

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

### Editorial Notes

#### REFERENCES IN TEXT

Section 2 of the Act of September 26, 1961 (75 Stat. 648), referred to in subsec. (b)(1), is set out as a note under section 8322 of this title.

### § 8320. Offense or violation committed in compliance with orders

When it is established by satisfactory evidence that an individual—

(1) was convicted of an offense named by section 8312 of this title; or

(2) violated section 8314 or 8315 of this title; as a result of proper compliance with orders issued, in a confidential relationship, by an agency or other authority of the Government of the United States or the government of the District of Columbia, the right to receive annuity or retired pay may not be denied.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 564.)

#### HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i>  | <i>Revised Statutes and Statutes at Large</i>                 |
|-------------------|-------------------|---|
| .....             | 5 U.S.C. 2285(c). | Sept. 26, 1961, Pub. L. 87-299, §1 “Sec. 6(c)”, 75 Stat. 645. |

The reference to conviction of an offense which constitutes a violation of former section 2283 (which is carried into this title as sections 8314 and 8315) is omitted as being covered by the words “violated section 8314 or 8315 of this title” which are added on authority of the words “conviction or violation” in former section 2285(c).

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

### § 8321. Liability of accountable employees

An accountable employee may not be held responsible for a payment made in violation of this subchapter when the payment made is in due course and without fraud, collusion, or gross negligence.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 564.)

#### HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i>              |
|-------------------|------------------|--|
| .....             | 5 U.S.C. 2286.   | Sept. 26, 1961, Pub. L. 87-299, §1 “Sec. 7”, 75 Stat. 645. |

The words “and section 3282 of Title 18” are omitted as unnecessary.

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

### § 8322. Effect on other statutes

This subchapter does not restrict authority under a statute, other than this subchapter, to deny or withhold benefits authorized by statute.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 564.)

#### HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i>              |
|-------------------|------------------|--|
| .....             | 5 U.S.C. 2288.   | Sept. 26, 1961, Pub. L. 87-299, §1 “Sec. 9”, 75 Stat. 646. |

The words “and section 3282 of Title 18” are omitted as unnecessary.

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

### Statutory Notes and Related Subsidiaries

#### RETROACTIVE RESTORATION OF ANNUITY AND RETIRED PAY; REDEPOSITS OF CONTRIBUTIONS AND OFFSETS

Section 2 of Pub. L. 87-299, Sept. 26, 1961, 75 Stat. 648, provided that:

“(a) Subject to subsection (b) of this section, any person, including his survivor or beneficiary, to whom annuity or retired pay is not payable under the Act of September 1, 1954 [this subchapter], as in effect at any time prior to the date of enactment of this Act [Sept. 26, 1961], by reason of any conviction of an offense, any commission of a violation, any refusal to answer, or any absence under indictment, or under charges, for any offense, shall be restored the right to receive such annuity or retired pay for any and all periods for which he would have had the right to receive such annuity or retired pay if the Act of September 1, 1954 [this subchapter], had not been enacted, unless, under the amendment made by the first section of this Act [amending former chapter 31 of this title, now this subchapter, and section 3282 of Title 18, Crimes and Criminal Procedure], such annuity or retired pay remains nonpayable to such person, including his survivor or beneficiary.

“(b) No annuity accrued or accruing, prior to, on, or after the date of enactment of this Act [Sept. 26, 1961], on account of the restoration, by reason of the amendment made by the first section of this Act [amending former chapter 31 of this title, now this subchapter, and section 3282 of Title 18] and by reason of subsection (a) of this section, of the right to receive such annuity, shall be paid until any sum refunded under section 3 of the Act of September 1, 1954 [former section 2284 of this title, now section 8316 of this title, prior to amendment Sept. 26, 1961], as in effect prior to the date of enactment of such amendment [Sept. 26, 1961], is deposited or is collected by offset against the annuity.”

