

section (a) [amending this section] takes effect on the date of enactment [Nov. 12, 2001] with regard to any individual subject to chapter 83 of title 5, United States Code, who is employed as an air traffic controller on that date.”

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-553 effective on the first day of the first applicable pay period that begins on Dec. 21, 2000, and applicable only to an individual who is employed as a member of the Supreme Court Police after Dec. 21, 2000, see section 1(a)(2) [title III, §308(i), (j)] of Pub. L. 106-553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-261 effective 1 year after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105-261, set out as a note under section 8331 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 2(60) of Pub. L. 102-378 effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102-378, set out as a note under section 6303 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENTS

Section 529 [title IV, §409(c)] of Pub. L. 101-509 provided that: “For the purposes of this section [amending this section and section 8425 of this title], the effective date shall be the date of enactment of this Act [Nov. 5, 1990].”

Section 2(b)(1)(B) of Pub. L. 101-428 provided that: “The amendment made by subparagraph (A) [amending this section] shall take effect 2 years after the date of enactment of this Act [Oct. 15, 1990].”

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96-347, set out as a note under section 2109 of this title.

#### EFFECTIVE DATE OF 1979 AMENDMENT

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

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-256 effective Sept. 30, 1978, see section 5(f) of Pub. L. 95-256, set out as a note under section 633a of Title 29, Labor.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-350 effective Jan. 1, 1978, see section 7 of Pub. L. 93-350, set out as a note under section 3307 of this title.

#### EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92-297, set out as an Effective Date note under section 3381 of this title.

#### EXEMPTION PROCESS TO DELAY MANDATORY RETIREMENT FOR AIR TRAFFIC CONTROLLERS

Pub. L. 108-199, div. F, title I, Jan. 23, 2004, 118 Stat. 282, provided in part: “That not later than March 1, 2004, the Secretary of Transportation, in consultation with the Administrator of the Federal Aviation Administration, shall issue final regulations, pursuant to 5 U.S.C. 8335, establishing an exemption process allowing individual air traffic controllers to delay mandatory retirement until the employee reaches no later than 61 years of age”.

#### NONAPPLICABILITY OF SUBSECTION (a) TO AIR TRAFFIC CONTROLLERS APPOINTED BEFORE JANUARY 1, 1987

Pub. L. 99-556, title V, §504, Oct. 27, 1986, 100 Stat. 3141, provided that:

“(a) IN GENERAL.—Section 8335(a) of title 5, United States Code, shall not apply to any air traffic controller appointed before January 1, 1987.

“(b) DEFINITION.—For purposes of this section, the term ‘air traffic controller’ means any individual who—

“(1) is an air traffic controller within the meaning of section 2109(1) of title 5, United States Code, as in effect on January 1, 1987; but

“(2) is not an air traffic controller within the meaning of section 2109(1) of title 5, United States Code, as in effect on December 31, 1986.”

#### NONAPPLICABILITY OF SUBSECTION (a) TO DEPARTMENT OF DEFENSE AIR TRAFFIC CONTROLLERS APPOINTED BEFORE SEPTEMBER 12, 1980

Section 2 of Pub. L. 96-347 provided that: “Section 8335(a) of title 5, United States Code shall not apply to an individual appointed as an air traffic controller in the Department of Defense before the date of the enactment of this Act [Sept. 12, 1980].”

#### NONAPPLICABILITY OF SUBSECTION (f) TO AIR TRAFFIC CONTROLLERS APPOINTED BEFORE MAY 16, 1972

Section 8 of Pub. L. 92-297 provided that: “Section 8335(f) of title 5, United States Code, as added by this Act, does not apply to a person appointed as an air traffic controller by the Department of Transportation before the date of enactment of this Act [May 16, 1972].”

#### § 8336. Immediate retirement

(a) An employee who is separated from the service after becoming 55 years of age and completing 30 years of service is entitled to an annuity.

(b) An employee who is separated from the service after becoming 60 years of age and completing 20 years of service is entitled to an annuity.

(c)(1) An employee who is separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer, firefighter, nuclear materials courier, or customs and border protection officer, or any combination of such service totaling at least 20 years, is entitled to an annuity.

(2) An employee is entitled to an annuity if the employee—

(A) was a law enforcement officer or firefighter employed by the Panama Canal Company or the Canal Zone Government at any time during the period beginning March 31, 1979, and ending September 30, 1979; and

(B) is separated from the service before January 1, 2000, after becoming 48 years of age and completing 18 years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least 18 years.

