for “Each employee or annuitant”.

1978—Subsecs. (a), (b). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission” wherever appearing.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable with respect to contract years beginning on or after Jan. 1, 1991, see section 7002(g) of Pub. L. 101-508, set out as a note under section 8902 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-654 applicable with respect to any calendar year beginning, and contracts entered into or renewed for any calendar year beginning, after end of 9-month period beginning Nov. 14, 1988, and with respect to any qualifying event occurring on or after first day of first calendar year beginning after end of such 9-month period, see section 203 of Pub. L. 100-654, set out as a note under section 8902 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

DISPOSAL OF AMOUNTS REMAINING AS OF OCTOBER 19, 1998, IN CONTINGENCY RESERVE OF DISCONTINUED PLAN

Pub. L. 105-266, §6(b)(2), Oct. 19, 1998, 112 Stat. 2369, provided that: "In the case of any amounts remaining as of the date of the enactment of this Act [Oct. 19, 1998] in the contingency reserve of a discontinued plan, such amounts shall be disposed of in accordance with section 8909(e) of title 5, United States Code, as amended by this subsection, by—

"(A) the deadline set forth in section 8909(e) of such title (as so amended); or

"(B) if later, the end of the 6-month period beginning on such date of enactment."

AMOUNTS TO BE REFUNDED FROM CARRIERS' SPECIAL RESERVES

Pub. L. 99-272, title XV, §15202(a), Apr. 7, 1986, 100 Stat. 333, provided that:

"(1) The Office of Personnel Management—

"(A) shall determine the minimum level of financial reserves necessary to be held by a carrier for each health benefits plan under chapter 89 of such title for the purpose of ensuring the stable and efficient operation of such plan; and

"(B) shall require the carrier to refund to the Employees Health Benefits Fund (described in section 8909(a) of title 5, United States Code) any such reserves in excess of such minimum level in such amounts and at such times during fiscal years 1986 and 1987 as the Office determines appropriate.

"(2) In carrying out its responsibilities under this subsection, the Office shall ensure that the aggregate amount to be refunded to the Employees Health Benefits Fund under this subsection—

"(A) during fiscal year 1986 shall be not less than \$800,000,000; and

"(B) during fiscal year 1987 shall be not less than \$300,000,000.

"(3) No amount in the Employees Health Benefits Fund may be transferred to the general fund of the Treasury of the United States as a result of a refund made under this subsection.

"(4)(A) Subject to subparagraphs (B) and (C), any amounts refunded to the Employees Health Benefits Fund under this subsection may be used solely for the purpose of paying the Government contribution under chapter 89 of title 5, United States Code, for health benefits for annuitants, as defined by section 8901(3) of title 5, United States Code, (including the Government contribution for former employees of the United States Postal Service) enrolled in health benefits plans under such chapter.

"(B) This paragraph applies to a refund to the extent that such refund represents amounts attributable to Government contributions which were made under section 8906(b) of title 5, United States Code, (including contributions made by the United States Postal Service) as determined under regulations which the Office of Personnel Management shall prescribe.

"(C) Any part of the amount in the Employees Health Benefits Fund as a result of a refund made under this subsection may be transferred—

"(i) to the government of the District of Columbia, except that the amount of any such part so transferred shall not exceed the amount attributable to the contributions made by the government of the District of Columbia to subscription charges under this chapter (as determined by the Office of Personnel Management); and

"(ii) to the United States Postal Service, except that the amount of any such part so transferred shall not exceed the amount attributable to the contributions made by the United States Postal Service to subscription charges under this chapter (as determined by the Office).

"(5) The provisions of this subsection shall apply notwithstanding any provision of the Federal Employees Benefits Improvement Act of 1985 [probably means the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99-251, see Short Title of 1986 Amendment note set out under section 8901 of this title for classification]."

RESTRICTIONS RELATING TO AMOUNTS REFUNDED TO EMPLOYEES HEALTH BENEFITS FUND FROM CARRIERS' SPECIAL RESERVES

Section 112 of Pub. L. 99-251 provided that:

"(a) PROHIBITED TRANSFERS.—(1) No amount in the Employees Health Benefits Fund may be transferred to the general fund of the Treasury of the United States or the United States Postal Service as a result of a refund described in paragraph (2).

"(2) This subsection applies with respect to any refund made by a carrier during fiscal year 1986 or 1987 to the Employees Health Benefits Fund to the extent that such refund represents amounts in excess of the minimum level of financial reserves necessary to be held by such carrier to ensure the stable and efficient operation of its health benefits plan.

"(b) RESTRICTION RELATING TO USE OF CERTAIN AMOUNTS IN THE FUND.—(1) Any amount which is in the Employees Health Benefits Fund, and which is described in paragraph (2), may be used solely for the purpose of paying the Government contribution under chapter 89 of title 5, United States Code, for health benefits for annuitants enrolled in health benefits plans (without regard to the health benefits plan or plans from which the refunds were received).

"(2) This subsection applies with respect to any amounts—

"(A) which are referred to in subsection (a)(2); and

"(B) which are attributable to Government contributions (other than contributions by the government of the District of Columbia, which shall be returned to such government) that were made under section 8906(b) of title 5, United States Code, as determined under regulations which the Office of Personnel Management shall prescribe.

"(c) DEFINITIONS.—For the purpose of this section—

"(1) the term 'Employees Health Benefits Fund' refers to the fund described in section 8909(a) of title 5, United States Code;

"(2) the term 'carrier' has the meaning given such term by section 8901(7) of such title; and

"(3) the term 'health benefits plan' has the meaning given such term by section 8901(6) of such title."

§ 8909a. Postal Service Retiree Health Benefit¹ Fund

(a) There is in the Treasury of the United States a Postal Service Retiree Health Benefits Fund which is administered by the Office of Personnel Management.

(b) The Fund is available without fiscal year limitation for payments required under section 8906(g)(2)(A).

(c) The Secretary of the Treasury shall immediately invest, in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. Such investments shall be made in the same manner as investments for the Civil Service Retirement and Disability Fund under section 8348.

(d)(1) Not later than June 30, 2007, and by June 30 of each succeeding year, the Office shall compute the net present value of the future payments required under section 8906(g)(2)(A) and attributable to the service of Postal Service em-

¹ So in original. Probably should be "Benefits".

ployees during the most recently ended fiscal year.

(2)(A) Not later than June 30, 2007, the Office shall compute, and by June 30 of each succeeding year, the Office shall recompute the difference between—

(i) the net present value of the excess of future payments required under section 8906(g)(2)(A) for current and future United States Postal Service annuitants as of the end of the fiscal year ending on September 30 of that year; and

(ii)(I) the value of the assets of the Postal Retiree Health Benefits Fund as of the end of the fiscal year ending on September 30 of that year; and

(II) the net present value computed under paragraph (1).

(B) Not later than June 30, 2017, the Office shall compute, and by June 30 of each succeeding year shall recompute, a schedule including a series of annual installments which provide for the liquidation of any liability or surplus by September 30, 2056, or within 15 years, whichever is later, of the net present value determined under subparagraph (A), including interest at the rate used in that computation.

(3)(A) The United States Postal Service shall pay into such Fund—

(i) \$5,400,000,000, not later than September 30, 2007;

(ii) \$5,600,000,000, not later than September 30, 2008;

(iii) \$1,400,000,000, not later than September 30, 2009;

(iv) \$5,500,000,000, not later than September 30, 2010;

(v) \$5,500,000,000, not later than August 1, 2012;

(vi) \$5,600,000,000, not later than September 30, 2012;

(vii) \$5,600,000,000, not later than September 30, 2013;

(viii) \$5,700,000,000, not later than September 30, 2014;

(ix) \$5,700,000,000, not later than September 30, 2015; and

(x) \$5,800,000,000, not later than September 30, 2016.

(B) Not later than September 30, 2017, and by September 30 of each succeeding year, the United States Postal Service shall pay into such Fund the sum of—

(i) the net present value computed under paragraph (1); and

(ii) any annual installment computed under paragraph (2)(B).

(4) Computations under this subsection shall be made consistent with the assumptions and methodology used by the Office for financial reporting under subchapter II of chapter 35 of title 31.

(5)(A)(i) Any computation or other determination of the Office under this subsection shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this paragraph.

(ii) Upon receiving a request under clause (i), the Commission shall promptly procure the services of an actuary, who shall hold member-

ship in the American Academy of Actuaries and shall be qualified in the evaluation of healthcare insurance obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this subparagraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

(B) Upon receiving the report under subparagraph (A), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

(6) After consultation with the United States Postal Service, the Office shall promulgate any regulations the Office determines necessary under this subsection.