### SUBCHAPTER III—CIVIL SERVICE RETIREMENT

### § 8331. Definitions

For the purpose of this subchapter—

(1) “employee” means—

(A) an employee as defined by section 2105 of this title;

(B) the Architect of the Capitol, an employee of the Architect of the Capitol, and an employee of the Botanic Garden;

(C) a Congressional employee as defined by section 2107 of this title (other than the Architect of the Capitol, an employee of the Architect of the Capitol, and an employee of the Botanic Garden), after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter;

(D) a temporary Congressional employee appointed at an annual rate of pay, after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter;

(E) a United States Commissioner whose total pay for services performed as Commissioner is not less than \$3,000 in each of the last 3 consecutive calendar years ending after December 31, 1954;

(F) an individual employed by a county committee established under section 590h(b) of title 16;

(G) an individual first employed by the government of the District of Columbia before October 1, 1987;

(H) an individual employed by Gallaudet College;

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

(J) an alien (i) who was previously employed by the Government, (ii) who is employed full time by a foreign government for the purpose of protecting or furthering the interests of the United States during an interruption of diplomatic or consular relations, and (iii) for whose services reimbursement is made to the foreign government by the United States;

(K) an individual appointed to a position on the office staff of a former President, or a former Vice President under section 5 of the Presidential Transition Act of 1963, as amended (78 Stat. 153), who immediately before the date of such appointment was an employee as defined under any other subparagraph of this paragraph; and

(L) an employee described in section 2105(c) who has made an election under section 8347(q)(1) to remain covered under this subchapter;

but does not include—

(i) a justice or judge of the United States as defined by section 451 of title 28;

(ii) an employee subject to another retirement system for Government employees (besides any employee excluded by clause (x), but including any employee who has made an election under section 8347(q)(2) to remain covered by a retirement system established for employees described in section 2105(c));

(iii) an employee or group of employees in or under an Executive agency excluded by the Office of Personnel Management under section 8347(g) of this title;

(iv) an individual or group of individuals employed by the government of the District of Columbia excluded by the Office under section 8347(h) of this title;

(v) an employee of the Administrative Office of the United States Courts, the Federal Judicial Center, or a court named by section 610 of title 28, excluded by the Director of the Administrative Office under section 8347(o) of this title;

(vi) a construction employee or other temporary, part-time, or intermittent employee of the Tennessee Valley Authority;

(vii) an employee under the Office of the Architect of the Capitol excluded by the Architect of the Capitol under section 8347(i) of this title;

(viii) an employee under the Library of Congress excluded by the Librarian of Congress under section 8347(j) of this title;

(ix) a student-employee as defined by section 5351 of this title;

(x) an employee subject to the Federal Employees' Retirement System;

(xi) an employee under the Botanic Garden excluded by the Director or Acting Director of the Botanic Garden under section 8347(l) of this title; or

(xii) a member of the Foreign Service (as described in section 103(6) of the Foreign Service Act of 1980), appointed after December 31, 1987.

Notwithstanding this paragraph, the employment of a teacher in the recess period between two school years in a position other than a teaching position in which he served immediately before the recess period does not qualify the individual as an employee for the purpose of this subchapter. For the purpose of the preceding sentence, “teacher” and “teaching position” have the meanings given them by section 901 of title 20;

(2) “Member” means a Member of Congress as defined by section 2106 of this title, after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter, but does not include any such Member of Congress who is subject to the Federal Employees' Retirement System or who makes an election under section 8401(20) of this title not to be subject to such System;

(3) “basic pay” includes—

(A) the amount a Member received from April 1, 1954, to February 28, 1955, as expense allowance under section 601(b) of the Legislative Reorganization Act of 1946 (60 Stat. 850), as amended; and that amount from January 3, 1953, to March 31, 1954, if deposit is made therefor as provided by section 8334 of this title;

(B) additional pay provided by—

(i) subsection (a) of section 60e-7 of title 2 and the provisions of law referred to by that subsection; and

(ii) sections 60e-8, 60e-9, 60e-10, 60e-11, 60e-12, 60e-13, and 60e-14 of title 2;

(C) premium pay under section 5545(c)(1) of this title;

(D) with respect to a law enforcement officer, premium pay under section 5545(c)(2) of this title;

(E) availability pay—

(i) received by a criminal investigator under section 5545a of this title; or

(ii) received after September 11, 2001, by a Federal air marshal or criminal investigator (as defined in section 5545a(a)(2)) of the Transportation Security Administration, subject to all restrictions and earning limitations imposed on criminal investigators receiving such pay under section 5545a, including the premium pay limitations under section 5547;

