

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.

Pub. L. 103-226, § 9(j), Mar. 30, 1994, 108 Stat. 122, 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

Pub. L. 102-484, div. D, title XLIV, § 4437(d), Oct. 23, 1992, 106 Stat. 2725, 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

Pub. L. 102-183, title III, § 308(b), Dec. 4, 1991, 105 Stat. 1266, 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

Pub. L. 101-335, § 3(c), July 17, 1990, 104 Stat. 321, 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.”

Pub. L. 101-335, § 6(c), July 17, 1990, 104 Stat. 324, 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

Pub. L. 100-238, title I, § 111(b), Jan. 8, 1988, 101 Stat. 1750, 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

Pub. L. 99-335, title II, § 206(b), June 6, 1986, 100 Stat. 594, 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

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 8473. Employee Thrift Advisory Council.
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AMENDMENTS

2012—Pub. L. 112-141, div. F, title I, § 100121(b)(2), July 6, 2012, 126 Stat. 914, added item 8412a.

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;

¹ So in original. The period probably should be a semicolon.

(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;

(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);

(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;

(37) the term “revised annuity employee” means any individual who—

(A) on December 31, 2012—

(i) is not an employee or Member covered under this chapter;

(ii) is not performing civilian service which is creditable service under section 8411; and

(iii) has less than 5 years of creditable civilian service under section 8411; and

(B) after December 31, 2012, and before January 1, 2014, becomes employed as an employee or becomes a Member covered under this chapter performing service which is creditable service under section 8411; and

(38) the term “further revised annuity employee” means any individual who—

(A) on December 31, 2013—

(i) is not an employee or Member covered under this chapter;

(ii) is not performing civilian service which is creditable service under section 8411; and

(iii) has less than 5 years of creditable civilian service under section 8411; and

(B) after December 31, 2013, becomes employed as an employee or becomes a Member covered under this chapter performing service which is creditable service under section 8411.

(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; Pub. L. 112-96, title V, §5001(a), Feb. 22, 2012, 126 Stat. 199; Pub. L. 113-67, div. A, title IV, §401(a), Dec. 26, 2013, 127 Stat. 1183.)

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

2013—Par. (37)(B). Pub. L. 113-67, § 401(a)(2), inserted “and before January 1, 2014,” after “after December 31, 2012.”

Par. (38). Pub. L. 113-67, § 401(a)(1), added par. (38).

2012—Par. (37). Pub. L. 112-96 added par. (37).

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 ‘military reserve technician’ 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)(I). 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.

Pub. L. 100-238, title I, § 113(b)(2), Jan. 8, 1988, 101 Stat. 1751, 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

Pub. L. 99-335, title VII, § 702(a), (b), June 6, 1986, 100 Stat. 631, 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

Pub. L. 104-208, div. A, title I, § 101(f) [title VI, § 659 [title I, § 101]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 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.’”

Pub. L. 104-208, div. A, title I, § 101(f) [title VI, § 659 [title I, § 201]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-374, 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

Pub. L. 101-335, § 1, July 17, 1990, 104 Stat. 319, provided that: “This Act [enacting section 8432a of this

title, amending this section 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

Pub. L. 99-556, §1, Oct. 27, 1986, 100 Stat. 3131, 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

Pub. L. 99-335, title I, §100(a), June 6, 1986, 100 Stat. 514, 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

Pub. L. 99-335, title I, §100A, June 6, 1986, 100 Stat. 516, 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

Pub. L. 99-335, title III, §307, June 6, 1986, 100 Stat. 607, 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

Pub. L. 99-335, title VII, §702(c), June 6, 1986, 100 Stat. 631, 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 temporary 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 section 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, For-

eign 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 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);

(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

(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

¹ See References in Text note below.

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

² So in original. Two subses. (i) have been enacted.

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, the President, the Vice President, or an elected official of a State or local government.

(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, the President, the Vice President, or an elected official of a State or local government.

(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).

(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; Pub. L. 112-105, §15(a)(2), Apr. 4, 2012, 126 Stat. 301.)

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

³ So in original. No subsec. (j) has been enacted.

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

2012—Subsec. (l)(2)(A), (B). Pub. L. 112-105 inserted “, the President, the Vice President, or an elected official of a State or local government” after “Member”.

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 application 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 remit-

tance 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 cal-

endar 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.

§ 8412a. Phased retirement

(a) For the purposes of this section—

(1) the term “composite retirement annuity” means the annuity computed when a phased retiree attains full retirement status;

(2) the term “full retirement status” means that a phased retiree has ceased employment and is entitled, upon application, to a composite retirement annuity;

(3) the term “phased employment” means the less-than-full-time employment of a phased retiree;

(4) the term “phased retiree” means a retirement-eligible employee who—

(A) makes an election under subsection (b); and

(B) has not entered full retirement status;

(5) the term “phased retirement annuity” means the annuity payable under this section before full retirement;

(6) the term “phased retirement percentage” means the percentage which, when added to the working percentage for a phased retiree, produces a sum of 100 percent;

(7) the term “phased retirement period” means the period beginning on the date on which an individual becomes entitled to receive a phased retirement annuity and ending on the date on which the individual dies or separates from phased employment;

(8) the term “phased retirement status” means that a phased retiree is concurrently employed in phased employment and eligible to receive a phased retirement annuity;

(9) the term “retirement-eligible employee”—

(A) means an individual who, if the individual separated from the service, would meet the requirements for retirement under subsection (a) or (b) of section 8412; and

(B) does not include—

(i) an individual who, if the individual separated from the service, would meet the requirements for retirement under subsection (d) or (e) of section 8412; but

(ii) does not include an employee described in section 8425 after the date on which the employee is required to be separated from the service by reason of such section; and

(10) the term “working percentage” means the percentage of full-time employment equal to the quotient obtained by dividing—

(A) the number of hours per pay period to be worked by a phased retiree, as scheduled in accordance with subsection (b)(2); by

(B) the number of hours per pay period to be worked by an employee serving in a comparable position on a full-time basis.