(Added Pub. L. 109-435, title VIII, §803(a)(1)(B), Dec. 20, 2006, 120 Stat. 3251; amended Pub. L. 111-68, div. B, §164(a), Oct. 1, 2009, 123 Stat. 2053; Pub. L. 112-33, §124, Sept. 30, 2011, 125 Stat. 366; Pub. L. 112-74, div. C, title VI, §632, Dec. 23, 2011, 125 Stat. 928.)

AMENDMENTS

2011—Subsec. (d)(3)(A)(v). Pub. L. 112-74 substituted “August 1, 2012” for “October 4, 2011”. See below.

Pub. L. 112-33 substituted “October 4, 2011”, which is the date specified in section 106(3) of Pub. L. 112-33, for “September 30, 2011”.

2009—Subsec. (d)(3)(A)(iii). Pub. L. 111-68 amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “\$5,400,000,000, not later than September 30, 2009;”.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-68, div. B, §164(b), Oct. 1, 2009, 123 Stat. 2053, provided that: “The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 803(a)(1)(B) of the Postal Accountability and Enhancement Act (Public Law 109-435; 120 Stat. 3251).”

EFFECTIVE DATE

Section effective Oct. 1, 2006, see section 805(a) of Pub. L. 109-435, set out as a Effective Date of 2006 Amendment note under section 8334 of this title.

REVIEW BY POSTAL REGULATORY COMMISSION

Pub. L. 109-435, title VIII, §803(b), Dec. 20, 2006, 120 Stat. 3252, provided that:

“(1) IN GENERAL.—

“(A) REQUEST FOR REVIEW.—Any regulation established under section 8909a(d)(5) of title 5, United States Code (as added by subsection (a)), shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this paragraph.

“(B) REPORT.—Upon receiving a request under subparagraph (A), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of healthcare insurance obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission

containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this paragraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

“(2) RECONSIDERATION.—Upon receiving the report under paragraph (1), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.”

§ 8910. Studies, reports, and audits

(a) The Office of Personnel Management shall make a continuing study of the operation and administration of this chapter, including surveys and reports on health benefits plans available to employees and on the experience of the plans.

(b) Each contract entered into under section 8902 of this title shall contain provisions requiring carriers to—

(1) furnish such reasonable reports as the Office determines to be necessary to enable it to carry out its functions under this chapter; and

(2) permit the Office and representatives of the Government Accountability Office to examine records of the carriers as may be necessary to carry out the purposes of this chapter.

(c) Each Government agency shall keep such records, make such certifications, and furnish the Office with such information and reports as may be necessary to enable the Office to carry out its functions under this chapter.

(d) The Office, in consultation with the Department of Health and Human Services, shall develop and implement a system through which the carrier for an approved health benefits plan described by section 8903 or 8903a will be able to identify those annuitants or other individuals covered by such plan who are entitled to benefits under part A or B of title XVIII of the Social Security Act in order to ensure that payments under coordination of benefits with Medicare do not exceed the statutory maximums which physicians may charge Medicare enrollees.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 606; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 101-508, title VII, §7002(d), Nov. 5, 1990, 104 Stat. 1388-330; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 3010. Sept. 28, 1959, Pub. L. 86-382, §11, 73 Stat. 716.

In subsection (b), the word “agency” is substituted for “department, agency, and independent establishment”.

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

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts

A and B of title XVIII of the Social Security Act are classified generally to parts A (§1395c et seq.) and B (§1395j et seq.), respectively, of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2004—Subsec. (b)(2). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

1990—Subsec. (d). Pub. L. 101-508 added subsec. (d). 1978—Subsecs. (a) to (c). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission” wherever appearing.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable with respect to contract years beginning on or after Jan. 1, 1991, see section 7002(g) of Pub. L. 101-508, set out as a note under section 8902 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 8911. Advisory committee

The Director of the Office of Personnel Management shall appoint a committee composed of five members, who serve without pay, to advise the Office regarding matters of concern to employees under this chapter. Each member of the committee shall be an employee enrolled under this chapter or an elected official of an employee organization.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 607; Pub. L. 95-454, title IX, §906(a)(1), (4), Oct. 13, 1978, 92 Stat. 1224, 1225.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 3012. Sept. 28, 1959, Pub. L. 86-382, §13, 73 Stat. 716.

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

AMENDMENTS

1978—Pub. L. 95-454 substituted “Director of the Office of Personnel Management” for “Chairman of the Civil Service Commission” and “Office” for “Commission”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to this title.

§ 8912. Jurisdiction of courts

The district courts of the United States have original jurisdiction, concurrent with the

United States Court of Federal Claims, of a civil action or claim against the United States founded on this chapter.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 607; Pub. L. 97-164, title I, §160(a)(3), Apr. 2, 1982, 96 Stat. 48; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3014.	Sept. 28, 1959, Pub. L. 86-382, §15, 73 Stat. 716.

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

AMENDMENTS

1992—Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

1982—Pub. L. 97-164 substituted “United States Claims Court” for “Court of Claims”.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

§ 8913. Regulations

(a) The Office of Personnel Management may prescribe regulations necessary to carry out this chapter.

(b) The regulations of the Office may prescribe the time at which and the manner and conditions under which an employee is eligible to enroll in an approved health benefits plan described by section 8903 or 8903a of this title. The regulations may exclude an employee on the basis of the nature and type of his employment or conditions pertaining to it, such as short-term appointment, seasonal or intermittent employment, and employment of like nature. The Office may not exclude—

(1) an employee or group of employees solely on the basis of the hazardous nature of employment;

(2) a teacher in the employ of the Board of Education of the District of Columbia, whose pay is fixed by section 1501 of title 31, District of Columbia Code, on the basis of the fact that the teacher is serving under a temporary appointment if the teacher has been so employed by the Board for a period or periods totaling not less than two school years;

(3) an employee who is occupying a position on a part-time career employment basis (as defined in section 3401(2) of this title); or

(4) an employee who is employed on a temporary basis and is eligible under section 8906a(a).

(c) The regulations of the Office shall provide for the beginning and ending dates of coverage of employees, annuitants, members of their fam-

ilies, and former spouses under health benefits plans. The regulations may permit the coverage to continue, exclusive of the temporary extension of coverage described by section 8902(g) of this title, until the end of the pay period in which an employee is separated from the service, or until the end of the month in which an annuitant or former spouse ceases to be entitled to annuity, and in case of the death of an employee or annuitant, may permit a temporary extension of the coverage of members of his family for not to exceed 90 days.

(d) The Secretary of Agriculture shall prescribe regulations to effect the application and operation of this chapter to an individual named by section 8901(1)(H) of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 607; Pub. L. 95-437, §4(c)(1), Oct. 10, 1978, 92 Stat. 1058; Pub. L. 95-454, title IX, §906(a)(2), (3), (c)(2)(F), (H), Oct. 13, 1978, 92 Stat. 1224, 1227; Pub. L. 98-615, §3(7), Nov. 8, 1984, 98 Stat. 3204; Pub. L. 99-53, §2(a), June 17, 1985, 99 Stat. 94; Pub. L. 100-654, title III, §301(c), Nov. 14, 1988, 102 Stat. 3846.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 3009(a).	Sept. 28, 1959, Pub. L. 86-382, §10(a), 73 Stat. 715.
(b)	5 U.S.C. 3002(a) (words between 1st and 4th commas of 1st sentence, and 2d sentence), (f) (words between 1st and 2d commas of 1st sentence).	Sept. 28, 1959, Pub. L. 86-382, §3(a) (words between 1st and 4th commas of 1st sentence, and 2d sentence), 73 Stat. 710. July 1, 1960, Pub. L. 86-568, §115(d) “(f) (words between 1st and 2d commas of 1st sentence)”, 74 Stat. 303.
(c)	5 U.S.C. 3009(b).	Oct. 6, 1964, Pub. L. 88-631, §1, 78 Stat. 1007. Sept. 28, 1959, Pub. L. 86-382, §10(b), 73 Stat. 715.
(d)	5 U.S.C. 3002(f) (2d sentence).	July 1, 1960, Pub. L. 86-568, §115(d) “(f) (2d sentence)”, 74 Stat. 303.

In subsection (b)(2), the words “section 1501 of title 31, District of Columbia Code” are substituted for “section 1 of the District of Columbia Teachers’ Salary Act of 1955 (69 Stat. 521), as amended (sec. 31-1501, D.C. Code, 1961 edition)”.

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

AMENDMENTS

1988—Subsec. (b)(4). Pub. L. 100-654 added par. (4).

1985—Subsec. (b). Pub. L. 99-53 inserted reference to section 8903a of this title.

1984—Subsec. (c). Pub. L. 98-615, §3(7), substituted “employees, annuitants, members of their families, and former spouses” for “employees and annuitants and members of their families”, and “in which an annuitant or former spouse” for “in which an annuitant”.