(F) pay as provided in section 5545b(b)(2) and (c)(2);

(G) with respect to a customs officer (referred to in subsection (e)(1) of section 5 of

the Act of February 13, 1911), compensation for overtime inspectional services provided for under subsection (a) of such section 5, but not to exceed 50 percent of any statutory maximum in overtime pay for customs officers which is in effect for the year involved;

(H) any amount received under section 5948 (relating to physicians comparability allowances); and

(I) with respect to a border patrol agent, the amount of supplemental pay received through application of the level 1 border patrol rate of pay or the level 2 border patrol rate of pay for scheduled overtime within the regular tour of duty of the border patrol agent as provided in section 5550;

but does not include bonuses, allowances, overtime pay, military pay, pay given in addition to the base pay of the position as fixed by law or regulation except as provided by subparagraphs (B) through (I) of this paragraph<sup>1</sup> retroactive pay under section 5344 of this title in the case of a retired or deceased employee, uniform allowances under section 5901 of this title, or lump-sum leave payments under subchapter VI of chapter 55 of this title. For an employee paid on a fee basis, the maximum amount of basic pay which may be used is \$10,000;

(4) “average pay” means the largest annual rate resulting from averaging an employee’s or Member’s rates of basic pay in effect over any 3 consecutive years of creditable service or, in the case of an annuity under subsection (d) or (e)(1) of section 8341 of this title based on service of less than 3 years, over the total service, with each rate weighted by the time it was in effect;

(5) “Fund” means the Civil Service Retirement and Disability Fund;

[(6) Repealed. Pub. L. 96-499, title IV, § 403(b), Dec. 5, 1980, 94 Stat. 2606;]

(7) “Government” means the Government of the United States, the government of the District of Columbia, Gallaudet University, and, in the case of an employee described in paragraph (1)(L), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c);

(8) “lump-sum credit” means the unrefunded amount consisting of—

(A) retirement deductions made from the basic pay of an employee or Member;

(B) amounts deposited by an employee or Member covering earlier service, including any amounts deposited under section 8334(j) of this title; and

(C) interest on the deductions and deposits at 4 percent a year to December 31, 1947, and 3 percent a year thereafter compounded annually to December 31, 1956, or, in the case of an employee or Member separated or transferred to a position in which he does not continue subject to this subchapter before he has completed 5 years of civilian service, to the date of the separation or transfer;

but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for the fractional part of a month in the total service;

(9) “annuitant” means a former employee or Member who, on the basis of his service, meets all requirements of this subchapter for title to annuity and files claim therefor;

(10) “survivor” means an individual entitled to annuity under this subchapter based on the service of a deceased employee, Member, or annuitant;

(11) “survivor annuitant” means a survivor who files claim for annuity;

(12) “service” means employment creditable under section 8332 of this title;

(13) “military service” means honorable active service—

(A) in the armed forces;

(B) in the Regular or Reserve Corps<sup>2</sup> of the Public Health Service after June 30, 1960; or

(C) as a commissioned officer of the Environmental Science Services Administration after June 30, 1961;

and includes service as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, but does not include service in the National Guard except when ordered to active duty in the service of the United States or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this subchapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990;

(14) “Member service” means service as a Member and includes the period from the date of the beginning of the term for which elected or appointed to the date on which he takes office as a Member;

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

(16) “base month” means the month for which the price index showed a percent rise forming the basis for a cost-of-living annuity increase;

(17) “normal-cost percentage” means the entry-age normal cost computed by the Office of Personnel Management in accordance with generally accepted actuarial practice and standards (using dynamic assumptions) and expressed as a level percentage of aggregate basic pay;

(18) “Fund balance” means the current net assets of the Fund available for payment of benefits, as determined by the Office in accordance with appropriate accounting standards, but does not include any amount attributable to—

(A) the Federal Employees’ Retirement System; or

(B) contributions made under the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 by or on behalf of any individual who became subject to the Federal Employees’ Retirement System;

<sup>1</sup> So in original. Probably should be followed by a comma.