(b)(1) With the concurrence of the head of the employing agency, and under regulations promulgated by the Director, a retirement-eligible employee who has been employed on a full-time basis for not less than the 3-year period ending on the date on which the retirement-eligible employee makes an election under this subsection may elect to enter phased retirement status.

(2)(A) Subject to subparagraph (B), at the time of entering phased retirement status, a phased retiree shall be appointed to a position for which the working percentage is 50 percent.

(B) The Director may, by regulation, provide for working percentages different from the percentage specified under subparagraph (A), which shall be not less than 20 percent and not more than 80 percent.

(C) The working percentage for a phased retiree may not be changed during the phased retiree’s phased retirement period.

(D)(i) Not less than 20 percent of the hours to be worked by a phased retiree shall consist of mentoring.

(ii) The Director may, by regulation, provide for exceptions to the requirement under clause (i).

(iii) Clause (i) shall not apply to a phased retiree serving in the United States Postal Service. Nothing in this clause shall prevent the application of clause (i) or (ii) with respect to a phased retiree serving in the Postal Regulatory Commission.

(3) A phased retiree—

(A) may not be employed in more than one position at any time; and

(B) may transfer to another position in the same or a different agency, only if the transfer does not result in a change in the working percentage.

(4) A retirement-eligible employee may make not more than one election under this subsection during the retirement-eligible employee's lifetime.

(5) A retirement-eligible employee who makes an election under this subsection may not make an election under section 8420a.

(c)(1) Except as otherwise provided under this subsection, the phased retirement annuity for a phased retiree is the product obtained by multiplying—

(A) the amount of an annuity computed under section 8415 that would have been payable to the phased retiree if, on the date on which the phased retiree enters phased retirement status, the phased retiree had separated from service and retired under section 8412 (a) or (b); by

(B) the phased retirement percentage for the phased retiree.

(2) A phased retirement annuity shall be paid in addition to the basic pay for the position to which a phased retiree is appointed during the phased employment.

(3) A phased retirement annuity shall be adjusted in accordance with section 8462.

(4)(A) A phased retirement annuity shall not be subject to reduction for any form of survivor annuity, shall not serve as the basis of the computation of any survivor annuity, and shall not be subject to any court order requiring a survivor annuity to be provided to any individual.

(B) A phased retirement annuity shall be subject to a court order providing for division, allotment, assignment, execution, levy, attachment, garnishment, or other legal process on the same basis as other annuities.

(5)(A) Any deposit, or election of an actuarial annuity reduction in lieu of a deposit, for military service or for creditable civilian service for which retirement deductions were not made or refunded, shall be made by a retirement-eligible employee at or before the time the retirement-eligible employee enters phased retirement status. No such deposit may be made, or actuarial adjustment in lieu thereof elected, at the time a phased retiree enters full retirement status.

(B) Notwithstanding subparagraph (A), if a phased retiree does not make such a deposit and dies in service as a phased retiree, a survivor of the phased retiree shall have the same right to make such deposit as would have been available had the employee not entered phased retirement status and died in service.

(6) A phased retirement annuity shall commence on the date on which a phased retiree enters phased employment.

(7) No unused sick leave credit may be used in the computation of the phased retirement annuity.

(d) All basic pay not in excess of the full-time rate of pay for the position to which a phased retiree is appointed shall be deemed to be basic pay for purposes of sections 8422 and 8423.

(e) Under such procedures as the Director may prescribe, a phased retiree may elect to enter full retirement status at any time. Upon making such an election, a phased retiree shall be entitled to a composite retirement annuity.

(f)(1) Except as provided otherwise under this subsection, a composite retirement annuity is a single annuity computed under regulations prescribed by the Director, equal to the sum of—

(A) the amount of the phased retirement annuity as of the date of full retirement, including any adjustments made under section 8462; and

(B) the product obtained by multiplying—

(i) the amount of an annuity computed under section 8412 that would have been payable at the time of full retirement if the individual had not elected a phased retirement and as if the individual was employed on a full-time basis in the position occupied during the phased retirement period and before any adjustment to provide for a survivor annuity; by

(ii) the working percentage.

(2) After computing a composite retirement annuity under paragraph (1), the Director shall adjust the amount of the annuity for any applicable reductions for a survivor annuity.

(3) A composite retirement annuity shall be adjusted in accordance with section 8462, except that subsection (c)(1) of that section shall not apply.

(4) In computing a composite retirement annuity under paragraph (1)(B)(i), the unused sick leave to the credit of a phased retiree at the time of entry into full retirement status shall be adjusted by dividing the number of hours of unused sick leave by the working percentage.

(g)(1) Under such procedures and conditions as the Director may provide, and with the concurrence of the head of employing agency, a phased retiree may elect to terminate phased retirement status and return to a full-time work schedule.

(2) Upon entering a full-time work schedule based on an election under paragraph (1), the phased retirement annuity of a phased retiree shall terminate.

(3) After termination of the phased retirement annuity under this subsection, the individual's rights under this chapter shall be determined based on the law in effect at the time of any subsequent separation from service. For purposes of this chapter, at the time of the subsequent separation from service, the phased retirement period shall be treated as if it had been a period of part-time employment with the work schedule described in subsection (b)(2).

(h) For purposes of subchapter IV—

(1) the death of a phased retiree shall be deemed to be the death in service of an employee;

(2) except for purposes of section 8442(b)(1)(A)(i), the phased retirement period shall be deemed to have been a period of part-time employment with the work schedule described in subsection (b)(2) of this section; and

(3) for purposes of section 8442(b)(1)(A)(i), the phased retiree shall be deemed to have been at the full-time rate of pay for the position occupied.

(i) Employment of a phased retiree shall not be deemed to be part-time career employment, as defined in section 3401(2).

(j) A phased retiree is not eligible to receive an annuity supplement under section 8421.

(k) For purposes of subchapter III, a phased retiree shall be deemed to be an employee.

(l) For purposes of section 8445(d), retirement shall be deemed to occur on the date on which a phased retiree enters into full retirement status.