1978—Subsecs. (a), (b). Pub. L. 95-454, §906(a)(2), (3), substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission” wherever appearing.

Subsec. (b)(3). Pub. L. 95-454, §906(c)(2)(F), (H), substituted “3401” for “3391”.

Pub. L. 95-437 added par. (3).

Subsec. (c). Pub. L. 95-454, §906(a)(3), substituted “Office” for “Commission”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-654 effective 120 days after Nov. 14, 1988, see section 301(d) of Pub. L. 100-654, set

out as an Effective Date note under section 8906a of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 8914. Effect of other statutes

Any provision of law outside of this chapter which provides coverage or any other benefit under this chapter to any individuals who (based on their being employed by an entity other than the Government) would not otherwise be eligible for any such coverage or benefit shall not apply with respect to any individual appointed, transferred, or otherwise commencing that type of employment on or after October 1, 1988.

(Added Pub. L. 100-238, title I, §108(a)(3)(A), Jan. 8, 1988, 101 Stat. 1747.)

CHAPTER 89A—ENHANCED DENTAL BENEFITS

Sec.	
8951.	Definitions.
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§ 8951. Definitions

In this chapter:

(1) The term “employee” means an employee defined under section 8901(1) and an employee of the District of Columbia courts.

(2) The terms “annuitant”, “member of family”, and “dependent” have the meanings as such terms are defined under paragraphs (3), (5), and (9), respectively, of section 8901.

(3) The term “eligible individual” refers to an individual described in paragraph (1) or (2), without regard to whether the individual is enrolled in a health benefits plan under chapter 89.

(4) The term “Office” means the Office of Personnel Management.

(5) The term “qualified company” means a company (or consortium of companies or an employee organization defined under section 8901(8)) that offers indemnity, preferred provider organization, health maintenance organization, or discount dental programs and if required is licensed to issue applicable coverage in any number of States, taking any subsidiaries of such a company into account (and, in the case of a consortium, considering

the member companies and any subsidiaries thereof, collectively).

(6) The term “employee organization” means an association or other organization of employees which is national in scope, or in which membership is open to all employees of a Government agency who are eligible to enroll in a health benefits plan under chapter 89.

(7) The term “State” includes the District of Columbia.

(Added Pub. L. 108-496, §2, Dec. 23, 2004, 118 Stat. 4001; amended Pub. L. 109-356, title I, §117(a)(1), Oct. 16, 2006, 120 Stat. 2027.)

AMENDMENTS

2006—Par. (1). Pub. L. 109-356, which directed insertion of “and an employee of the District of Columbia courts” at end of par. (1), was executed by making the insertion before the period to reflect the probable intent of Congress.

EFFECTIVE DATE

Pub. L. 108-496, §7, Dec. 23, 2004, 118 Stat. 4011, provided that: “The amendments made by this Act [enacting this chapter and chapter 89B of this title, amending section 1005 of Title 39, Postal Service, and enacting provisions set out as a note under section 101 of this title] shall take effect on the date of enactment of this Act [Dec. 23, 2004] and shall apply to contracts that take effect with respect to the calendar year 2006.”

§ 8952. Availability of dental benefits

(a) The Office shall establish and administer a program through which an eligible individual may obtain dental coverage to supplement coverage available through chapter 89.

(b) The Office shall determine, in the exercise of its reasonable discretion, the financial requirements for qualified companies to participate in the program.

(c) Nothing in this chapter shall be construed to prohibit the availability of dental benefits provided by health benefits plans under chapter 89.

(Added Pub. L. 108-496, §2, Dec. 23, 2004, 118 Stat. 4002.)

§ 8953. Contracting authority

(a)(1) The Office shall contract with a reasonable number of qualified companies for a policy or policies of benefits described under section 8954 without regard to section 6101(b) to (d) of title 41 or any other statute requiring competitive bidding. An employee organization may contract with a qualified company for the purpose of participating with that qualified company in any contract between the Office and that qualified company.

(2) The Office shall ensure that each resulting contract is awarded on the basis of contractor qualifications, price, and reasonable competition.

(b) Each contract under this section shall contain—

(1) the requirements under section 8902(d), (f), and (i) made applicable to contracts under this section by regulations prescribed by the Office;

(2) the terms of the enrollment period; and

(3) such other terms and conditions as may be mutually agreed to by the Office and the

qualified company involved, consistent with the requirements of this chapter and regulations prescribed by the Office.

(c) Nothing in this chapter shall, in the case of an individual electing dental supplemental benefit coverage under this chapter after the expiration of such individual's first opportunity to enroll, preclude the application of waiting periods more stringent than those that would have applied if that opportunity had not yet expired.

(d)(1) Each contract under this chapter shall require the qualified company to agree—

(A) to provide payments or benefits to an eligible individual if such individual is entitled thereto under the terms of the contract; and

(B) with respect to disputes regarding claims for payments or benefits under the terms of the contract—

(i) to establish internal procedures designed to expeditiously resolve such disputes; and

(ii) to establish, for disputes not resolved through procedures under clause (i), procedures for 1 or more alternative means of dispute resolution involving independent third-party review under appropriate circumstances by entities mutually acceptable to the Office and the qualified company.

(2) A determination by a qualified company as to whether or not a particular individual is eligible to obtain coverage under this chapter shall be subject to review only to the extent and in the manner provided in the applicable contract.

(3) For purposes of applying the Contract Disputes Act of 1978¹ to disputes arising under this chapter between a qualified company and the Office—

(A) the agency board having jurisdiction to decide an appeal relative to such a dispute shall be such board of contract appeals as the Director of the Office of Personnel Management shall specify in writing (after appropriate arrangements, as described in section 8(c)¹ of such Act); and

(B) the district courts of the United States shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any action described in section 10(a)(1)¹ of such Act relative to such a dispute.

(e) Nothing in this section shall be considered to grant authority for the Office or third-party reviewer to change the terms of any contract under this chapter.

(f) Contracts under this chapter shall be for a uniform term of 7 years and may not be renewed automatically.

(Added Pub. L. 108–496, § 2, Dec. 23, 2004, 118 Stat. 4002; amended Pub. L. 111–350, § 5(a)(16), Jan. 4, 2011, 124 Stat. 3842.)

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in subsec. (d)(3), is Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2383, which was classified principally to chapter 9 (§ 601 et seq.) of former Title 41, Public Contracts, and was substantially repealed and restated as chapter 71 (§ 7101 et seq.) of Title 41, Public Contracts, by Pub. L. 111–350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. Sections 8(c)

and 10(a)(1) of the Act, which were classified to sections 607(c) and 609(a)(1), respectively, of former Title 41, were repealed and restated as section 7105(d), (e)(1)(C) and section 7104(b)(1), respectively, of Title 41. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 111–350 substituted “section 6101(b) to (d) of title 41” for “section 5 of title 41”.

§ 8954. Benefits

(a) The Office may prescribe reasonable minimum standards for enhanced dental benefits plans offered under this chapter and for qualified companies offering the plans.

(b) Each contract may include more than 1 level of benefits that shall be made available to all eligible individuals.

(c) The benefits to be provided under enhanced dental benefits plans under this chapter may be of the following types:

- (1) Diagnostic.
- (2) Preventive.
- (3) Emergency care.
- (4) Restorative.
- (5) Oral and maxillofacial surgery.
- (6) Endodontics.
- (7) Periodontics.
- (8) Prosthodontics.
- (9) Orthodontics.

(d) A contract approved under this chapter shall require the qualified company to cover the geographic service delivery area specified by the Office. The Office shall require qualified companies to include dentally underserved areas in their service delivery areas.

(e) If an individual has dental coverage under a health benefits plan under chapter 89 and also has coverage under a plan under this chapter, the health benefits plan under chapter 89 shall be the first payor of any benefit payments.

(Added Pub. L. 108–496, § 2, Dec. 23, 2004, 118 Stat. 4003.)

§ 8955. Information to individuals eligible to enroll

(a) The qualified companies¹ at the direction and with the approval of the Office, shall make available to each individual eligible to enroll in a dental benefits plan information on services and benefits (including maximums, limitations, and exclusions), that the Office considers necessary to enable the individual to make an informed decision about electing coverage.

(b) The Office shall make available to each individual eligible to enroll in a dental benefits plan, information on services and benefits provided by qualified companies participating under chapter 89.

(Added Pub. L. 108–496, § 2, Dec. 23, 2004, 118 Stat. 4004.)

§ 8956. Election of coverage

(a) An eligible individual may enroll in a dental benefits plan for self-only, self plus one, or for self and family. If an eligible individual has

¹ See References in Text note below.

¹ So in original. Probably should be followed by a comma.

a spouse who is also eligible to enroll, either spouse, but not both, may enroll for self plus one or self and family. An individual may not be enrolled both as an employee, annuitant, or other individual eligible to enroll and as a member of the family.