<sup>2</sup> See Change of Name note below.

(19) “unfunded liability” means the estimated excess of the present value of all benefits payable from the Fund to employees and Members, and former employees and Members, subject to this subchapter, and to their survivors, over the sum of—

(A) the present value of deductions to be withheld from the future basic pay of employees and Members currently subject to this subchapter and of future agency contributions to be made in their behalf; plus

(B) the present value of Government payments to the Fund under section 8348(f) of this title; plus

(C) the Fund balance as of the date the unfunded liability is determined;

(20) “law enforcement officer” means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purpose of this paragraph, “detention” includes the duties of—

(A) employees of the Bureau of Prisons and Federal Prison Industries, Incorporated;

(B) employees of the Public Health Service assigned to the field service of the Bureau of Prisons or of the Federal Prison Industries, Incorporated;

(C) employees in the field service at Army or Navy disciplinary barracks or at confinement and rehabilitation facilities operated by any of the armed forces; and

(D) employees of the Department of Corrections of the District of Columbia, its industries and utilities;

whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniformed Code of Military Justice (chapter 47 of title 10) require frequent (as determined by the appropriate administrative authority with the concurrence of the Office) direct contact with these individuals in their detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation;

(21) “firefighter” means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position;

(22) “bankruptcy judge” means an individual—

(A) who is appointed under section 34 of the Bankruptcy Act (11 U.S.C. 62) or under section 404(d) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549), and—

(i) who is serving as a United States bankruptcy judge on March 31, 1984; or

(ii) whose service as a United States bankruptcy judge at any time in the period beginning on October 1, 1979, and end-

ing on July 10, 1984, is terminated by reason of death or disability; or

(B) who is appointed as a bankruptcy judge under section 152 of title 28;

(23) “former spouse” means a former spouse of an individual—

(A) if such individual performed at least 18 months of civilian service covered under this subchapter as an employee or Member, and

(B) if the former spouse was married to such individual for at least 9 months;

(24) “Indian court” means an Indian court as defined by section 201(3) of the Act entitled “An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes”, approved April 11, 1968 (25 U.S.C. 1301(3); 82 Stat. 77);

(25) “magistrate judge” or “United States magistrate judge” means an individual appointed under section 631 of title 28;

(26) “Court of Federal Claims judge” means a judge of the United States Court of Federal Claims who is appointed under chapter 7 of title 28 or who has served under section 167 of the Federal Courts Improvement Act of 1982;

(27) “Nuclear materials courier”—

(A) means an employee of the Department of Energy, the duties of whose position are primarily to transport, and provide armed escort and protection during transit of, nuclear weapons, nuclear weapon components, strategic quantities of special nuclear materials or other materials related to national security; and

(B) includes an employee who is transferred directly to a supervisory or administrative position within the same Department of Energy organization, after performing duties referred to in subparagraph (A) for at least 3 years;

(28) “Government physician” has the meaning given that term under section 5948;

(29) “dynamic assumptions” means economic assumptions that are used in determining actuarial costs and liabilities of a retirement system and in anticipating the effects of long-term future—

(A) investment yields;

(B) increases in rates of basic pay; and

(C) rates of price inflation;

(30) the term “air traffic controller” or “controller” means—

(A) a controller within the meaning of section 2109(1); and

(B) a civilian employee of the Department of Transportation or the Department of Defense who is the immediate supervisor of a person described in section 2109(1)(B);

(31) “customs and border protection officer” means an employee in the Department of Homeland Security (A) who holds a position within the GS-1895 job series (determined applying the criteria in effect as of September 1, 2007) or any successor position, and (B) whose duties include activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry, including any such employee who is transferred directly to a

supervisory or administrative position in the Department of Homeland Security after performing such duties (as described in subparagraph (B)) in 1 or more positions (as described in subparagraph (A)) for at least 3 years;