(d) An employee who—

(1) is separated from the service involuntarily, except by removal for cause on charges of misconduct or delinquency; or

(2)(A) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in subparagraph (D);

(B) is serving under an appointment that is not time limited;

(C) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

(D) is separated from the service voluntarily during a period in which, as determined by the office<sup>1</sup> of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

(i) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

(ii) a significant percentage of employees servicing<sup>2</sup> in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

(iii) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

(E) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

(i) 1 or more organizational units;

(ii) 1 or more occupational series or levels;

(iii) 1 or more geographical locations;

(iv) specific periods;

(v) skills, knowledge, or other factors related to a position; or

(vi) any appropriate combination of such factors;

after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity. For purposes of paragraph (1) of this subsection, separation for failure to accept a directed reassignment to a position outside the commuting area of the employee concerned or to accompany a position outside of such area pursuant to a transfer of function shall not be considered to be a removal for cause on charges of misconduct or delinquency. Notwithstanding the first sentence of this subsection, an employee described in paragraph (1) of this subsection is not entitled to an annuity under this subsection if the employee has declined a reasonable offer of another position in the employee's agency for which the employee is qualified, which is not lower than 2 grades (or pay levels) below the employee's grade (or pay level), and which is within the employee's commuting area.

(e) An employee who is voluntarily or involuntarily separated from the service, except by removal for cause on charges of misconduct or delinquency, after completing 25 years of service as an air traffic controller or after becoming 50 years of age and completing 20 years of service as an air traffic controller, is entitled to an annuity.

(f) An employee who is separated from the service after becoming 62 years of age and com-

pleting 5 years of service is entitled to an annuity.

(g) A Member who is separated from the service after becoming 62 years of age and completing 5 years of civilian service or after becoming 60 years of age and completing 10 years of Member service is entitled to an annuity. A Member who is separated from the service after becoming 55 years of age (but before becoming 60 years of age) and completing 30 years of service is entitled to a reduced annuity. A Member who is separated from the service, except by resignation or expulsion, after completing 25 years of service or after becoming 50 years of age and (1) completing 20 years of service or (2) serving in 9 Congresses is entitled to an annuity.

(h)(1) A member of the Senior Executive Service who is removed from the Senior Executive Service for less than fully successful executive performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.

(2) A member of the Defense Intelligence Senior Executive Service or the Senior Cryptologic Executive Service who is removed from such service for failure to be recertified as a senior executive or for less than fully successful executive performance after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.

(3) A member of the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service who is removed from such service for failure to be recertified as a senior executive or for less than fully successful executive performance after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.

(i)(1) An employee of the Panama Canal Commission or of an Executive agency conducting operations in the Canal Zone or Republic of Panama who is separated from the service before January 1, 2000, who was employed by the Canal Zone Government or the Panama Canal Company at any time during the period beginning March 31, 1979, and ending September 30, 1979, and who has had continuous Panama Canal service, without a break in service of more than 3 days, from that time until separation, is entitled to an annuity if the employee is separated—

(A) involuntarily, after completing 20 years of service or after becoming 48 years of age and completing 18 years of service, if the separation is a result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements; or

(B) voluntarily, after completing 23 years of service or after becoming 48 years of age and completing 18 years of service.

(2) An employee of the Panama Canal Commission or of an Executive agency conducting operations in the Canal Zone or Republic of Panama who is separated from the service before January 1, 2000, who was employed, at a permanent duty station in the Canal Zone, by any Executive agency other than the Canal Zone Government or the Panama Canal Company at any

<sup>1</sup> So in original. Probably should be capitalized.

<sup>2</sup> So in original. Probably should be "serving".

time during the period beginning March 31, 1979, and ending September 30, 1979, and who has had continuous Panama Canal service, without a break in service of more than 3 days, from that time until separation, is entitled to an annuity if—

(A) the employee is separated involuntarily, after completing 20 years of service or after becoming 48 years of age and completing 18 years of service; and

(B) the separation is the result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements.

(3) An employee of the Panama Canal Commission employed by that body after September 30, 1979, who is separated from the Panama Canal Commission before January 1, 2000, and who at the time of separation has a minimum of 11 years of continuous employment with the Commission (disregarding any break in service of 3 days or less) is entitled to an annuity if the employee is separated—

(A) involuntarily, after completing 20 years of service or after becoming 48 years of age and completing 18 years of service, if the separation is a result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements; or

(B) voluntarily, after completing 23 years of service or after becoming 48 years of age and completing 18 years of service.

(4) For the purpose of this subsection—

(A) “Panama Canal service” means—

(i) service as an employee of the Canal Zone Government, the Panama Canal Company, or the Panama Canal Commission; or

(ii) service at a permanent duty station in the Canal Zone or Republic of Panama as an employee of an Executive agency conducting operations in the Canal Zone or the Republic of Panama; and

(B) “Executive agency” includes the United States District Court for the District of the Canal Zone and the Smithsonian Institution.