(b) The Office shall prescribe regulations under which—

(1) an eligible individual may enroll in a dental benefits plan; and

(2) an enrolled individual may change the self-only, self plus one, or self and family coverage of that individual.

(c)(1) Regulations under subsection (b) shall permit an eligible individual to cancel or transfer the enrollment of that individual to another dental benefits plan—

(A) before the start of any contract term in which there is a change in rates charged or benefits provided, in which a new plan is offered, or in which an existing plan is terminated; or

(B) during other times and under other circumstances specified by the Office.

(2) A transfer under paragraph (1) shall be subject to waiting periods provided under a new plan.

(Added Pub. L. 108-496, § 2, Dec. 23, 2004, 118 Stat. 4004.)

§ 8957. Coverage of restored survivor or disability annuitants

A surviving spouse, disability annuitant, or surviving child whose annuity is terminated and is later restored, may continue enrollment in a dental benefits plan subject to the terms and conditions prescribed in regulations issued by the Office.

(Added Pub. L. 108-496, § 2, Dec. 23, 2004, 118 Stat. 4004.)

§ 8958. Premiums

(a) Each eligible individual obtaining supplemental dental coverage under this chapter shall be responsible for 100 percent of the premiums for such coverage.

(b) The Office shall prescribe regulations specifying the terms and conditions under which individuals are required to pay the premiums for enrollment.

(c) The amount necessary to pay the premiums for enrollment may—

(1) in the case of an employee, be withheld from the pay of such an employee; or

(2) in the case of an annuitant, be withheld from the annuity of such an annuitant.

(d) All amounts withheld under this section shall be paid directly to the qualified company.

(e) Each participating qualified company shall maintain accounting records that contain such information and reports as the Office may require.

(f)(1) The Employee Health Benefits Fund is available, without fiscal year limitation, for reasonable expenses incurred by the Office in administering this chapter before the first day of the first contract period, including reasonable implementation costs.

(2)(A) There is established in the Employees Health Benefits Fund a Dental Benefits Administrative Account, which shall be available to the Office, without fiscal year limitation, to defray reasonable expenses incurred by the Office in administering this chapter after the start of the first contract year.

(B) A contract under this chapter shall include appropriate provisions under which the qualified company involved shall, during each year, make such periodic contributions to the Dental Benefits Administrative Account as necessary to ensure that the reasonable anticipated expenses of the Office in administering this chapter during such year are defrayed.

(Added Pub. L. 108-496, § 2, Dec. 23, 2004, 118 Stat. 4004.)

§ 8959. Preemption

The terms of any contract that relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to dental benefits, insurance, plans, or contracts.

(Added Pub. L. 108-496, § 2, Dec. 23, 2004, 118 Stat. 4005.)

§ 8960. Studies, reports, and audits

(a) Each contract shall contain provisions requiring the qualified company to—

(1) furnish such reasonable reports as the Office determines to be necessary to enable it to carry out its functions under this chapter; and

(2) permit the Office and representatives of the Government Accountability Office to examine such records of the qualified company as may be necessary to carry out the purposes of this chapter.

(b) Each Federal agency shall keep such records, make such certifications, and furnish the Office, the qualified company, or both, with such information and reports as the Office may require.

(c) The Office shall conduct periodic reviews of plans under this chapter, including a comparison of the dental benefits available under chapter 89, to ensure the competitiveness of plans under this chapter. The Office shall cooperate with the Government Accountability Office to provide periodic evaluations of the program.

(Added Pub. L. 108-496, § 2, Dec. 23, 2004, 118 Stat. 4005.)

§ 8961. Jurisdiction of courts

The district courts of the United States have original jurisdiction, concurrent with the United States Court of Federal Claims, of a civil action or claim against the United States under this chapter after such administrative remedies as required under section 8953(d) have been exhausted, but only to the extent judicial review is not precluded by any dispute resolution or other remedy under this chapter.

(Added Pub. L. 108-496, § 2, Dec. 23, 2004, 118 Stat. 4005.)

§ 8962. Administrative functions

(a) The Office shall prescribe regulations to carry out this chapter. The regulations may exclude an employee on the basis of the nature and type of employment or conditions pertaining to it.

(b) The Office shall, as appropriate, provide for coordinated enrollment, promotion, and education efforts as appropriate in consultation with each qualified company. The information under this subsection shall include information relating to the dental benefits available under chapter 89, including the advantages and disadvantages of obtaining additional coverage under this chapter.

(Added Pub. L. 108-496, § 2, Dec. 23, 2004, 118 Stat. 4006.)

CHAPTER 89B—ENHANCED VISION BENEFITS

Sec.	
8981.	Definitions.
8982.	Availability of vision benefits.
8983.	Contracting authority.
8984.	Benefits.
8985.	Information to individuals eligible to enroll.
8986.	Election of coverage.
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8988.	Premiums.
8989.	Preemption.
8990.	Studies, reports, and audits.
8991.	Jurisdiction of courts.
8992.	Administrative functions.

§ 8981. Definitions

In this chapter:

(1) The term “employee” means an employee defined under section 8901(1) and an employee of the District of Columbia courts.

(2) The terms “annuitant”, “member of family”, and “dependent” have the meanings as such terms are defined under paragraphs (3), (5), and (9), respectively, of section 8901.

(3) The term “eligible individual” refers to an individual described in paragraph (1) or (2), without regard to whether the individual is enrolled in a health benefits plan under chapter 89.

(4) The term “Office” means the Office of Personnel Management.

(5) The term “qualified company” means a company (or consortium of companies or an employee organization defined under section 8901(8)) that offers indemnity, preferred provider organization, health maintenance organization, or discount vision programs and if required is licensed to issue applicable coverage in any number of States, taking any subsidiaries of such a company into account (and, in the case of a consortium, considering the member companies and any subsidiaries thereof, collectively).

(6) The term “employee organization” means an association or other organization of employees which is national in scope, or in which membership is open to all employees of a Government agency who are eligible to enroll in a health benefits plan under chapter 89.

(7) The term “State” includes the District of Columbia.

(Added Pub. L. 108-496, § 3, Dec. 23, 2004, 118 Stat. 4006; amended Pub. L. 109-356, title I, § 117(a)(2), Oct. 16, 2006, 120 Stat. 2027.)

AMENDMENTS

2006—Par. (1). Pub. L. 109-356, which directed insertion of “and an employee of the District of Columbia courts” at end of par. (1), was executed by making the insertion before the period, to reflect the probable intent of Congress.

EFFECTIVE DATE

Chapter effective Dec. 23, 2004, and applicable to contracts that take effect with respect to the calendar year 2006, see section 7 of Pub. L. 108-496, set out as a note under section 8951 of this title.

§ 8982. Availability of vision benefits

(a) The Office shall establish and administer a program through which an eligible individual may obtain vision coverage to supplement coverage available through chapter 89.

(b) The Office shall determine, in the exercise of its reasonable discretion, the financial requirements for qualified companies to participate in the program.

(c) Nothing in this chapter shall be construed to prohibit the availability of vision benefits provided by health benefits plans under chapter 89.

(Added Pub. L. 108-496, § 3, Dec. 23, 2004, 118 Stat. 4007.)

§ 8983. Contracting authority

(a)(1) The Office shall contract with a reasonable number of qualified companies for a policy or policies of benefits described under section 8984 without regard to section 6101(b) to (d) of title 41 or any other statute requiring competitive bidding. An employee organization may contract with a qualified company for the purpose of participating with that qualified company in any contract between the Office and that qualified company.

(2) The Office shall ensure that each resulting contract is awarded on the basis of contractor qualifications, price, and reasonable competition.

(b) Each contract under this section shall contain—

(1) the requirements under section 8902(d), (f), and (i) made applicable to contracts under this section by regulations prescribed by the Office;

(2) the terms of the enrollment period; and

(3) such other terms and conditions as may be mutually agreed to by the Office and the qualified company involved, consistent with the requirements of this chapter and regulations prescribed by the Office.

(c) Nothing in this chapter shall, in the case of an individual electing vision supplemental benefit coverage under this chapter after the expiration of such individual’s first opportunity to enroll, preclude the application of waiting periods more stringent than those that would have applied if that opportunity had not yet expired.

(d)(1) Each contract under this chapter shall require the qualified company to agree—

(A) to provide payments or benefits to an eligible individual if such individual is entitled thereto under the terms of the contract; and

(B) with respect to disputes regarding claims for payments or benefits under the terms of the contract—

(i) to establish internal procedures designed to expeditiously resolve such disputes; and

(ii) to establish, for disputes not resolved through procedures under clause (i), procedures for 1 or more alternative means of dispute resolution involving independent third-party review under appropriate circumstances by entities mutually acceptable to the Office and the qualified company.