(32) “Director” means the Director of the Office of Personnel Management; and

(33) “representative payee” means a person (including an organization) designated under section 8345(e)(1) to receive payments on behalf of a minor or an individual mentally incompetent or under other legal disability.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 564; Pub. L. 89–737, §1(2), Nov. 2, 1966, 80 Stat. 1164; Pub. L. 90–83, §1(72), Sept. 11, 1967, 81 Stat. 213; Pub. L. 90–623, §1(21), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 91–93, title I, §101, title II, §201(a), Oct. 20, 1969, 83 Stat. 136, 138; Pub. L. 92–352, title I, §105(a), July 13, 1972, 86 Stat. 490; Pub. L. 93–350, §2, July 12, 1974, 88 Stat. 355; Pub. L. 94–183, §2(38), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95–598, title III, §338(e), Nov. 6, 1978, 92 Stat. 2681; Pub. L. 96–54, §2(a)(47), Aug. 14, 1979, 93 Stat. 384; Pub. L. 96–499, title IV, §403(b), Dec. 5, 1980, 94 Stat. 2606; Pub. L. 97–253, title III, §306(a), Sept. 8, 1982, 96 Stat. 795; Pub. L. 98–249, §3(b), Mar. 31, 1984, 98 Stat. 117; Pub. L. 98–271, §3(b), Apr. 30, 1984, 98 Stat. 163; Pub. L. 98–299, §3(b), May 25, 1984, 98 Stat. 214; Pub. L. 98–325, §3(b), June 20, 1984, 98 Stat. 268; Pub. L. 98–353, title I, §§116(a), 121(g), July 10, 1984, 98 Stat. 343, 346; Pub. L. 98–531, §2(a), Oct. 19, 1984, 98 Stat. 2704; Pub. L. 98–615, §2(1), Nov. 8, 1984, 98 Stat. 3195; Pub. L. 99–335, title II, §§202, 207(f), June 6, 1986, 100 Stat. 591, 595; Pub. L. 100–53, §2(a), June 18, 1987, 101 Stat. 367; Pub. L. 100–238, title I, §§112, 123, Jan. 8, 1988, 101 Stat. 1750, 1754; Pub. L. 100–679, §13(a)(1), Nov. 17, 1988, 102 Stat. 4071; Pub. L. 101–474, §5(m), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101–508, title VII, §7202(j)(1), Nov. 5, 1990, 104 Stat. 1388–337; Pub. L. 101–650, title III, §§306(c)(1), 321, Dec. 1, 1990, 104 Stat. 5110, 5117; Pub. L. 102–378, §2(57), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 102–572, title IX, §902(b), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–66, title XIII, §13812(a), Aug. 10, 1993, 107 Stat. 670; Pub. L. 103–353, §5(a), Oct. 13, 1994, 108 Stat. 3173; Pub. L. 105–261, div. C, title XXXI, §3154(b), Oct. 17, 1998, 112 Stat. 2254; Pub. L. 105–277, div. A, §101(h) [title VI, §628(d)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–521; Pub. L. 106–571, §3(a), (b)(2), Dec. 28, 2000, 114 Stat. 3054, 3055; Pub. L. 107–71, title I, §105(c), Nov. 19, 2001, 115 Stat. 607; Pub. L. 108–18, §2(a), Apr. 23, 2003, 117 Stat. 624; Pub. L. 108–176, title II, §226(a)(1), Dec. 12, 2003, 117 Stat. 2529; Pub. L. 110–161, div. E, title V, §535(a)(1), Dec. 26, 2007, 121 Stat. 2075; Pub. L. 110–181, div. A, title XI, §1115(a), Jan. 28, 2008, 122 Stat. 361; Pub. L. 112–141, div. F, title I, §100121(a)(1), July 6, 2012, 126 Stat. 906; Pub. L. 113–277, §2(d), Dec. 18, 2014, 128 Stat. 3003; Pub. L. 114–136, §2(c)(3), Mar. 18, 2016, 130 Stat. 305; Pub. L. 115–254, div. K, title I, §1908(a), Oct. 5, 2018, 132 Stat. 3548; Pub. L. 116–126, §2(a)(1), Mar. 18, 2020, 134 Stat. 174.)