(j)(1) Except as provided in paragraph (3), an employee is entitled to an annuity if he—

(A)(i) is separated from the service after completing 25 years of service or after becoming 50 years of age and completing 20 years of service, or

(ii) is involuntarily separated, except by removal for cause on charges of misconduct or delinquency, during the 2-year period before the date on which he would meet the years of service and age requirements under clause (i),

(B) was employed in the Bureau of Indian Affairs, the Indian Health Service, a tribal organization (to the extent provided in paragraph (2)), or any combination thereof, continuously from December 21, 1972, to the date of his separation, and

(C) is not entitled to preference under the Indian preference laws.

(2) Employment in a tribal organization may be considered for purposes of paragraph (1)(B) of this subsection only if—

(A) the employee was employed by the tribal organization after January 4, 1975, and immediately before such employment he was an em-

ployee of the Bureau of Indian Affairs or the Indian Health Service, and

(B) at the time of such employment such employee and the tribal organization were eligible to elect, and elected, to have the employee retain the coverage, rights, and benefits of this chapter under section 105(e)(2) of the Indian Self-Determination Act (25 U.S.C. 450i(a)(2);<sup>3</sup> 88 Stat. 2209).

(3)(A) The provisions of paragraph (1) of this subsection shall not apply with respect to any separation of any employee which occurs after the date 10 years after—

(i) the date the employee first meets the years of service and age requirements of paragraph (1)(A)(i), or

(ii) the date of the enactment of this paragraph, if the employee met those requirements before that date.

(B) For purposes of applying this paragraph with respect to any employee of the Bureau of Indian Affairs in the Department of the Interior or of the Indian Health Service in the Department of Health, Education, and Welfare, the Secretary of the department involved may postpone the date otherwise applicable under subparagraph (A) if—

(i) such employee consents to such postponement, and

(ii) the Secretary finds that such postponement is necessary for the continued effective operation of the agency.

The period of any postponement under this subparagraph shall not exceed 12 months and the total period of all postponements with respect to any employee shall not exceed 5 years.

(4) For the purpose of this subsection—

(A) “Bureau of Indian Affairs” means (i) the Bureau of Indian Affairs and (ii) all other organizational units in the Department of the Interior directly and primarily related to providing services to Indians and in which positions are filled in accordance with the Indian preference laws.

(B) “Indian preference laws” means section 12 of the Act of June 18, 1934 (25 U.S.C. 472; 48 Stat. 986),<sup>3</sup> or any other provision of law granting a preference to Indians in promotions or other Federal personnel actions.

(k) A bankruptcy judge, United States magistrate judge, or Court of Federal Claims judge who is separated from service, except by removal, after becoming 62 years of age and completing 5 years of civilian service, or after becoming 60 years of age and completing 10 years of service as a bankruptcy judge, United States magistrate judge, or Court of Federal Claims judge, is entitled to an annuity.

(l) A judge of the United States Court of Appeals for the Armed Forces who is separated from the service after becoming 62 years of age and completing 5 years of civilian service or after completing the term of service for which he was appointed as a judge of such court is entitled to an annuity. A judge who is separated from the service before becoming 60 years of age is entitled to a reduced annuity.

<sup>3</sup> See References in Text note below.

(m) A member of the Capitol Police who is separated from the service after becoming 50 years of age and completing 20 years of service as a member of the Capitol Police as a law enforcement officer, or as a customs and border protection officer, or any combination of such service totaling at least 20 years, is entitled to an annuity.

(n) A member of the Supreme Court Police who is separated from the service after becoming 50 years of age and completing 20 years of service as a member of the Supreme Court Police as a law enforcement officer, or as a customs and border protection officer, or any combination of such service totaling at least 20 years, is entitled to an annuity.

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

(p)(1) The Secretary of Defense may, during fiscal years 2002 and 2003, carry out a program under which an employee of the Department of Defense may be separated from the service entitled to an immediate annuity under this subchapter if the employee—

(A) has—

- (i) completed 25 years of service; or
- (ii) become 50 years of age and completed 20 years of service; and

(B) is eligible for the annuity under paragraph (2) or (3).

(2)(A) For the purposes of paragraph (1), an employee referred to in that paragraph is eligible for an immediate annuity under this paragraph if the employee—

(i) is separated from the service involuntarily other than for cause; and

(ii) has not declined a reasonable offer of another position in the Department of Defense for which the employee is qualified, which is not lower than 2 grades (or pay levels) below the employee's grade (or pay level), and which is within the employee's commuting area.