(m) A phased retiree is not eligible to apply for an annuity under subchapter V.

(n) A phased retiree is not subject to section 8468.

(o) For purposes of chapter 87, a phased retiree shall be deemed to be receiving basic pay at the rate of a full-time employee in the position to which the phased retiree is appointed.

(Added Pub. L. 112-141, div. F, title I, § 100121(b)(1), July 6, 2012, 126 Stat. 910.)

EFFECTIVE DATE

Section effective on Nov. 6, 2014, see section 100121(d) of Pub. L. 112-141, set out as an Effective Date of 2012 Amendment 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 layering, 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 imme-

¹ So in original. Probably should be “separated”.

diate 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 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:

² So in original. Probably should be a semicolon.

- (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 1¹/₁₀ 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 1¹/₁₀ percent of the individual's average pay by the years of such service.

(d) Notwithstanding any other provision of law, the annuity of an individual described in subsection (b) or (c) who is a revised annuity employee or a further revised annuity employee shall be computed in the same manner as in the case of an individual described in subsection (a).

(e) 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) 1¹/₁₀ 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.

(f) 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 at least 5 years of service in any combination as—

(1) an air traffic controller as defined by section 2109(1)(A)(i);

(2) a first level supervisor of an air traffic controller as defined by section 2109(1)(A)(i); or

(3) a second level supervisor of 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 7/10 percent of the individual's average pay by the years of such service.

(g)(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.

(h)(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.

(i)(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

(j) 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.

(k)(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 percentage 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.

(l) 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

¹ So in original. Probably should be followed by a period.

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.

(m)(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.

(n) 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, §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; Pub. L. 112-96, title V, §5001(c)(1), Feb. 22, 2012, 126 Stat. 199; Pub. L. 113-67, div. A, title IV, §401(d), Dec. 26, 2013, 127 Stat. 1185; Pub. L. 114-190, title II, §2304(a), July 15, 2016, 130 Stat. 640.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (k), 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. (m)(2)(B)(i), is the date of enactment of Pub. L. 111-84, which was approved Oct. 28, 2009.

AMENDMENTS

2016—Subsec. (f). Pub. L. 114-190 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “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 1¼ percent of the individual’s average pay by the years of such service.”

2013—Subsec. (d). Pub. L. 113-67 inserted “or a further revised annuity employee” after “a revised annuity employee”.

2012—Subsecs. (d) to (n). Pub. L. 112-96 added subsec. (d) and redesignated former subsecs. (d) to (m) as (e) to (n), respectively.

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 2016 AMENDMENT

Pub. L. 114-190, title II, §2304(b), July 15, 2016, 130 Stat. 640, provided that: “The amendment made by subsection (a) [amending this section] shall be deemed to be effective on December 12, 2003.”

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].”

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.

PROCEDURES REQUIRED

Pub. L. 114-190, title II, §2304(c), July 15, 2016, 130 Stat. 640, provided that: “The Director of the Office of Personnel Management shall establish such procedures as are necessary to provide for—

“(1) notification to each annuitant affected by the amendments made by this section [amending this section];

“(2) recalculation of the benefits of affected annuitants;

“(3) an adjustment to applicable monthly benefit amounts pursuant to such recalculation, to begin as soon as is practicable; and

“(4) a lump-sum payment to each affected annuitant equal to the additional total benefit amount that such annuitant would have received had the amendment made by subsection (a) been in effect on December 12, 2003.”

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 reduction 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 Member. 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 in-

surance 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) Except as provided in subsection (c), 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 entitled 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) This section shall not apply to an individual described in section 8412(e) during any period in which the individual, after separating from the service as described in that section, is employed full-time as an air traffic control instructor under contract with the Federal Aviation

Administration, including an instructor working at an on-site facility (such as an airport).

(d) 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; Pub. L. 114-251, §1, Dec. 8, 2016, 130 Stat. 1002.)

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

2016—Subsec. (a). Pub. L. 114-251, §1(1), substituted “Except as provided in subsection (c), the amount” for “The amount”.

Subsecs. (c), (d). Pub. L. 114-251, §1(2), (3), added subsec. (c) and redesignated former subsec. (c) as (d).

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)(A) The applicable percentage under this paragraph for civilian service by employees or Members other than revised annuity employees or further revised annuity employees shall be as follows:

Employee	7	January 1, 1987, 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.
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.
	7.5	After December 31, 2000.
Member	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) The applicable percentage under this paragraph for civilian service by revised annuity employees shall be as follows:

Employee	9.3	After December 31, 2012.
Congressional employee	9.3	After December 31, 2012.
Member	9.3	After December 31, 2012.
Law enforcement officer, firefighter, member of the Capitol Police, member of the Supreme Court Police, or air traffic controller	9.8	After December 31, 2012.
Nuclear materials courier	9.8	After December 31, 2012.
Customs and border protection officer	9.8	After December 31, 2012.

(C) The applicable percentage under this paragraph for civilian service by further revised annuity employees shall be as follows:

Employee	10.6	After December 31, 2013.
Congressional employee.	10.6	After December 31, 2013.
Member	10.6	After December 31, 2013.
Law enforcement officer, firefighter, member of the Capitol Police, member of the Supreme Court Police, or air traffic controller.	11.1	After December 31, 2013.
Nuclear materials courier.	11.1	After December 31, 2013.
Customs and border protection officer.	11.1	After December 31, 2013.

(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(m).

(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.

(7)(A) In calculating and processing the deposit under paragraph (1) with respect to an employee, Member, or annuitant, if the employing agency of such employee, Member, or annuitant makes an administrative error, such employing agency may pay, on behalf of the employee, Member, or annuitant, any additional interest assessed due to the administrative error.

(B) For purposes of subparagraph (A), the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives, as appropriate, shall be considered the employing agency of a Member or Congressional employee.

(C) The Director of the Office of Personnel Management shall issue such regulations as are necessary to carry out this paragraph.

(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

¹ See References in Text note below.

(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.