# HISTORICAL AND REVISION NOTES 1966 ACT

| Derivation | U.S. Code  | Revised Statutes and Statutes at Large  |
|------------|--|---|
| .....      | 5 U.S.C. 2251 (less (h)–(j)).  | July 31, 1956, ch. 804, §401 “Sec. 1 (less (h)–(j))”, 70 Stat. 743.<br>Apr. 8, 1960, Pub. L. 86–415, §6(c), 74 Stat. 35.<br>July 7, 1960, Pub. L. 86–604, §1(a), 74 Stat. 358.<br>Sept. 14, 1961, Pub. L. 87–233, §2, 75 Stat. 507.<br>Oct. 11, 1962, Pub. L. 87–793, §1102(a), 76 Stat. 869.<br>Feb. 7, 1964, Pub. L. 88–267, §1(a), 78 Stat. 8. |
| .....      | 5 U.S.C. 2252 (less (e), (f) (words after semicolon), (g) (2d sentence), (h) (words after colon)). | July 31, 1956, ch. 804, §401 “Sec. 2 (less (e), (f) (words after semicolon), (g) (2d sentence))”, 70 Stat. 745.<br>July 1, 1960, Pub. L. 86–568, §115(b)(1) “(h) (less words after colon)”, 74 Stat. 302.<br>Feb. 7, 1964, Pub. L. 88–267, §1(b), (c), 78 Stat. 9.  |
| .....      | 5 U.S.C. 1054 (1st 27 words).  | Aug. 4, 1947, ch. 452, §5 (1st 27 words), 61 Stat. 728.   |
| .....      | [Uncodified].  | Aug. 25, 1958, Pub. L. 85–745, §1(b) (last sentence, as applicable to the Civil Service Retirement Act), 72 Stat. 838.  |
| .....      | 5 U.S.C. 2358(c) (as applicable to the Civil Service Retirement Act).                              | July 17, 1959, Pub. L. 86–91, §10(c) (as applicable to the Civil Service Retirement Act), 73 Stat. 217.   |
| .....      | 5 U.S.C. 932c(d).  | June 28, 1955, ch. 189, §4(i), 69 Stat. 178.  |
| .....      | 5 U.S.C. 932d(d).  | June 20, 1958, Pub. L. 85–462, §4(g), 72 Stat. 208.   |
| .....      | 5 U.S.C. 932e(f).  | July 1, 1960, Pub. L. 86–568, §117(i), 74 Stat. 304.  |
| .....      | 5 U.S.C. 932f(e).  | Oct. 11, 1962, Pub. L. 87–793, §1005(h), 76 Stat. 867.  |
| .....      | 5 U.S.C. 932g(d).  | Aug. 14, 1964, Pub. L. 88–426, §202(d), 78 Stat. 413.   |
| .....      | 5 U.S.C. 1182(b).  | Sept. 2, 1958, Pub. L. 85–872, §2(b), 72 Stat. 1696.  |
| .....      | 5 U.S.C. 2132 (as applicable to the Civil Service Retirement Act, as amended).                     | Sept. 1, 1954, ch. 1208, §403 (as applicable to the Civil Service Retirement Act, as amended), 68 Stat. 1115.   |

In paragraph (1), the specific exception of the President, appearing in former section 2252(b), is omitted as unnecessary because he is not included in the definition of “employee”.

In paragraph (1)(B), the definition of “Congressional employee” in former section 2251(c) is omitted as unnecessary in view of the definition of the term in section 2107.

In paragraph (1)(E), the words “Notwithstanding any other provision of law or any Executive order” are omitted as unnecessary.

In paragraph (1)(i), the words “justice or” are added on authority of section 371 and 372 of title 28.

Paragraph (1)(iii) and (iv) is based on former section 2252(e), which is carried into section 8347(g) and (h).

Paragraph (1)(vii) and (viii) is based on former section 2252(f), which is carried in part into section 8347(i) and (j).

In paragraph (1), the last sentence is added on authority of former section 2351, which is scheduled for transfer to section 901 of title 20.

In paragraph (3), the words “or lump-sum leave payments under subchapter VI of chapter 55 of this title” are added on authority of former section 61b (6th sentence), which is carried into section 5551.

In paragraph (4)(B), references to sections 60e–7, 60e–8, 60e–9, 60e–10, and 60e–11 of title 2 are substituted for the words “this section”, appearing in former sections 932c(d), 932d(d), 932e(f), 932f(e), and 932g(d), to reflect the scheduled transfer of those sections to title 2.