(B) For the purposes of paragraph (2)(A)(i), a separation for failure to accept a directed reassignment to a position outside the commuting area of the employee concerned or to accompany a position outside of such area pursuant to a transfer of function may not be considered to be a removal for cause.

(3) For the purposes of paragraph (1), an employee referred to in that paragraph is eligible for an immediate annuity under this paragraph if the employee satisfies all of the following conditions:

(A) The employee is separated from the service voluntarily during a period in which the organization within the Department of Defense in which the employee is serving is undergoing a major organizational adjustment.

(B) The employee has been employed continuously by the Department of Defense for more than 30 days before the date on which the head of the employee's organization requests the determinations required under subparagraph (A).

(C) The employee is serving under an appointment that is not limited by time.

(D) The employee is not in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance.

(E) The employee is within the scope of an offer of voluntary early retirement, as defined on the basis of one or more of the following objective criteria:

(i) One or more organizational units.

(ii) One or more occupational groups, series, or levels.

(iii) One or more geographical locations.

(iv) Any other similar objective and non-personal criteria that the Office of Personnel Management determines appropriate.

(4) Under regulations prescribed by the Office of Personnel Management, the determinations of whether an employee meets—

(A) the requirements of subparagraph (A) of paragraph (3) shall be made by the Office, upon the request of the Secretary of Defense; and

(B) the requirements of subparagraph (E) of such paragraph shall be made by the Secretary of Defense.

(5) A determination of which employees are within the scope of an offer of early retirement shall be made only on the basis of consistent and well-documented application of the relevant criteria.

(6) In this subsection, the term "major organizational adjustment" means any of the following:

(A) A major reorganization.

(B) A major reduction in force.

(C) A major transfer of function.

(D) A workforce restructuring—

(i) to meet mission needs;

(ii) to achieve one or more reductions in strength;

(iii) to correct skill imbalances; or

(iv) to reduce the number of high-grade, managerial, supervisory, or similar positions.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 571; Pub. L. 90-83, §1(75), Sept. 11, 1967, 81 Stat. 214; Pub. L. 92-297, §5, May 16, 1972, 86 Stat. 144; Pub. L. 92-382, Aug. 14, 1972, 86 Stat. 539; Pub. L. 93-39, June 12, 1973, 87 Stat. 73; Pub. L. 93-350, §5, July 12, 1974, 88 Stat. 356; Pub. L. 94-183, §2(40), (41), Dec. 31, 1975, 89 Stat. 1059; Pub. L. 95-454, title III, §306, title IV, §412(a), Oct. 13, 1978, 92 Stat. 1147, 1175; Pub. L. 96-70, title I, §1241(a), Sept. 27, 1979, 93 Stat. 471; Pub. L. 96-135, §1(a), Dec. 5, 1979, 93 Stat. 1056; Pub. L. 97-89, title VIII, §803, Dec. 4, 1981, 95 Stat. 1161; Pub. L. 97-253, title III, §308(a), Sept. 8, 1982, 96 Stat. 798; Pub. L. 98-94, title XII, §1256(b), Sept. 24, 1983, 97 Stat. 701; Pub. L. 98-353, title I, §116(c), July 10, 1984, 98 Stat. 344; Pub. L. 98-531, §2(b), Oct. 19, 1984, 98 Stat. 2704; Pub. L. 98-615, title III, §304(d), Nov. 8, 1984, 98 Stat. 3219; Pub. L. 99-190, §101(d) [title III, §315], Dec. 19, 1985, 99 Stat. 1224, 1266; Pub. L. 100-53, §2(c), June 18, 1987, 101 Stat. 368; Pub. L. 100-325, §2(l), May 30, 1988, 102 Stat. 582; Pub. L. 101-194, title V, §506(b)(7), Nov. 30, 1989, 103 Stat. 1758; Pub. L. 101-428, §2(a), Oct. 15, 1990, 104 Stat. 928; Pub. L. 101-510, div. C, title XXXV, §3506(a), Nov. 5, 1990, 104 Stat. 1846; Pub. L. 101-650, title III, §§306(c)(3), 321, Dec. 1, 1990, 104 Stat. 5110, 5117; Pub. L. 102-572, title IX, §902(b)(2), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103-337, div. A, title IX, §924(d)(1)(A), Oct. 5, 1994, 108 Stat. 2832; Pub. L. 105-261, div. A, title XI, §1109(a), div. C, title XXXI, §3154(e), Oct. 17, 1998, 112 Stat. 2143, 2255;