(5)(A) In calculating and processing the deposit under paragraph (1) with respect to an employee, Member, or annuitant, if an employing agency of such employee, Member, or annuitant makes an administrative error that causes additional interest assessed to accrue on the deposit, the employee, Member, or annuitant's employing agency may pay, on behalf of the employee, Member, or annuitant, any additional interest assessed due to the administrative error.

(B) In calculating and processing the deposit under paragraph (1) with respect to an employee, Member, or annuitant, if the Office of Personnel Management makes an administrative error that causes additional interest assessed to accrue on the deposit, the Office of Personnel Management may pay, on behalf of the employee, Member, or annuitant, any additional interest assessed due to the administrative error.

(C) For purposes of subparagraph (A), the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives, as appropriate, shall be considered the employing agency of a Member or congressional employee.

(D) The Director of the Office of Personnel Management shall issue such regulations as are necessary to carry out this paragraph.

(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) 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; Pub. L. 112-96, title V, §5001(b), (c)(2)(A), Feb. 22, 2012, 126 Stat. 199; Pub. L. 113-67, div. A, title IV, §401(b), Dec. 26, 2013, 127 Stat. 1184; Pub. L. 115-352, §§2(b), 3(b), Dec. 21, 2018, 132 Stat. 5067, 5068.)

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

2018—Subsec. (e)(7). Pub. L. 115-352, §2(b), added par. (7).

Subsec. (f)(5). Pub. L. 115-352, §3(b), added par. (5).

2013—Subsec. (a)(3)(A). Pub. L. 113-67, §401(b)(1), inserted “or further revised annuity employees” after “revised annuity employees”.

Subsec. (a)(3)(C). Pub. L. 113-67, §401(b)(2), added subpar. (C).

2012—Subsec. (a)(3). Pub. L. 112-96, §5001(b), designated existing provisions as subpar. (A), substituted “The applicable percentage under this paragraph for civilian service by employees or Members other than revised annuity employees” for “The applicable percentage under this paragraph for civilian service”, and added subpar. (B).

Subsec. (d)(2). Pub. L. 112-96, §5001(c)(2)(A), substituted “section 8415(m)” for “section 8415(l)”.

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 separa-

tion 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.

AUTHORIZATION OF PAYMENTS

Payments from the Office of Personnel Management authorized by section 3(b) of Pub. L. 115-352, which

amended this section, to be paid from the Civil Service Retirement and Disability Fund, see section 3(c) of Pub. L. 115-352, set out as a note under section 8334 of this title.

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."

Pub. L. 105-33, title VII, §7001(b)(2), Aug. 5, 1997, 111 Stat. 658, 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, nuclear 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)(A) In determining any normal-cost percentage to be applied under this subsection, amounts provided for under section 8422 shall be taken into account.

(B)(i) Subject to clauses (ii) and (iii), for purposes of any period in any year beginning after December 31, 2013, the normal-cost percentage under this subsection shall be determined and applied as if section 401(b) of the Bipartisan Budget Act of 2013 had not been enacted.

(ii) Any contributions under this subsection in excess of the amounts which (but for clause (i)) would otherwise have been payable shall be applied toward reducing the unfunded liability of the Civil Service Retirement System.

(iii) After the unfunded liability of the Civil Service Retirement System has been eliminated, as determined by the Office, Government contributions under this subsection shall be determined and made disregarding this subparagraph.

(iv) The preceding provisions of this subparagraph shall be disregarded for purposes of deter-

mining the contributions payable by the United States Postal Service and the Postal Regulatory Commission.

(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; Pub. L. 113-67, div. A, title IV, §401(c), Dec. 26, 2013, 127 Stat. 1184.)

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.

Section 401(b) of the Bipartisan Budget Act of 2013, referred to in subsec. (a)(2)(B)(i), is section 401(b) of div. A of Pub. L. 113-67, which amended section 8422 of this title.

AMENDMENTS

2013—Subsec. (a)(2). Pub. L. 113-67 designated existing provisions as subpar. (A) and added subpar. (B).

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 be-

comes 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 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.

¹ So in original. Probably should be followed by a comma.

(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

Pub. L. 101-428, §3(b)(1)(B), Oct. 15, 1990, 104 Stat. 929, 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:

In the case of a pay period beginning in fiscal year:	The maximum percentage allowable is:
2001	11
2002	12
2003	13
2004	14
2005	15
2006 or thereafter	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) (ii)¹ Except in the case of a full TSP member (as defined in section 8440e(a)), 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(b)(1) shall be applied in a manner consistent with the purposes of this paragraph.

(F) Notwithstanding any other provision of this paragraph, if a full TSP member (as defined in section 8440e(a)) has declined automatic enrollment into the Thrift Savings Plan for a year, the full TSP member shall be automatically re-enrolled on January 1 of the succeeding year, with contributions under subsection (a) at the default percentage of basic pay.

(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.

¹ So in original.

² See References in Text note below.

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 appropriation 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;

(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; or

(C) 2 years of service in the case of a member of the uniformed services.

(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)² 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; Pub. L. 114-92, div. A, title VI, §632(b), (c), Nov. 25, 2015, 129 Stat. 847; Pub. L. 114-328, div. A, title VI, §632, Dec. 23, 2016, 130 Stat. 2162.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a)(3), (d), and (j), is classified generally to Title 26, Internal Revenue Code.

Subsection (b)(4), referred to in subsec. (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 subsec. (c)(3)(B)(iii), is set out as a note under section 8331 of this title.

The Intelligence Authorization Act for Fiscal Year 2003, referred to in subsec. (k)(1), is Pub. L. 107-306, Nov. 27, 2002, 116 Stat. 2383. Section 402 of the Act was formerly set out as a note under section 403-4 of Title 50, War and National Defense, and was editorially reclassified as a note under section 3505 of Title 50.

AMENDMENTS

2016—Subsec. (g)(6). Pub. L. 114-328, §632, repealed Pub. L. 114-92, §632(c)(2). See 2015 Amendment note below.