In paragraph (5), the words “the Civil Service Retirement and Disability Fund” are substituted for “the civil service retirement and disability fund created by the Act of May 22, 1920”.

In paragraph (7), the words “Government of the United States” are coextensive with and substituted for “the executive, judicial, and legislative branches of the United States Government, including Government-owned or controlled corporation”.

In paragraph (13), the words “armed forces” are coextensive with and substituted for “Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States” in view of the definition of “armed forces” in section 2101.

The definition of “Commission” in former section 2251(m) is omitted as unnecessary as the title “Civil Service Commission” is fully set out the first time it is used in each section.

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

## 1967 ACT

| <i>Section of title 5</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>                     |
|---------------------------|---------------------------|---|
| 8331(1)(B), (C).          | 5 App.: 2252(c).          | Sept. 26, 1966, Pub. L. 89-604, §1(b), 80 Stat. 846.  |
| 8331(3)(B) (ii).          | 5 App.: 932h(c).          | Oct. 29, 1965, Pub. L. 89-301, §11(d), 79 Stat. 1120. |
|                           | 5 App.: 932i(c).          | July 18, 1966, Pub. L. 89-504, §302(d), 80 Stat. 295. |
| 8331(13) .....            | [No source].              | [No source].  |
| 8331(15), (16)            | 5 App.: 2251(t).          | Sept. 27, 1965, Pub. L. 89-205, §1(a), 79 Stat. 840.  |

In paragraphs (1)(C), (D) and (2), the words “become subject to” are substituted for “come within the purview of” for consistency within the subchapter.

In paragraph (3)(B)(ii), references to sections 60e-12 and 60e-13 of title 2 are substituted for the words “this section” appearing in 5 U.S.C. App. 932h(c) and 932i(c), to reflect the scheduled transfer of those sections to title 2 (See table IV).

In paragraph (8)(C), the words “in which he does not continue subject to” are substituted for “not within the purview of” for consistency within the subchapter and to reflect that it is the individual, rather than the position, that is subject to this subchapter.

The amendment to paragraph (13) reflects Reorganization Plan No. 2 of 1965 (79 Stat. 1318), effective July 13, 1965, which consolidated the Coast and Geodetic Survey and the Weather Bureau to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration.

## Editorial Notes

## REFERENCES IN TEXT

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

Section 5 of the Presidential Transition Act of 1963, referred to in par. (1)(K), is section 5 of Pub. L. 88-277, which is set out as a note under section 102 of Title 3, The President.

Section 103(6) of the Foreign Service Act of 1980, referred to in par. (1)(xii), is classified to section 3903(6) of Title 22, Foreign Relations and Intercourse.

Section 601(b) of the Legislative Reorganization Act of 1946 (60 Stat. 850), as amended, referred to in par. (3)(A), was classified to section 31a of Title 2, The Congress, which was repealed by act Mar. 2, 1955, ch. 9, §4(b), 69 Stat. 11.

Sections 60e-7, 60e-8, 60e-9, 60e-10, 60e-11, 60e-12, 60e-13, and 60e-14 of title 2, referred to in par. (3)(B), were omitted from the Code.

Section 5 of the Act of February 13, 1911, referred to in par. (3)(G), is classified to section 267 of Title 19, Customs Duties.

The Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983, referred to in par. (18)(B), is Pub. L. 98-168, title II, Nov. 29, 1983, 97 Stat. 1106, which is set out as a note below.

The Bankruptcy Act, referred to in par. (22)(A), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11, Bankruptcy. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95-598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

Section 404(d) of the Act of November 6, 1978, referred to in par. (22)(A), is section 404(d) of Pub. L. 95-598, title IV, Nov. 6, 1978, 92 Stat. 2684, which was set out in a note preceding section 151 of Title 28, Judiciary and Judicial Procedure, and was repealed by Pub. L. 98-353, title I, §114, July 10, 1984, 98 Stat. 343.

Section 167 of the Federal Courts Improvement Act of 1982, referred to in par. (26), is section 167 of Pub. L. 97-164, which is set out as a note under section 171 of Title 28.