Pub. L. 106-58, title VI, § 651(b), Sept. 29, 1999, 113 Stat. 480; Pub. L. 106-398, § 1 [[div. A], title XI, § 1152(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-320; Pub. L. 106-553, § 1(a)(2) [title III, § 308(b)(3)], Dec. 21, 2000, 114 Stat. 2762, 2762A-87; Pub. L. 107-107, div. A, title X, § 1048(i)(5), Dec. 28, 2001, 115 Stat. 1229; Pub. L. 107-296, title XIII, §§ 1313(b)(1), 1321(a)(4)(A), Nov. 25, 2002, 116 Stat. 2294, 2297; Pub. L. 110-161, div. E, title V, § 535(a)(4), Dec. 26, 2007, 121 Stat. 2075.)

HISTORICAL AND REVISION NOTES  
1966 ACT

| <i>Derivation</i> | <i>U.S. Code</i>                           | <i>Revised Statutes and Statutes at Large</i>  |
|-------------------|--|--|
| .....             | 5 U.S.C. 2256 (less last sentence in (f)). | July 31, 1956, ch. 804, § 401 "Sec. 6 (less last sentence in (f))", 70 Stat. 749.<br>July 7, 1960, Pub. L. 86-604, § 1(b), 74 Stat. 358.<br>July 12, 1960, Pub. L. 86-622, § 3(b), 74 Stat. 410. |

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

1967 ACT

| <i>Section of title 5</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>                   |
|---------------------------|---------------------------|---|
| 8336(a) .....             | 5 App.: 2256(a).          | July 18, 1966, Pub. L. 89-504, § 504, 80 Stat. 301. |
| 8336(b) .....             | 5 App.: 2256(b).          |   |

In subsections (a) and (b), the words "is entitled to" are substituted for "shall \* \* \* be paid". The words "computed as provided in section 9" are omitted as unnecessary in view of 5 U.S.C. 8339.

REFERENCES IN TEXT

Section 105(e)(2) of the Indian Self-Determination Act (25 U.S.C. 450i(a)(2); 88 Stat. 2209), referred to in subsec. (j)(2)(B), was renumbered section 104(e)(2) of that Act by Pub. L. 100-472, title II, § 203(a), Oct. 5, 1988, 102 Stat. 2290, without corresponding amendment to this section. Section 104(e)(2) of the Indian Self-Determination Act was formerly classified to section 450i(e)(2) of Title 25, Indians, prior to editorial reclassification as section 5323(e)(2) of Title 25.

The date of the enactment of this paragraph, referred to in subsec. (j)(3)(A)(ii), is Dec. 5, 1979, the date of the enactment of Pub. L. 96-135, which was approved Dec. 5, 1979.

Section 12 of the Act of June 18, 1934 (25 U.S.C. 472; 48 Stat. 986), referred to in subsec. (j)(4)(B), is section 12 of act June 18, 1934, ch. 576, 48 Stat. 986, which was classified to section 472 of Title 25, Indians, prior to editorial reclassification as section 5116 of Title 25.

AMENDMENTS

2007—Subsec. (c)(1). Pub. L. 110-161, § 535(a)(4)(A), substituted "nuclear materials courier, or customs and border protection officer" for "or nuclear materials courier".

Subsecs. (m), (n). Pub. L. 110-161, § 535(a)(4)(B), substituted "as a law enforcement officer, or as a customs and border protection officer," for "or as a law enforcement officer,".

2002—Subsec. (d)(2). Pub. L. 107-296, § 1313(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "except in the case of an employee who is separated from the service under a program carried out under subsection (p), while serving in a geographic area designated by the Office of Personnel Management, is separated from the service voluntarily during a period in which the Office determines that—

"(A) the agency in which the employee is serving is undergoing a major reorganization, a major reduction in force, or a major transfer of function; and

"(B) a significant percent of the employees serving in such agency will be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53 of this title or comparable provisions);"

Subsec. (h)(1). Pub. L. 107-296, § 1321(a)(4)(A), struck out "for failure to be recertified as a senior executive under section 3393a or" before "for less than".

2001—Subsec. (d)(2). Pub. L. 107-107, § 1048(i)(5)(A), substituted "subsection (p)" for "subsection (o)" in introductory provisions.

Subsecs. (o), (p). Pub. L. 107-107, § 1048(i)(5)(B), redesignated subsec. (o), relating to Department of Defense employees, as (p).

2000—Subsec. (d)(2). Pub. L. 106-398, § 1 [[div. A], title XI, § 1152(a)(1)], inserted "except in the case of an employee who is separated from the service under a program carried out under subsection (o)," before "while serving" in introductory provisions.