2015—Subsec. (b)(2)(D)(ii). Pub. L. 114-92, §632(b)(1), substituted “(ii) Except in the case of a full TSP member (as defined in section 8440e(a)), members” for “Members”.

Subsec. (b)(2)(E). Pub. L. 114-92, §632(b)(2), substituted “8440e(b)(1)” for “8440e(a)(1)”.

Subsec. (b)(2)(F). Pub. L. 114-92, §632(b)(3), added subpar. (F).

Subsec. (g)(2)(C). Pub. L. 114-92, §632(c)(1), added subpar. (C).

Subsec. (g)(6). Pub. L. 114-92, §632(c)(2), which directed the amendment of subsec. (g) by adding at the end “(6) For purposes of this subsection, a member of the uniformed services shall be considered to have separated from Government employment if the member is discharged or released from service in the uniformed services.”, was repealed by Pub. L. 114-328, §632.

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 2016 AMENDMENT

Pub. L. 114-328, div. A, title VI, §632, Dec. 23, 2016, 130 Stat. 2162, provided that, effective Dec. 23, 2016, paragraph (2) of section 632(c) of Pub. L. 114-92 (amending this section) is repealed, and the amendment proposed to be made by that paragraph shall not be made or go into effect.

EFFECTIVE DATE OF 2015 AMENDMENT; IMPLEMENTATION

Pub. L. 114-92, div. A, title VI, §635, Nov. 25, 2015, 129 Stat. 851, provided that:

“(a) EFFECTIVE DATE.—The amendments made by this part [part I (§§ 631-635) of subtitle D of title VI of Pub. L. 114-92, enacting section 1415 of Title 10, Armed Forces, and section 356 of Title 37, Pay and Allowances of the Uniformed Services, and amending this section and sections 8432b, 8438, and 8440e of this title, sections 1401, 1401a, 1409, 1410, 1413a, 1414, 1463, and 12739 of Title 10, section 3045 of Title 33, Navigation and Navigable Waters, sections 211 and 354 of Title 37, section 5304 of Title 38, Veterans’ Benefits, and section 212 of Title 42, The Public Health and Welfare] shall take effect on January 1, 2018.

“(b) IMPLEMENTATION.—

“(1) IN GENERAL.—The Secretaries concerned, the Director of the Office of Personnel Management, and the Federal Retirement Thrift Investment Board shall each and jointly take appropriate actions to ensure the full and effective implementation of the amendments made by this part in order to ensure that members of the uniformed services will be able to participate in the modernized retirement plan provided by this part commencing on the date specified in subsection (a).

“(2) IMPLEMENTATION PLAN.—Not later than March 1, 2016, the Secretaries concerned shall submit to the appropriate committees of Congress a report containing a plan to ensure the full and effective commencement and operational implementation of the amendments made by this part in accordance with paragraph (1).

“(c) ADDITIONAL TECHNICAL AND CONFORMING AMENDMENTS.—The report required by subsection (b) shall contain a draft of such legislation as may be necessary to make any additional technical and conforming changes to titles 10 and 37, United States Code, and other provisions of law that are required or should be made by reason of the amendments made by this part.

“(d) DEFINITIONS.—In this section:

“(1) The term ‘appropriate committees of Congress’ means—

“(A) the Committee on Armed Services, the Committee on Energy and Commerce, the Committee on Natural Resources, the Committee on Oversight and Government Reform, and the Committee on Transportation and Infrastructure of the House of Representatives; and

“(B) the Committee on Armed Services, the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, the Committee on Homeland Security and Governmental Affairs, and the Committee on Health, Education, Labor, and Pensions of the Senate.

“(2) The term ‘Secretary concerned’ has the meaning given that term in section 101 of title 37, United States Code.”

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

Pub. L. 104-93, title III, §304(b), Jan. 6, 1996, 109 Stat. 965, 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

Pub. L. 99-509, title VI, §6001(f), Oct. 21, 1986, 100 Stat. 1931, 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

Pub. L. 99-509, title VI, §6001(d), Oct. 21, 1986, 100 Stat. 1931, 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

Pub. L. 99-509, title VI, §6001(a)(3), Oct. 21, 1986, 100 Stat. 1930, 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

Pub. L. 99-335, title III, §312, June 6, 1986, 100 Stat. 608, 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 incurred 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

Pub. L. 101-335, §2(b), July 17, 1990, 104 Stat. 320, 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) 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; Pub. L. 114-92, div. A, title VI, §632(e)(2), Nov. 25, 2015, 129 Stat. 847; Pub. L. 115-84, §2(e), Nov. 17, 2017, 131 Stat. 1273.)

AMENDMENT OF SUBSECTION (h)(2)(A)

Pub. L. 115-84, §2(e), (g), Nov. 17, 2017, 131 Stat. 1273, provided that, effective on the date on which the regulations prescribed under section 2(f) of Pub. L. 115-84 (set out as a note under section 8433 of this title) take effect, subsection (h)(2)(A) of this section is amended by striking "section 8433(d), or paragraph (1) or (2) of section 8433(h)" and inserting "subsection (d) or (f) of section 8433". See 2017 Amendment note below.

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

2017—Subsec. (h)(2)(A). Pub. L. 115-84 substituted "subsection (d) or (f) of section 8433" for "section 8433(d), or paragraph (1) or (2) of section 8433(h)".

2015—Subsec. (c)(2)(B). Pub. L. 114-92 struck out "(including pursuant to an agreement under section 211(d) of title 37)" before "with respect to the period".

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 2017 AMENDMENT

Pub. L. 115-84, §2(g), Nov. 17, 2017, 131 Stat. 1273, provided that: "The amendments made by this section [amending this section and section 8433 of this title] shall take effect on the date on which the regulations prescribed under subsection (f) [section 2(f) of Pub. L. 115-84, set out as a Regulations note under section 8433 of this title] take effect."