(2) A determination by a qualified company as to whether or not a particular individual is eligible to obtain coverage under this chapter shall be subject to review only to the extent and in the manner provided in the applicable contract.

(3) For purposes of applying the Contract Disputes Act of 1978¹ to disputes arising under this chapter between a qualified company and the Office—

(A) the agency board having jurisdiction to decide an appeal relative to such a dispute shall be such board of contract appeals as the Director of the Office of Personnel Management shall specify in writing (after appropriate arrangements, as described in section 8(c)¹ of such Act); and

(B) the district courts of the United States shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any action described in section 10(a)(1)¹ of such Act relative to such a dispute.

(e) Nothing in this section shall be considered to grant authority for the Office or third-party reviewer to change the terms of any contract under this chapter.

(f) Contracts under this chapter shall be for a uniform term of 7 years and may not be renewed automatically.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4007; amended Pub. L. 111–350, § 5(a)(17), Jan. 4, 2011, 124 Stat. 3842.)

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in subsec. (d)(3), is Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2383, which was classified principally to chapter 9 (§ 601 et seq.) of former Title 41, Public Contracts, and was substantially repealed and restated as chapter 71 (§ 7101 et seq.) of Title 41, Public Contracts, by Pub. L. 111–350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. Sections 8(c) and 10(a)(1) of the Act, which were classified to sections 607(c) and 609(a)(1), respectively, of former Title 41, were repealed and restated as section 7105(d), (e)(1)(C) and section 7104(b)(1), respectively, of Title 41. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 111–350 substituted “section 6101(b) to (d) of title 41” for “section 5 of title 41”.

§ 8984. Benefits

(a) The Office may prescribe reasonable minimum standards for enhanced vision benefits plans offered under this chapter and for qualified companies offering the plans.

(b) Each contract may include more than 1 level of benefits that shall be made available to all eligible individuals.

(c) The benefits to be provided under enhanced vision benefits plans under this chapter may be of the following types:

(1) Diagnostic (to include refractive services).

(2) Preventive.

(3) Eyewear.

(d) A contract approved under this chapter shall require the qualified company to cover the geographic service delivery area specified by the Office. The Office shall require qualified companies to include visually underserved areas in their service delivery areas.

(e) If an individual has vision coverage under a health benefits plan under chapter 89 and also has coverage under a plan under this chapter, the health benefits plan under chapter 89 shall be the first payor of any benefit payments.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4008.)

§ 8985. Information to individuals eligible to enroll

(a) The qualified companies at the direction and with the approval of the Office, shall make available to each individual eligible to enroll in a vision benefits plan information on services and benefits (including maximums, limitations, and exclusions), that the Office considers necessary to enable the individual to make an informed decision about electing coverage.

(b) The Office shall make available to each individual eligible to enroll in a vision benefits plan, information on services and benefits provided by qualified companies participating under chapter 89.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4008.)

§ 8986. Election of coverage

(a) An eligible individual may enroll in a vision benefits plan for self-only, self plus one, or for self and family. If an eligible individual has a spouse who is also eligible to enroll, either spouse, but not both, may enroll for self plus one or self and family. An individual may not be enrolled both as an employee, annuitant, or other individual eligible to enroll and as a member of the family.

(b) The Office shall prescribe regulations under which—

(1) an eligible individual may enroll in a vision benefits plan; and

(2) an enrolled individual may change the self-only, self plus one, or self and family coverage of that individual.

(c)(1) Regulations under subsection (b) shall permit an eligible individual to cancel or transfer the enrollment of that individual to another vision benefits plan—

(A) before the start of any contract term in which there is a change in rates charged or benefits provided, in which a new plan is offered, or in which an existing plan is terminated; or

(B) during other times and under other circumstances specified by the Office.

¹ See References in Text note below.

(2) A transfer under paragraph (1) shall be subject to waiting periods provided under a new plan.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4008.)

§ 8987. Coverage of restored survivor or disability annuitants

A surviving spouse, disability annuitant, or surviving child whose annuity is terminated and is later restored, may continue enrollment in a vision benefits plan subject to the terms and conditions prescribed in regulations issued by the Office.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4009.)

§ 8988. Premiums

(a) Each eligible individual obtaining supplemental vision coverage under this chapter shall be responsible for 100 percent of the premiums for such coverage.

(b) The Office shall prescribe regulations specifying the terms and conditions under which individuals are required to pay the premiums for enrollment.

(c) The amount necessary to pay the premiums for enrollment may—

(1) in the case of an employee, be withheld from the pay of such an employee; or

(2) in the case of an annuitant, be withheld from the annuity of such an annuitant.

(d) All amounts withheld under this section shall be paid directly to the qualified company.

(e) Each participating qualified company shall maintain accounting records that contain such information and reports as the Office may require.

(f)(1) The Employee Health Benefits Fund is available, without fiscal year limitation, for reasonable expenses incurred by the Office in administering this chapter before the first day of the first contract period, including reasonable implementation costs.

(2)(A) There is established in the Employees Health Benefits Fund a Vision Benefits Administrative Account, which shall be available to the Office, without fiscal year limitation, to defray reasonable expenses incurred by the Office in administering this chapter after the start of the first contract year.

(B) A contract under this chapter shall include appropriate provisions under which the qualified company involved shall, during each year, make such periodic contributions to the Vision Benefits Administrative Account as necessary to ensure that the reasonable anticipated expenses of the Office in administering this chapter during such year are defrayed.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4009.)

§ 8989. Preemption

The terms of any contract that relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder,

which relates to vision benefits, insurance, plans, or contracts.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4010.)

§ 8990. Studies, reports, and audits

(a) Each contract shall contain provisions requiring the qualified company to—

(1) furnish such reasonable reports as the Office determines to be necessary to enable it to carry out its functions under this chapter; and

(2) permit the Office and representatives of the Government Accountability Office to examine such records of the qualified company as may be necessary to carry out the purposes of this chapter.

(b) Each Federal agency shall keep such records, make such certifications, and furnish the Office, the qualified company, or both, with such information and reports as the Office may require.

(c) The Office shall conduct periodic reviews of plans under this chapter, including a comparison of the vision benefits available under chapter 89, to ensure the competitiveness of plans under this chapter. The Office shall cooperate with the Government Accountability Office to provide periodic evaluations of the program.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4010.)

§ 8991. Jurisdiction of courts

The district courts of the United States have original jurisdiction, concurrent with the United States Court of Federal Claims, of a civil action or claim against the United States under this chapter after such administrative remedies as required under section 8983(d) have been exhausted, but only to the extent judicial review is not precluded by any dispute resolution or other remedy under this chapter.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4010.)

§ 8992. Administrative functions

(a) The Office shall prescribe regulations to carry out this chapter. The regulations may exclude an employee on the basis of the nature and type of employment or conditions pertaining to it.

(b) The Office shall, as appropriate, provide for coordinated enrollment, promotion, and education efforts as appropriate in consultation with each qualified company. The information under this subsection shall include information relating to the vision benefits available under chapter 89, including the advantages and disadvantages of obtaining additional coverage under this chapter.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4010.)

CHAPTER 90—LONG-TERM CARE INSURANCE

Sec.	
9001.	Definitions.
9002.	Availability of insurance.
9003.	Contracting authority.
9004.	Financing.

Sec.	
9005.	Preemption.
9006.	Studies, reports, and audits.
9007.	Jurisdiction of courts.
9008.	Administrative functions.
9009.	Cost accounting standards.

§ 9001. Definitions

For purposes of this chapter:

(1) EMPLOYEE.—The term “employee” means—

(A) an employee as defined by section 8901(1);

(B) an individual described in section 2105(e);

(C) an individual employed by the Tennessee Valley Authority;

(D) an employee of a nonappropriated fund instrumentality of the Department of Defense described in section 2105(c); and

(E) an employee of the District of Columbia courts.

(2) ANNUITANT.—The term “annuitant” means—

(A) any individual who would satisfy the requirements of paragraph (3) of section 8901 if, for purposes of such paragraph, the term “employee” were considered to have the meaning given to it under paragraph (1);

(B) any individual who—

(i) satisfies all requirements for title to an annuity under subchapter III of chapter 83, chapter 84, or any other retirement system for employees of the Government (whether based on the service of such individual or otherwise), and files application therefor;

(ii) is at least 18 years of age; and

(iii) would not (but for this subparagraph) otherwise satisfy the requirements of this paragraph; and

(C) any former employee who, on the basis of his or her service, would meet all requirements for being considered an “annuitant” within the meaning of subchapter III of chapter 83, chapter 84, or any other retirement system for employees of the Government, but for the fact that such former employee has not attained the minimum age for title to annuity.