Subsec. (n). Pub. L. 106-553 added subsec. (n). Former subsec. (n), relating to computation of annuity under section 8339 of this title, redesignated (o).

Subsec. (o). Pub. L. 106-553 redesignated subsec. (n), relating to computation of annuity under section 8339 of this title, as (o).

Pub. L. 106-398, § 1 [[div. A], title XI, § 1152(a)(2)], added subsec. (o) relating to Department of Defense employees.

1999—Subsecs. (d)(2), (o). Pub. L. 106-58 repealed Pub. L. 105-261, § 1109(a). See 1998 Amendment notes below.

1998—Subsec. (c)(1). Pub. L. 105-261, § 3154(e), substituted ", firefighter, or nuclear materials courier" for "or firefighter".

Subsec. (d)(2). Pub. L. 105-261, § 1109(a)(1), which directed insertion of "except in the case of an employee described in subsection (o)(1)," after "(2)", was repealed by Pub. L. 106-58.

Subsec. (o). Pub. L. 105-261, § 1109(a)(2), which directed addition of subsec. (o), relating to authority of Department of Defense to offer employees voluntary early retirement, was repealed by Pub. L. 106-58.

1994—Subsec. (l). Pub. L. 103-337 substituted "Court of Appeals for the Armed Forces" for "Court of Military Appeals".

1992—Subsec. (k). Pub. L. 102-572 substituted "Court of Federal Claims" for "Claims Court" in two places.

1990—Subsec. (i)(3), (4). Pub. L. 101-510 added par. (3) and redesignated former par. (3) as (4).

Subsec. (k). Pub. L. 101-650 amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: "A bankruptcy judge or United States magistrate who is separated from service, except by removal, after becoming 62 years of age and completing 5 years of civilian service, or after becoming 60 years of age and completing 10 years of service as a bankruptcy judge or United States magistrate, is entitled to an annuity."

Subsecs. (m), (n). Pub. L. 101-428 added subsec. (m) and redesignated former subsec. (m) as (n).

1989—Subsec. (h)(1). Pub. L. 101-194, § 506(b)(7)(A), substituted "for failure to be recertified as a senior executive under section 3393a or for" for "for".

Subsec. (h)(2), (3). Pub. L. 101-194, § 506(b)(7)(B), (C), substituted "for failure to be recertified as a senior executive or for" for "for".

1988—Subsec. (h)(3). Pub. L. 100-325 added par. (3).

1987—Subsec. (k). Pub. L. 100-53 amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: "A bankruptcy judge who is separated from service, except by removal, after becoming sixty-two years of age and completing ten years of service as a bankruptcy judge is entitled to an annuity."

1985—Subsec. (j)(3)(A). Pub. L. 99-190 substituted "10 years" for "5 years".

1984—Subsec. (d). Pub. L. 98-615 inserted provision that for purposes of par. (1), separation for failure to accept a directed reassignment to a position outside the commuting area of the employee concerned or to accompany a position outside of such area pursuant to a transfer of function shall not be considered to be a removal for cause on charges of misconduct or delinquency.

Subsec. (k). Pub. L. 98-353, § 116(c), added subsec. (k). Former subsec. (k) redesignated (l).

Subsec. (l). Pub. L. 98-531 redesignated the subsec. (l), which was redesignated by Pub. L. 98-94, as (m).

Pub. L. 98-353, § 116(c)(1), redesignated subsec. (k) as (l).

Subsec. (m). Pub. L. 98-531 redesignated the subsec. (l), which was redesignated by Pub. L. 98-94, as (m).

1983—Subsecs. (k), (l). Pub. L. 98-94 added subsec. (k) and redesignated former subsec. (k) as (l).

1982—Subsec. (d). Pub. L. 97-253, § 308(a), inserted provision that the agency which is undergoing a major reorganization, a major reduction in force, or a major transfer of function must have a significant percent of its employees who will be separated or subject to an immediate reduction in the rate of basic pay and inserted provision that notwithstanding the first sentence of this subsection, an employee described in paragraph (1) of this subsection is not entitled to an annuity under this subsection if the employee has declined a reasonable offer of another position in the employee's agency for which the employee is qualified, which is not lower than 2 grades (or pay levels) below the employee's grade (or pay level), and which is within the employee's commuting area.

1981—Subsec. (h). Pub. L. 97-89 designated existing provisions as par. (1) and added par. (2).

1979—Subsec. (c). Pub. L. 96-70 § 1241(a)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (i). Pub. L. 96-70, § 1241(a)(2), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 96-135 added subsec. (j). Former subsec. (j) redesignated (k).

Pub. L. 96-70, § 1241(a)(2), redesignated former subsec. (i) as (j).