EFFECTIVE DATE OF 2015 AMENDMENT; IMPLEMENTATION

Amendment by Pub. L. 114-92 effective Jan. 1, 2018, with certain implementation requirements, see section 635 of Pub. L. 114-92, 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

Pub. L. 103-353, §4(e), (f), Oct. 13, 1994, 108 Stat. 3172, 3173, provided that:

"(e) EFFECTIVE DATE; APPLICABILITY.—This section [enacting this section and amending sections 8351, 8432, 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

¹ See References in Text note below.

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 applica-

ble, 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)).

(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 subsection (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 (§ 4041 et seq.) and II (§ 4071 et seq.), respectively, of

¹ See References in Text note below.

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; Pub. L. 115-84, §2(a)–(d), Nov. 17, 2017, 131 Stat. 1272, 1273.)

AMENDMENT OF SECTION

Pub. L. 115-84, §2(a)–(d), (g), Nov. 17, 2017, 131 Stat. 1272, 1273, made a number of amendments to this section, effective on the date on which the regulations prescribed under section 2(f) of Pub. L. 115-84 (set out as a Regulations note below) take effect. After such effective date, subsections (c), (d), (f), and (h) of this section will read as follows:

(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 may make one or more withdrawals of any amount in the same manner as a single payment is made 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.

(5) Withdrawals under this subsection shall be subject to such other limitations or conditions as the Executive Director may prescribe by regulation.

(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, except that in the case of an election to receive an annuity, a former employee or Member may not change an election under this section on or after the date on which an annuity contract is purchased to provide for the annuity elected by the former employee or Member.

(2) A former employee or Member may not return a payment that was made pursuant to an election under this section.

(f) 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 subsection as if it had never occurred.

(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)(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.

(3) Withdrawals under paragraph (1) shall be subject to such other limitations or conditions as the Executive Director may prescribe by regulation.

(4) A withdrawal may not be made under this subsection unless the requirements of section 8435(e) of this title are satisfied.

See 2017 Amendment notes below.

REFERENCES IN TEXT

Sections 72(p) and 402(c)(8) of the Internal Revenue Code of 1986, referred to in subsections (c)(3) and (g)(3), are classified to sections 72(p) and 402(c)(8), respectively, of Title 26, Internal Revenue Code.

AMENDMENTS

2017—Subsec. (c)(1). Pub. L. 115-84, §2(a)(1), substituted “may make one or more withdrawals” for “and who has not made a withdrawal under subsection (h)(1)(A) may make one withdrawal” and “in the same manner as a single payment is made” for “as a single payment”.

Subsec. (c)(5). Pub. L. 115-84, §2(a)(2), added par. (5).
Subsec. (d)(1). Pub. L. 115-84, §2(b)(1), inserted “, except that in the case of an election to receive an annuity, a former employee or Member may not change an election under this section on or after the date on which an annuity contract is purchased to provide for the annuity elected by the former employee or Member” after “this subchapter”.

Subsec. (d)(2). Pub. L. 115-84, §2(b)(2), substituted “return a payment that was made pursuant to an” for “change an” and struck out before period at end “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”.

Subsec. (f). Pub. L. 115-84, §2(c), struck out par. (1) designation before “Notwithstanding”, substituted “this subsection” for “this paragraph”, and struck out par. (2) which read as follows: “Unless otherwise elected under this section, and subject to paragraph (1), ben-

efits 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.”

Subsec. (h)(2). Pub. L. 115-84, §2(d)(1), (2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “A withdrawal under paragraph (1)(A) shall be available to each eligible participant one time only.”

Subsec. (h)(3). Pub. L. 115-84, §2(d)(2), (3), redesignated par. (4) as (3) and inserted “limitations or” before “conditions”. Former par. (3) redesignated (2).

Subsec. (h)(4), (5). Pub. L. 115-84, §2(d)(2), redesignated pars. (4) and (5) as (3) and (4), respectively.

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 Savings 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 2017 AMENDMENT

Amendment by Pub. L. 115-84 effective on the date on which the regulations prescribed under subsection (f) (section 2(f) of Pub. L. 115-84, set out as a Regulations note below) take effect, see section 2(g) of Pub. L. 115-84, set out as a note under section 8432b 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, 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

Pub. L. 101-335, §5(d), July 17, 1990, 104 Stat. 322, 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

Pub. L. 115-84, §2(f), Nov. 17, 2017, 131 Stat. 1273, provided that: “As soon as is practicable, as determined by the Executive Director of the Federal Retirement Thrift Investment Board, but not later than 2 years after the date of enactment of this Act [Nov. 17, 2017], the Executive Director shall prescribe such regulations as are necessary to carry out the amendments made by this section [amending this section and section 8432b of this title].”

Pub. L. 101-335, §6(b)(4), July 17, 1990, 104 Stat. 324, 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

Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title II, §203(b)]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-376, 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

Pub. L. 101-335, §4(b), July 17, 1990, 104 Stat. 321, 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 em-

ployee 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), the enforcement of an order for restitution under section 3663A of title 18, forfeiture under section 8432(g)(5) of this title, an obligation of the Executive Director to make a transfer under section 415(d)(3) of the Congressional Accountability Act of 1995 (2 U.S.C. 1415(d)(3)), or an obligation of the Executive Director to make a payment to another person under section 8467 of this title, and shall be subject to a Federal tax levy under section 6331 of the Internal Revenue Code of 1986. 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; Pub. L. 112-267, §1, Jan. 14, 2013, 126 Stat. 2440; Pub. L. 115-397, title I, §111(b), Dec. 21, 2018, 132 Stat. 5311.)

REFERENCES IN TEXT

Section 6331 of the Internal Revenue Code of 1986, referred to in subsec. (e)(3), is classified to section 6331 of Title 26, Internal Revenue Code.

AMENDMENTS

2018—Subsec. (e)(3). Pub. L. 115-397 inserted “an obligation of the Executive Director to make a transfer under section 415(d)(3) of the Congressional Accountability Act of 1995 (2 U.S.C. 1415(d)(3)),” before “or an obligation”.