(3) MEMBER OF THE UNIFORMED SERVICES.—The term “member of the uniformed services” means a member of the uniformed services, other than a retired member of the uniformed services, who is—

(A) on active duty or full-time National Guard duty for a period of more than 30 days; or

(B) a member of the Selected Reserve.

(4) RETIRED MEMBER OF THE UNIFORMED SERVICES.—The term “retired member of the uniformed services” means a member or former member of the uniformed services entitled to retired or retainer pay, and a member who has been transferred to the Retired Reserve and who would be entitled to retired pay under chapter 1223 of title 10 but for not having attained the age of 60 and who satisfies such eligibility requirements as the Office of Personnel Management prescribes under section 9008.

(5) QUALIFIED RELATIVE.—The term “qualified relative” means each of the following:

(A) The spouse of an individual described in paragraph (1), (2), (3), or (4).

(B) A parent, stepparent, or parent-in-law of an individual described in paragraph (1) or (3).

(C) A child (including an adopted child, a stepchild, or, to the extent the Office of Personnel Management by regulation provides, a foster child) of an individual described in paragraph (1), (2), (3), or (4), if such child is at least 18 years of age.

(D) An individual having such other relationship to an individual described in paragraph (1), (2), (3), or (4) as the Office may by regulation prescribe.

(6) ELIGIBLE INDIVIDUAL.—The term “eligible individual” refers to an individual described in paragraph (1), (2), (3), (4), or (5).

(7) QUALIFIED CARRIER.—The term “qualified carrier” means an insurance company (or consortium of insurance companies) that is licensed to issue long-term care insurance in all States, taking any subsidiaries of such a company into account (and, in the case of a consortium, considering the member companies and any subsidiaries thereof, collectively).

(8) STATE.—The term “State” includes the District of Columbia.

(9) QUALIFIED LONG-TERM CARE INSURANCE CONTRACT.—The term “qualified long-term care insurance contract” has the meaning given such term by section 7702B of the Internal Revenue Code of 1986.

(10) APPROPRIATE SECRETARY.—The term “appropriate Secretary” means—

(A) except as otherwise provided in this paragraph, the Secretary of Defense;

(B) with respect to the Coast Guard when it is not operating as a service of the Navy, the Secretary of Homeland Security;

(C) with respect to the commissioned corps of the National Oceanic and Atmospheric Administration, the Secretary of Commerce; and

(D) with respect to the commissioned corps of the Public Health Service, the Secretary of Health and Human Services.

(Added Pub. L. 106-265, title I, §1002(a), Sept. 19, 2000, 114 Stat. 762; amended Pub. L. 107-104, §1, Dec. 27, 2001, 115 Stat. 1001; Pub. L. 107-107, div. A, title X, §1048(i)(6), Dec. 28, 2001, 115 Stat. 1229; Pub. L. 107-314, div. A, title XI, §1101(a), Dec. 2, 2002, 116 Stat. 2660; Pub. L. 108-7, div. C, title III, §138(a), Feb. 20, 2003, 117 Stat. 129; Pub. L. 108-136, div. A, title V, §561, Nov. 24, 2003, 117 Stat. 1482; Pub. L. 109-241, title IX, §902(a)(3), July 11, 2006, 120 Stat. 566; Pub. L. 109-356, title I, §117(a)(3), Oct. 16, 2006, 120 Stat. 2027.)

REFERENCES IN TEXT

Section 7702B of the Internal Revenue Code of 1986, referred to in par. (9), is classified to section 7702B of Title 26, Internal Revenue Code.

AMENDMENTS

2006—Par. (1)(E). Pub. L. 109-356 added subpar. (E).

Par. (10)(B). Pub. L. 109-241 substituted “Secretary of Homeland Security” for “Secretary of Transportation”.

2003—Par. (1). Pub. L. 108-136, §561(a), substituted a period for a comma at end of subpar. (D) and struck out concluding provisions which read: “but does not include an individual employed by the government of the District of Columbia (other than an employee of the District of Columbia Courts).”

Pub. L. 108-7 inserted “(other than an employee of the District of Columbia Courts)” before period at end of concluding provisions.

Par. (2)(A). Pub. L. 108-136, §561(d), struck out “of this subsection” after “paragraph (1)”.

Par. (2)(C). Pub. L. 108-136, §561(b), added subpar. (C).

Par. (4). Pub. L. 108-136, §561(c), substituted “and a member who has been transferred to the Retired Reserve and who would be entitled to retired pay under chapter 1223 of title 10 but for not having” for “including a member or former member retired under chapter 1223 of title 10 who has”.

2002—Par. (1)(D). Pub. L. 107-314 added subpar. (D).

2001—Par. (2). Pub. L. 107-104 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “The term ‘annuitant’ has the meaning such term would have under paragraph (3) of section 8901 if, for purposes of such paragraph, the term ‘employee’ were considered to have the meaning given to it under paragraph (1) of this subsection.”

Par. (3)(A). Pub. L. 107-107 substituted “or” for “and” after semicolon.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-104, §3, Dec. 27, 2001, 115 Stat. 1002, provided that: “The amendments made by this Act [amending this section and section 9005 of this title] shall take effect as if included in the enactment of section 1002 of the Long-Term Care Security Act (Public Law 106-265; 114 Stat. 762).”

EFFECTIVE DATE

Pub. L. 106-265, title I, §1003, Sept. 19, 2000, 114 Stat. 770, provided that: “The Office of Personnel Management shall take such measures as may be necessary to ensure that long-term care insurance coverage under title 5, United States Code, as amended by this title [enacting this chapter], may be obtained in time to take effect not later than the first day of the first applicable pay period of the first fiscal year which begins after the end of the 18-month period beginning on the date of the enactment of this Act [Sept. 19, 2000].”

SHORT TITLE

Pub. L. 106-265, title I, §1001, Sept. 19, 2000, 114 Stat. 762, provided that: “This title [enacting this chapter] may be cited as the ‘Long-Term Care Security Act.’”

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 9002. Availability of insurance

(a) IN GENERAL.—The Office of Personnel Management shall establish and, in consultation with the appropriate Secretaries, administer a program through which an individual described in paragraph (1), (2), (3), (4), or (5) of section 9001 may obtain long-term care insurance coverage under this chapter for such individual.

(b) DISCRETIONARY AUTHORITY REGARDING NON-APPROPRIATED FUND INSTRUMENTALITIES.—The Secretary of Defense may determine that a non-appropriated fund instrumentality of the De-

partment of Defense is covered under this chapter or is covered under an alternative long-term care insurance program.

(c) GENERAL REQUIREMENTS.—Long-term care insurance may not be offered under this chapter unless—

(1) the only coverage provided is under qualified long-term care insurance contracts; and

(2) each insurance contract under which any such coverage is provided is issued by a qualified carrier.

(d) DOCUMENTATION REQUIREMENT.—As a condition for obtaining long-term care insurance coverage under this chapter based on one’s status as a qualified relative, an applicant shall provide documentation to demonstrate the relationship, as prescribed by the Office.

(e) UNDERWRITING STANDARDS.—

(1) DISQUALIFYING CONDITION.—Nothing in this chapter shall be considered to require that long-term care insurance coverage be made available in the case of any individual who would be eligible for benefits immediately.

(2) SPOUSAL PARITY.—For the purpose of underwriting standards, a spouse of an individual described in paragraph (1), (2), (3), or (4) of section 9001 shall, as nearly as practicable, be treated like that individual.

(3) GUARANTEED ISSUE.—Nothing in this chapter shall be considered to require that long-term care insurance coverage be guaranteed to an eligible individual.

(4) REQUIREMENT THAT CONTRACT BE FULLY INSURED.—In addition to the requirements otherwise applicable under section 9001(9), in order to be considered a qualified long-term care insurance contract for purposes of this chapter, a contract must be fully insured, whether through reinsurance with other companies or otherwise.

(5) HIGHER STANDARDS ALLOWABLE.—Nothing in this chapter shall, in the case of an individual applying for long-term care insurance coverage under this chapter after the expiration of such individual’s first opportunity to enroll, preclude the application of underwriting standards more stringent than those that would have applied if that opportunity had not yet expired.

(f) GUARANTEED RENEWABILITY.—The benefits and coverage made available to eligible individuals under any insurance contract under this chapter shall be guaranteed renewable (as defined by section 7A(2) of the model regulations described in section 7702B(g)(2) of the Internal Revenue Code of 1986), including the right to have insurance remain in effect so long as premiums continue to be timely made. However, the authority to revise premiums under this chapter shall be available only on a class basis and only to the extent otherwise allowable under section 9003(b).

(Added Pub. L. 106-265, title I, §1002(a), Sept. 19, 2000, 114 Stat. 764; amended Pub. L. 107-314, div. A, title XI, §1101(b), Dec. 2, 2002, 116 Stat. 2660.)