Subsec. (k). Pub. L. 96-135 redesignated former subsec. (j) as (k).

1978—Subsec. (d)(2). Pub. L. 95-454, § 306, substituted provisions relating to the employee's agency undergoing a major reorganization, reduction in force, or transfer of function, as determined by the Office of Personnel Management, for provisions relating to the employee's agency undergoing a major reduction in force, as determined by the Commission.

Subsecs. (h), (i). Pub. L. 95-454, § 412(a), added subsec. (h) and redesignated former subsec. (h) as (i).

1975—Subsecs. (d), (g). Pub. L. 94-183 substituted "an" for "a reduced" after "is entitled to".

1974—Subsec. (c). Pub. L. 93-350 substituted provisions granting annuity entitlement to employees separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer or firefighter or any combination of such service totaling at least 20 years for provisions requiring the head of the employing agency to recommend, and the Civil Service Commission to approve, the retirement of an otherwise eligible employee requiring the agency and the Commission to consider the degree of hazard the employee was subjected to in the performance of his duties, and defining "detention" to include the duties of specified employees.

1973—Subsec. (d). Pub. L. 93-39 reenacted existing provisions, designated part of such provisions as item (1) and added item (2).

1972—Subsec. (c). Pub. L. 92-382 inserted reference to employees performing work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment for the purpose of retirement benefits.

Subsecs. (e) to (h). Pub. L. 92-297 added subsec. (e) and redesignated former subsecs. (e) to (g) as (f) to (h), respectively.

#### CHANGE OF NAME

"United States magistrate judge" substituted for "United States magistrate" wherever appearing in subsec. (k) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of

Health and Human Services by section 3508 of Title 20, Education.

#### EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110-161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110-161, set out as a note under section 3307 of this title.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-553 effective on the first day of the first applicable pay period that begins on Dec. 21, 2000, and applicable only to an individual who is employed as a member of the Supreme Court Police after Dec. 21, 2000, see section 1(a)(2) [title III, § 308(i), (j)] of Pub. L. 106-553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-261, div. A, title XI, § 1109(d), Oct. 17, 1998, 112 Stat. 2145, as amended by Pub. L. 106-65, div. A, title XI, § 1101, Oct. 5, 1999, 113 Stat. 775, which provided that the amendments made by section 1109 of Pub. L. 105-261 (amending this section and sections 8339, 8414, and 8464 of this title) were to be effective Oct. 1, 2000, and applicable with respect to an approval for voluntary early retirement made on or after that date, was repealed by Pub. L. 106-58, title VI, § 651(b), Sept. 29, 1999, 113 Stat. 480.

Amendment by section 3154(e) of Pub. L. 105-261 effective at the beginning of the first pay period that begins after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105-261, set out as a note under section 8331 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-650 applicable to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after Dec. 1, 1990, see section 306(f) of Pub. L. 101-650, set out as a note under section 8331 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101-194, set out as a note under section 3151 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-53 effective Oct. 1, 1987, and applicable to bankruptcy judges and United States magistrate judges in office on that date and to individuals subsequently appointed to such positions to whom this chapter otherwise applies, see section 3 of Pub. L. 100-53, as amended, set out as a note under section 8331 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-615 effective Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3393 of this title.

Amendment by Pub. L. 98-531 effective Mar. 31, 1984, see section 3(b) of Pub. L. 98-531, set out as a note under section 8331 of this title.

Amendment by Pub. L. 98-353 effective July 10, 1984, and applicable to bankruptcy judges who retire on or after such date, see section 116(e) of Pub. L. 98-353, set out as a note under section 8331 of this title. See, also, section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Section 308(b) of Pub. L. 97-253 provided that: “The amendment made by subsection (a) [amending this section] shall take effect October 1, 1982.”

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-89 effective Oct. 1, 1981, see section 806 of Pub. L. 97-89, set out as an Effective Date note under section 1621 of Title 10, Armed Forces.

#### EFFECTIVE DATE OF 1979 AMENDMENTS

Section 1(d) of Pub. L. 96-135 provided that: “The amendments made by this section [amending this section and section 8339 of this title] shall take effect on the date of the enactment of this Act [Dec. 5, 1979].”

Section 1241(b)(1) of Pub. L. 96-70 provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Sept. 27, 1979], but no amount of annuity under chapter 83 of title 5, United States Code, accruing by reason of those amendments shall be payable for any period before October 1, 1979.”

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 306 of Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

Amendment by section 412 of Pub. L. 95-454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-350 effective July 12, 1974, see section 7 of Pub. L. 93-350, set out as a note under section 3307 of this title.

#### EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92-297, set out as an Effective Date note under section 3381 of this title.

#### REGULATIONS

Pub. L. 107-296, title XIII, §1313(b)(5), Nov. 25, 2002, 116 Stat. 2296, provided that: “The Office of Personnel Management may prescribe regulations to carry out this subsection [amending this section and section 8414 of this title, enacting provisions set out as notes under this section, and repealing provisions set out as notes under this section and section 8414 of this title].”

#### TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the “transition period”, being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203(a) of Pub. L. 96-70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

#### GOVERNMENT ACCOUNTABILITY OFFICE: VOLUNTARY EARLY RETIREMENT

Pub. L. 107-296, title XIII, §1313(b)(3), Nov. 25, 2002, 116 Stat. 2296, provided that: “The amendments made by this subsection [amending this section and section 8414

of this title and repealing provisions set out as notes under this section and section 8414 of this title] shall not be construed to affect the authority under section 1 of Public Law 106-303 (5 U.S.C. 8336 note; 114 State. 1063).”

Pub. L. 106-303, §1, Oct. 13, 2000, 114 Stat. 1063, as amended by Pub. L. 108-271, §§2(a), (b)(1), 8(b), July 7, 2004, 118 Stat. 811, 814, provided that:

“(a) CIVIL SERVICE RETIREMENT SYSTEM.—Effective October 13, 2000, paragraph (2) of section 8336(d) of title 5, United States Code, shall, with respect to officers and employees of the Government Accountability Office, be applied as if it had been amended to read as follows:

“(2)(A) has been employed continuously by the Government Accountability Office for at least the 31-day period immediately preceding the start of the period referred to in subparagraph (D);

“(B) is serving under an appointment that is not time limited;

“(C) has not received a notice of involuntary separation, for misconduct or unacceptable performance, with respect to which final action remains pending; and

“(D) is separated from the service voluntarily during a period with respect to which the Comptroller General determines that the application of this subsection is necessary and appropriate for the purpose of—

“(i) realigning the Government Accountability Office’s workforce in order to meet budgetary constraints or mission needs;

“(ii) correcting skill imbalances; or

“(iii) reducing high-grade, managerial, or supervisory positions;”.

“(b) FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.—Effective October 13, 2000, subparagraph (B) of section 8414(b)(1) of title 5, United States Code, shall, with respect to officers and employees of the Government Accountability Office, be applied as if it had been amended to read as follows:

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

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

“(iii) has not received a notice of involuntary separation, for misconduct or unacceptable performance, with respect to which final action remains pending; and

“(iv) is separated from the service voluntarily during a period with respect to which the Comptroller General determines that the application of this subsection is necessary and appropriate for the purpose of—

“(I) realigning the Government Accountability Office’s workforce in order to meet budgetary constraints or mission needs;

“(II) correcting skill imbalances; or

“(III) reducing high-grade, managerial, or supervisory positions;”.

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

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

“(1) geographic area, organizational unit, or occupational series or level;

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

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

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

APPLICATION OF SUBSECTION (d)(2)

Pub. L. 105-174, title III, §7001(a), May 1, 1998, 112 Stat. 91, as amended by Pub. L. 106-58, title VI, §651(a), Sept. 29, 1999, 113 Stat. 480, which provided that, effective May 1, 1998, subsec. (d)(2) of this section was to be applied as if it read as specified in Pub. L. 105-174, §7001(a), was repealed by Pub. L. 107-296, title XIII, §1313(b)(4), Nov. 25, 2002, 116 Stat. 2296.

INDIAN PREFERENCE LAWS APPLICABLE TO BUREAU OF INDIAN AFFAIRS AND INDIAN HEALTH SERVICE POSITIONS

Nonapplicability of annuity provisions of subsec. (j) of this section to individuals accepting waiver of Indian preference laws with respect to personnel actions, see section 5117(c)(2) of Title 25, Indians.

INDIVIDUALS ENTITLED TO ANNUITY PAYMENTS FOR PERIOD PRIOR TO OCTOBER 1, 1979

Section 1241(b)(2) of Pub. L. 96-70 provided that: “Effective October 1, 1979, any individual who, but for paragraph (1) of this subsection [set out as an Effective Date of 1979 Amendment note above], would have been entitled to one or more annuity payments pursuant to the amendments made by this section [amending this section] for periods before October 1, 1979, shall be entitled, to such extent or in such amounts as are provided in advance in appropriation Acts, to a lump sum payment equal to the total amount of all such annuity payments.”

**§ 8336a. 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 8336; but

(B) does not include an employee described in section 8335 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 8343a.

(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 8339 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