2013—Subsec. (e)(3). Pub. L. 112-267, in first sentence, substituted “659,” for “659)” and inserted “, and shall be subject to a Federal tax levy under section 6331 of the Internal Revenue Code of 1986” before period.

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 2018 AMENDMENT

Amendment by Pub. L. 115-397 applicable with respect to claims made on or after Dec. 21, 2018, see section 111(c) of Pub. L. 115-397, set out as a note under section 1415 of Title 2, The Congress.

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

Pub. L. 100-238, title I, §117(b), Jan. 8, 1988, 101 Stat. 1751, 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].”

DISPOSITION OF AMOUNTS

Pub. L. 112-267, §2, Jan. 14, 2013, 126 Stat. 2440, provided that: “Any potential revenue gain attributable to the enactment of this Act [amending this section], as determined by the Director of the Congressional Budget Office—

“(1) shall be deposited in the general fund of the Treasury of the United States; and

“(2) shall be used solely for purposes of deficit reduction.”

§ 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—

(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 indi-

rectly, 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 com-

mon 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 excluding 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 available for investment in the Thrift Savings Fund, the Executive Director shall invest such sums in an age-appropriate target date asset allocation investment fund, as determined by the Executive Director. Such investment fund shall consist of any of the funds described in subsection (b).

(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; Pub. L. 113-255, §2(a), Dec. 18, 2014, 128 Stat. 2920; Pub. L. 114-92, div. A, title VI, §632(d), Nov. 25, 2015, 129 Stat. 847.)

AMENDMENTS

2015—Subsec. (c)(2). Pub. L. 114-92 substituted “If an” for “(A) Consistent with the requirements of subparagraph (B), if an” and struck out subpar. (B) which read as follows: “If an election has not been made by an eligible member under section 8440e with respect to any sums available for investment in such member’s Thrift Savings Fund account, the Executive Director shall invest such sums in the Government Securities Investment Fund.”

2014—Subsec. (c)(2). Pub. L. 113-255 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “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.”

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 2015 AMENDMENT; IMPLEMENTATION

Amendment by Pub. L. 114-92 effective Jan. 1, 2018, with certain implementation requirements, see section

635 of Pub. L. 114-92, set out as a note under section 8432 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-255, §2(e), Dec. 18, 2014, 128 Stat. 2920, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 8439 of this title] shall—

“(1) take effect on the date that the Executive Director issues guidance under subsection (d) [guidance published Aug. 28, 2015, effective Sept. 5, 2015, see section 2(d) of Pub. L. 113-255, set out as a Guidance note below]; and

“(2) apply to individuals enrolled in the Thrift Savings Plan on or after such date.”

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

Pub. L. 100-366, §2(b), July 13, 1988, 102 Stat. 826, 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.”

GUIDANCE

Pub. L. 113-255, §2(d), Dec. 18, 2014, 128 Stat. 2920, provided that: “Not later than 9 months after the date of enactment of this Act [Dec. 18, 2014], the Executive Director (as that term is defined under section 8401(13) of title 5, United States Code) shall develop and issue guidance implementing the requirements of this Act [see section 1 of Pub. L. 113-255, set out as a Short Title of 2014 Amendment note under section 101 of this title].”

[Guidance issued in the form of a final rule published Aug. 28, 2015, effective Sept. 5, 2015, see 80 F.R. 52173.]

REMOVAL OF INVESTMENT RESTRICTIONS

Pub. L. 101-335, §3(b)(4), July 17, 1990, 104 Stat. 320, 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)(1) 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 acknowledgment 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.

(2) Prior to enrollment in the Thrift Savings Fund, or as soon as practicable thereafter, an individual who is automatically enrolled pursuant to section 8432(b)(2) shall receive the risk acknowledgment information described under paragraph (1).

(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; Pub. L. 113-255, §2(b), Dec. 18, 2014, 128 Stat. 2920.)

AMENDMENTS

2014—Subsec. (d). Pub. L. 113-255 designated existing provisions as par. (1) and added par. (2).

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 acknowledgment’”, was executed by making the substitution for “the Common Stock Index Investment Fund, the Fixed Income 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 acknowledgment”, 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 exe-

cuted 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 2014 AMENDMENT

Amendment by Pub. L. 113-255 effective on the date that the Executive Director issues guidance under section 2(d) Pub. L. 113-255, set out as a Guidance note under section 8438 of this title [guidance published Aug. 28, 2015, effective Sept. 5, 2015], and applicable to individuals enrolled in the Thrift Savings Plan on or after such date, see section 2(e) of Pub. L. 113-255, set out as a note under section 8438 of this title.

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 nondiscrimination 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 bankruptcy 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 of-

fice 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 contributions 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.

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 “basic pay” means basic pay payable under section 204 of title 37;

(2) the term “full TSP member” means a member described in subsection (e)(1);

(3) the term “member” has the meaning given the term in section 211 of title 37; and

(4) the term “Secretary concerned” has the meaning given the term in section 101 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.

¹ See References in Text note below.

(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) MODERNIZED RETIREMENT SYSTEM.—

(1) TSP CONTRIBUTIONS.—Notwithstanding any other provision of law, the Secretary concerned shall make contributions to the Thrift Savings Fund, in accordance with section 8432 (except to the extent the requirements under such section are modified by this subsection), for the benefit of a member—

(A) who first enters a uniformed service on or after January 1, 2018; or

(B) who—

(i) first entered a uniformed service before January 1, 2018;

(ii) has completed fewer than 12 years of service in the uniformed services as of December 31, 2017; and

(iii) makes the election described in section 1409(b)(4)(B) or 12729(f)(2) of title 10 to receive Thrift Savings Plan contributions under this subsection in exchange for the reduced multipliers described in section 1409(b)(4)(A) or 12739(f)(1) of title 10, as applicable, for purposes of calculating the retired pay of the member.

(2) MAXIMUM AMOUNT.—The amount contributed under this subsection by the Secretary concerned for the benefit of a full TSP member for any pay period shall not be more than 5 percent of the member's basic pay for such pay period. Any such contribution under this subsection, though in accordance with section 8432 as provided in paragraph (1), is instead of, and not in addition to, amounts contributable under section 8432 as provided in section 8432(c).