REFERENCES IN TEXT

Section 7702B(g)(2) of the Internal Revenue Code of 1986, referred to in subsec. (f), is classified to section 7702B(g)(2) of Title 26, Internal Revenue Code.

AMENDMENTS

2002—Subsecs. (b) to (f). Pub. L. 107-314 added subsec. (b) and redesignated former subsecs. (b) to (e) as (c) to (f), respectively.

§ 9003. Contracting authority

(a) **IN GENERAL.**—The Office of Personnel Management shall, without regard to section 6101(b) to (d) of title 41 or any other statute requiring competitive bidding, contract with one or more qualified carriers for a policy or policies of long-term care insurance. The Office shall ensure that each resulting contract (hereafter in this chapter referred to as a “master contract”) is awarded on the basis of contractor qualifications, price, and reasonable competition.

(b) **TERMS AND CONDITIONS.**—

(1) **IN GENERAL.**—Each master contract under this chapter shall contain—

(A) a detailed statement of the benefits offered (including any maximums, limitations, exclusions, and other definitions of benefits);

(B) the premiums charged (including any limitations or other conditions on their subsequent adjustment);

(C) the terms of the enrollment period; and
(D) such other terms and conditions as may be mutually agreed to by the Office and the carrier involved, consistent with the requirements of this chapter.

(2) **PREMIUMS.**—Premiums charged under each master contract entered into under this section shall reasonably and equitably reflect the cost of the benefits provided, as determined by the Office. The premiums shall not be adjusted during the term of the contract unless mutually agreed to by the Office and the carrier.

(3) **NONRENEWABILITY.**—Master contracts under this chapter may not be made automatically renewable.

(c) **PAYMENT OF REQUIRED BENEFITS; DISPUTE RESOLUTION.**—

(1) **IN GENERAL.**—Each master contract under this chapter shall require the carrier to agree—

(A) to provide payments or benefits to an eligible individual if such individual is entitled thereto under the terms of the contract; and

(B) with respect to disputes regarding claims for payments or benefits under the terms of the contract—

(i) to establish internal procedures designed to expeditiously resolve such disputes; and

(ii) to establish, for disputes not resolved through procedures under clause (i), procedures for one or more alternative means of dispute resolution involving independent third-party review under appropriate circumstances by entities mutually acceptable to the Office and the carrier.

(2) **ELIGIBILITY.**—A carrier’s determination as to whether or not a particular individual is eligible to obtain long-term care insurance coverage under this chapter shall be subject to review only to the extent and in the manner provided in the applicable master contract.

(3) **OTHER CLAIMS.**—For purposes of applying chapter 71 of title 41 to disputes arising under this chapter between a carrier and the Office—

(A) the agency board having jurisdiction to decide an appeal relative to such a dispute shall be such board of contract appeals as the Director of the Office of Personnel Management shall specify in writing; and

(B) the district courts of the United States shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any action described in section 7104(b)(1) of title 41 relative to such a dispute.

(4) **RULE OF CONSTRUCTION.**—Nothing in this chapter shall be considered to grant authority for the Office or a third-party reviewer to change the terms of any contract under this chapter.

(d) **DURATION.**—

(1) **IN GENERAL.**—Each master contract under this chapter shall be for a term of 7 years, unless terminated earlier by the Office in accordance with the terms of such contract. However, the rights and responsibilities of the enrolled individual, the insurer, and the Office (or duly designated third-party administrator) under such contract shall continue with respect to such individual until the termination of coverage of the enrolled individual or the effective date of a successor contract thereto.

(2) **EXCEPTION.**—

(A) **SHORTER DURATION.**—In the case of a master contract entered into before the end of the period described in subparagraph (B), paragraph (1) shall be applied by substituting “ending on the last day of the 7-year period described in paragraph (2)(B)” for “of 7 years”.

(B) **DEFINITION.**—The period described in this subparagraph is the 7-year period beginning on the earliest date as of which any long-term care insurance coverage under this chapter becomes effective.

(3) **CONGRESSIONAL NOTIFICATION.**—No later than 180 days after receiving the second report required under section 9006(c), the President (or his designee) shall submit to the Committees on Government Reform and on Armed Services of the House of Representatives and the Committees on Governmental Affairs and on Armed Services of the Senate, a written recommendation as to whether the program under this chapter should be continued without modification, terminated, or restructured. During the 180-day period following the date on which the President (or his designee) submits the recommendation required under the preceding sentence, the Office of Personnel Management may not take any steps to rebid or otherwise contract for any coverage to be available at any time following the expiration of the 7-year period described in paragraph (2)(B).

(4) **FULL PORTABILITY.**—Each master contract under this chapter shall include such provisions as may be necessary to ensure that, once an individual becomes duly enrolled, long-term care insurance coverage obtained by such individual pursuant to that enrollment

shall not be terminated due to any change in status (such as separation from Government service or the uniformed services) or ceasing to meet the requirements for being considered a qualified relative (whether as a result of dissolution of marriage or otherwise).

(Added Pub. L. 106-265, title I, §1002(a), Sept. 19, 2000, 114 Stat. 764; amended Pub. L. 111-350, §5(a)(18), Jan. 4, 2011, 124 Stat. 3842.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 111-350, §5(a)(18)(A), substituted “section 6101(b) to (d) of title 41” for “section 5 of title 41”.

Subsec. (c)(3). Pub. L. 111-350, §5(a)(18)(B), substituted “chapter 71 of title 41” for “the Contract Disputes Act of 1978” in introductory provisions.

Subsec. (c)(3)(A). Pub. L. 111-350, §5(a)(18)(C), struck out “(after appropriate arrangements, as described in section 8(c) of such Act)” after “specify in writing”.

Subsec. (c)(3)(B). Pub. L. 111-350, §5(a)(18)(D), substituted “section 7104(b)(1) of title 41” for “section 10(a)(1) of such Act”.

CHANGE OF NAME

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

§ 9004. Financing

(a) **IN GENERAL.**—Each eligible individual obtaining long-term care insurance coverage under this chapter shall be responsible for 100 percent of the premiums for such coverage.

(b) **WITHHOLDINGS.**—

(1) **IN GENERAL.**—The amount necessary to pay the premiums for enrollment may—

(A) in the case of an employee, be withheld from the pay of such employee;

(B) in the case of an annuitant, be withheld from the annuity of such annuitant;

(C) in the case of a member of the uniformed services described in section 9001(3), be withheld from the pay of such member; and

(D) in the case of a retired member of the uniformed services described in section 9001(4), be withheld from the retired pay or retainer pay payable to such member.

(2) **VOLUNTARY WITHHOLDINGS FOR QUALIFIED RELATIVES.**—Withholdings to pay the premiums for enrollment of a qualified relative may, upon election of the appropriate eligible individual (described in section 9001(1)–(4)), be withheld under paragraph (1) to the same extent and in the same manner as if enrollment were for such individual.

(c) **DIRECT PAYMENTS.**—All amounts withheld under this section shall be paid directly to the carrier.

(d) **OTHER FORMS OF PAYMENT.**—Any enrollee who does not elect to have premiums withheld under subsection (b) or whose pay, annuity, or retired or retainer pay (as referred to in subsection (b)(1)) is insufficient to cover the with-

holding required for enrollment (or who is not receiving any regular amounts from the Government, as referred to in subsection (b)(1), from which any such withholdings may be made, and whose premiums are not otherwise being provided for under subsection (b)(2)) shall pay an amount equal to the full amount of those charges directly to the carrier.

(e) **SEPARATE ACCOUNTING REQUIREMENT.**—Each carrier participating under this chapter shall maintain records that permit it to account for all amounts received under this chapter (including investment earnings on those amounts) separate and apart from all other funds.

(f) **REIMBURSEMENTS.**—

(1) **REASONABLE INITIAL COSTS.**—

(A) **IN GENERAL.**—The Employees’ Life Insurance Fund is available, without fiscal year limitation, for reasonable expenses incurred by the Office of Personnel Management in administering this chapter before the start of the 7-year period described in section 9003(d)(2)(B), including reasonable implementation costs.

(B) **REIMBURSEMENT REQUIREMENT.**—Such Fund shall be reimbursed, before the end of the first year of that 7-year period, for all amounts obligated or expended under subparagraph (A) (including lost investment income). Such reimbursement shall be made by carriers, on a pro rata basis, in accordance with appropriate provisions which shall be included in master contracts under this chapter.

(2) **SUBSEQUENT COSTS.**—

(A) **IN GENERAL.**—There is hereby established in the Employees’ Life Insurance Fund a Long-Term Care Administrative Account, which shall be available to the Office, without fiscal year limitation, to defray reasonable expenses incurred by the Office in administering this chapter after the start of the 7-year period described in section 9003(d)(2)(B).

(B) **REIMBURSEMENT REQUIREMENT.**—Each master contract under this chapter shall include appropriate provisions under which the carrier involved shall, during each year, make such periodic contributions to the Long-Term Care Administrative Account as necessary to ensure that the reasonable anticipated expenses of the Office in administering this chapter during such year (adjusted to reconcile for any earlier overestimates or underestimates under this subparagraph) are defrayed.

(Added Pub. L. 106-265, title I, §1002(a), Sept. 19, 2000, 114 Stat. 766.)

§ 9005. Preemption

(a) **CONTRACTUAL PROVISIONS.**—The terms of any contract under this chapter which relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to long-term care insurance or contracts.

(b) **PREMIUMS.**—

(1) **IN GENERAL.**—No tax, fee, or other monetary payment may be imposed or collected, di-

rectly or indirectly, by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority thereof, on, or with respect to, any premium paid for an insurance policy under this chapter.

(2) **RULE OF CONSTRUCTION.**—Paragraph (1) shall not be construed to exempt any company or other entity issuing a policy of insurance under this chapter from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by such entity from business conducted under this chapter, if that tax, fee, or payment is applicable to a broad range of business activity.

(Added Pub. L. 106-265, title I, §1002(a), Sept. 19, 2000, 114 Stat. 768; amended Pub. L. 107-104, §2, Dec. 27, 2001, 115 Stat. 1001.)

AMENDMENTS

2001—Pub. L. 107-104 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-104 effective as if included in the enactment of section 1002 of Pub. L. 106-265, see section 3 of Pub. L. 107-104, set out as a note under section 9001 of this title.

§ 9006. Studies, reports, and audits

(a) **PROVISIONS RELATING TO CARRIERS.**—Each master contract under this chapter shall contain provisions requiring the carrier—

(1) to furnish such reasonable reports as the Office of Personnel Management determines to be necessary to enable it to carry out its functions under this chapter; and

(2) to permit the Office and representatives of the Government Accountability Office to examine such records of the carrier as may be necessary to carry out the purposes of this chapter.

(b) **PROVISIONS RELATING TO FEDERAL AGENCIES.**—Each Federal agency shall keep such records, make such certifications, and furnish the Office, the carrier, or both, with such information and reports as the Office may require.

(c) **REPORTS BY THE GOVERNMENT ACCOUNTABILITY OFFICE.**—The Government Accountability Office shall prepare and submit to the President, the Office of Personnel Management, and each House of Congress, before the end of the third and fifth years during which the program under this chapter is in effect, a written report evaluating such program. Each such report shall include an analysis of the competitiveness of the program, as compared to both group and individual coverage generally available to individuals in the private insurance market. The Office shall cooperate with the Government Accountability Office to provide periodic evaluations of the program.

(Added Pub. L. 106-265, title I, §1002(a), Sept. 19, 2000, 114 Stat. 768; amended Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

Subsec. (c). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in heading and two places in text.

§ 9007. Jurisdiction of courts

The district courts of the United States have original jurisdiction of a civil action or claim described in paragraph (1) or (2) of section 9003(c), after such administrative remedies as required under such paragraph (1) or (2) (as applicable) have been exhausted, but only to the extent judicial review is not precluded by any dispute resolution or other remedy under this chapter.

(Added Pub. L. 106-265, title I, §1002(a), Sept. 19, 2000, 114 Stat. 768.)

§ 9008. Administrative functions

(a) **IN GENERAL.**—The Office of Personnel Management shall prescribe regulations necessary to carry out this chapter.

(b) **ENROLLMENT PERIODS.**—The Office shall provide for periodic coordinated enrollment, promotion, and education efforts in consultation with the carriers.

(c) **CONSULTATION.**—Any regulations necessary to effect the application and operation of this chapter with respect to an eligible individual described in paragraph (3) or (4) of section 9001, or a qualified relative thereof, shall be prescribed by the Office in consultation with the appropriate Secretary.

(d) **INFORMED DECISIONMAKING.**—The Office shall ensure that each eligible individual applying for long-term care insurance under this chapter is furnished the information necessary to enable that individual to evaluate the advantages and disadvantages of obtaining long-term care insurance under this chapter, including the following:

(1) The principal long-term care benefits and coverage available under this chapter, and how those benefits and coverage compare to the range of long-term care benefits and coverage otherwise generally available.

(2) Representative examples of the cost of long-term care, and the sufficiency of the benefits available under this chapter relative to those costs. The information under this paragraph shall also include—

(A) the projected effect of inflation on the value of those benefits; and

(B) a comparison of the inflation-adjusted value of those benefits to the projected future costs of long-term care.

(3) Any rights individuals under this chapter may have to cancel coverage, and to receive a total or partial refund of premiums. The information under this paragraph shall also include—

(A) the projected number or percentage of individuals likely to fail to maintain their coverage (determined based on lapse rates experienced under similar group long-term care insurance programs and, when available, this chapter); and

(B)(i) a summary description of how and when premiums for long-term care insurance under this chapter may be raised;

(ii) the premium history during the last 10 years for each qualified carrier offering long-term care insurance under this chapter; and

(iii) if cost increases are anticipated, the projected premiums for a typical insured individual at various ages.

(4) The advantages and disadvantages of long-term care insurance generally, relative to other means of accumulating or otherwise acquiring the assets that may be needed to meet the costs of long-term care, such as through tax-qualified retirement programs or other investment vehicles.

(Added Pub. L. 106-265, title I, § 1002(a), Sept. 19, 2000, 114 Stat. 768.)

§ 9009. Cost accounting standards

The cost accounting standards issued pursuant to section 1502(a) and (b) of title 41 shall not apply with respect to a long-term care insurance contract under this chapter.

(Added Pub. L. 106-265, title I, § 1002(a), Sept. 19, 2000, 114 Stat. 769; amended Pub. L. 111-350, § 5(a)(19), Jan. 4, 2011, 124 Stat. 3842.)

AMENDMENTS

2011—Pub. L. 111-350 substituted “section 1502(a) and (b) of title 41” for “section 26(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f))”.

Subpart H—Access to Criminal History Record Information

CHAPTER 91—ACCESS TO CRIMINAL HISTORY RECORDS FOR NATIONAL SECURITY AND OTHER PURPOSES

Sec.

9101. Access to criminal history records for national security and other purposes.

AMENDMENTS

2000—Pub. L. 106-398, § 1 [[div. A], title X, § 1076(f)(1)(A), (2)(B)], Oct. 30, 2000, 114 Stat. 1654, 1654A-282, substituted “AND OTHER PURPOSES” for “PURPOSES” in chapter heading and “Access to criminal history records for national security and other purposes” for “Criminal history record information for national security purposes” in item 9101.

§ 9101. Access to criminal history records for national security and other purposes

(a) As used in this section:

(1) The term “criminal justice agency” means (A) any Federal, State, or local court, and (B) any Federal, State, or local agency, or any subunit thereof, which performs the administration of criminal justice pursuant to a statute or Executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

(2) The term “criminal history record information” means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. The term does not include those records of a

State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.

(3) The term “classified information” means information or material designated pursuant to the provisions of a statute or Executive order as requiring protection against unauthorized disclosure for reasons of national security.

(4) The term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.

(5) The term “local” and “locality” means any local government authority or agency or component thereof within a State having jurisdiction over matters at a county, municipal, or other local government level.

(6) The term “covered agency” means any of the following:

- (A) The Department of Defense.
- (B) The Department of State.
- (C) The Department of Transportation.
- (D) The Office of Personnel Management.
- (E) The Central Intelligence Agency.
- (F) The Federal Bureau of Investigation.

(b)(1) Upon request by the head of a covered agency, criminal justice agencies shall make available criminal history record information regarding individuals under investigation by that covered agency for the purpose of determining eligibility for any of the following:

- (A) Access to classified information.
- (B) Assignment to or retention in sensitive national security duties.
- (C) Acceptance or retention in the armed forces.
- (D) Appointment, retention, or assignment to a position of public trust or a critical or sensitive position while either employed by the Government or performing a Government contract.

(2) Such a request to a State central criminal history record repository shall be accompanied by the fingerprints of the individual who is the subject of the request if required by State law and if the repository uses the fingerprints in an automated fingerprint identification system.

(3) Fees, if any, charged for providing criminal history record information pursuant to this subsection shall not exceed the reasonable cost of providing such information.

(4) This subsection shall apply notwithstanding any other provision of law or regulation of any State or of any locality within a State, or any other law of the United States.

(c) A covered agency shall not obtain criminal history record information pursuant to this section unless it has received written consent from the individual under investigation for the release of such information for the purposes set forth in paragraph (b)(1).

(d) Criminal history record information received under this section shall be disclosed or used only for the purposes set forth in paragraph (b)(1) or for national security or criminal justice purposes authorized by law, and such informa-