(3) TIMING AND DURATION OF CONTRIBUTIONS.—

(A) AUTOMATIC CONTRIBUTIONS.—The Secretary concerned shall make a contribution described in section 8432(c)(1) under this subsection for the benefit of a member described in paragraph (1) for any pay period during the period that—

(i) begins—

(I) on or after the day that is 60 days after the date the member first enters a uniformed service, in the case of a member described in paragraph (1)(A); or

(II) on or after the date the member makes the election described in paragraph (1)(B), in the case of a member making such an election; and

(ii) ends on the day such member completes 26 years of service as a member of the uniformed services.

(B) MATCHING CONTRIBUTIONS.—The Secretary concerned shall make a contribution described in section 8432(c)(2) under this subsection for the benefit of a member described in paragraph (1) for any pay period during the period that—

(i) begins—

(I) on or after the day that is 2 years and 1 day after the date the member first enters a uniformed service, in the case of a member described in paragraph (1)(A); or

(II) on or after the date the member makes the election described in paragraph (1)(B), in the case of a member making such an election; and

(ii) ends on the day such member completes 26 years of service as a member of the uniformed services.

(4) PROTECTIONS FOR SPOUSES AND FORMER SPOUSES.—Section 8435 shall apply to a full TSP member in the same manner as such section is applied to an employee or Member under such 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; Pub. L. 114-92, div. A, title VI, § 632(a), Nov. 25, 2015, 129 Stat. 845.)

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

2015—Subsec. (a). Pub. L. 114-92, § 632(a)(1), added pars. (1) to (4) and struck out former pars. (1) and (2) which defined “member” and “basic pay”, respectively.

Subsec. (e). Pub. L. 114-92, § 632(a)(2), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “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.”

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 (re-

ceived under such section 206) allowable under section 8440f.” for “5 percent of such compensation, payable to such member for such pay period.”

EFFECTIVE DATE OF 2015 AMENDMENT; IMPLEMENTATION

Amendment by Pub. L. 114-92 effective Jan. 1, 2018, with certain implementation requirements, see section 635 of Pub. L. 114-92, set out as a note under section 8432 of this title.

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 classi-

fication 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 en-

titled 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 subsection (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 in-

surance 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 (h) 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; Pub. L. 112-96, title V, §5001(c)(2)(B), Feb. 22, 2012, 126 Stat. 200.)

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

2012—Subsec. (d)(1). Pub. L. 112-96 substituted “subsection (h)” for “subsection (g)”.

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 3001 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 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 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 (i) 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 claiming 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 pre-

scribed 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.

¹ So in original. Probably should be "part-time".

(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;

(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 pur-

poses 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 on December 31, 2019.

(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; Pub. L. 112-96, title V, §5001(c)(2)(C), Feb. 22, 2012, 126 Stat. 200; Pub. L. 113-291, div. A, title XI, §1107(b), Dec. 19, 2014, 128 Stat. 3527.)

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.

AMENDMENTS

2014—Subsec. (i)(7). Pub. L. 113-291 substituted “on December 31, 2019” for “5 years after the date of enactment of the National Defense Authorization Act for Fiscal Year 2010”.

2012—Subsec. (b)(1)(A). Pub. L. 112-96 substituted “section 8415(a) through (i)” for “section 8415(a) through (h)”.

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 2014 AMENDMENT

Amendment by Pub. L. 113-291 effective as of Oct. 28, 2014, see section 1107(c) of Pub. L. 113-291, set out as a note under section 8344 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 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

Pub. L. 100-238, title I, §134(d), Jan. 8, 1988, 101 Stat. 1765, 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, estate, 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 under section 8438(c)(2)(B), 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; Pub. L. 113-255, §2(c), Dec. 18, 2014, 128 Stat. 2920.)

REFERENCES IN TEXT

Section 311 of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99-335], referred to in subssecs. (c) and (e)(1), is set out as a note below.

AMENDMENTS

2014—Subsec. (g)(2). Pub. L. 113-255 substituted “under section 8438(c)(2)(B)” for “required by section 8438 of this title to be invested in securities of the Government”.

1986—Subsecs. (i), (j). Pub. L. 99-509 added subssecs. (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

Pub. L. 99-335, title III, §311, June 6, 1986, 100 Stat. 608, 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

Pub. L. 99-335, title VII, §701, June 6, 1986, 100 Stat. 631, 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 promoting 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.)

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 de-

scribed 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 or beneficiary in a default investment fund or option in accordance with section 8438(c)(2); or

(III) for allowing a participant or beneficiary to invest through the mutual fund window or for establishing restrictions applicable to participants' or beneficiaries' 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; Pub. L. 113-255, §3, Dec. 18, 2014, 128 Stat. 2921.)

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

2014—Subsec. (e)(1)(C)(ii)(II). Pub. L. 113-255, §3(1), inserted “or beneficiary” after “participant” and “or option” after “fund”.

Subsec. (e)(1)(C)(ii)(III). Pub. L. 113-255, §3(2), inserted “or beneficiary” after “participant” and “or beneficiaries” after “participants”.

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 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.”

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

Pub. L. 100-366, §3(b), July 13, 1988, 102 Stat. 826, 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."

Pub. L. 100-238, title I, §133(b), Jan. 8, 1988, 101 Stat. 1762, 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."

Pub. L. 100-238, title I, §133(c), Jan. 8, 1988, 101 Stat. 1762, 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

Pub. L. 99-556, title I, §111, Oct. 27, 1986, 100 Stat. 3133, 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

Pub. L. 99-556, title I, §114(a), Oct. 27, 1986, 100 Stat. 3133, 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 individual 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

Pub. L. 99-556, title I, §113, Oct. 27, 1986, 100 Stat. 3133, 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

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AMENDMENTS

1992—Pub. L. 102-378, §2(73), Oct. 2, 1992, 106 Stat. 1355, added item 8509.