## AMENDMENTS

2020—Par. (33). Pub. L. 116-126 added par. (33).

2018—Par. (3)(E)(ii). Pub. L. 115-254 amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “received after September 11, 2001, by a Federal air marshal of the Department of Transportation, subject to all restrictions and earning limitations imposed on criminal investigators under section 5545a;”.

2016—Par. (1)(K). Pub. L. 114-136 substituted “section 5” for “section 4”.

2014—Par. (3). Pub. L. 113-277, §2(d)(4), substituted “subparagraphs (B) through (I)” for “subparagraphs (B) through (H)” in concluding provisions.

Par. (3)(I). Pub. L. 113-277, §2(d)(1)–(3), added subpar. (I).

2012—Par. (32). Pub. L. 112-141 added par. (32).

2008—Par. (13). Pub. L. 110-181, in concluding provisions, substituted “and includes service as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, but” for “but”.

2007—Pars. (29) to (31). Pub. L. 110-161 redesignated par. (29) defining “air traffic controller” or “controller” as (30) and added par. (31).

2003—Par. (17). Pub. L. 108-18, §2(a)(1), substituted “normal-cost percentage” for “normal cost” and inserted “and standards (using dynamic assumptions)” after “practice”.

Par. (18). Pub. L. 108-18, §2(a)(2), amended par. (18) generally. Prior to amendment, par. (18) read as follows: “‘Fund balance’ means the sum of—

“(A) the investments of the Fund calculated at par value; and

“(B) the cash balance of the Fund on the books of the Treasury;

“but does not include any amount attributable to—

“(i) the Federal Employees’ Retirement System; or

“(ii) contributions made under the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 by or on behalf of any individual who became subject to the Federal Employees’ Retirement System;”.

Pars. (27), (28). Pub. L. 108-18, §2(a)(3), and Pub. L. 108-176, §226(a)(1)(A), (B), made identical amendments, striking out “and” at end of par. (27) and substituting “; and” for period at end of par. (28).

Par. (29). Pub. L. 108-176, §226(a)(1)(C), added par. (29) defining “air traffic controller” or “controller”.

Pub. L. 108-18, §2(a)(3), added par. (29) defining “dynamic assumptions”.

2001—Par. (3)(E). Pub. L. 107-71 amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: “with respect to a criminal investigator, availability pay under section 5545a of this title;”.

2000—Par. (3). Pub. L. 106-571, §3(a)(4), substituted “through (H)” for “through (G)” in concluding provisions.

Par. (3)(H). Pub. L. 106-571, §3(a)(1)–(3), added subpar. (H).

Par. (28). Pub. L. 106-571, §3(b)(2), added par. (28).  
 1998—Par. (3). Pub. L. 105-277 struck out “and” at end of subpar. (D), added subpars. (E) and (F), redesignated former subpar. (E) as (G), and, in concluding provisions, substituted “subparagraphs (B) through (G)” for “subparagraphs (B), (C), (D), and (E)”.

Par. (27). Pub. L. 105-261 added par. (27).

1994—Par. (13). Pub. L. 103-353 inserted before semicolon at end “or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this subchapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990”.

1993—Par. (3). Pub. L. 103-66 added subpar. (E), and in closing provisions substituted “subparagraphs (B), (C), (D), and (E) of this paragraph” for “subparagraphs (B), (C), and (D) of this paragraph”.

1992—Par. (1)(L). Pub. L. 102-378, §2(57)(A)(i), substituted “section 8347(q)(1)” for “section 8347(p)(1)”.

Par. (1)(ii). Pub. L. 102-378, §2(57)(A)(ii), substituted “section 8347(q)(2)” for “section 8347(p)(2)”.

Par. (7). Pub. L. 102-378, §2(57)(B), substituted “University” for “College”.

Par. (26). Pub. L. 102-572 substituted “Court of Federal Claims” for “Claims Court” and “United States Court of Federal Claims” for “United States Claims Court”.

1990—Par. (1)(L). Pub. L. 101-508, §7202(j)(1)(A)–(C), added subpar. (L).

Par. (1)(ii). Pub. L. 101-508, §7202(j)(1)(D), substituted “(besides any employee excluded by clause (x), but including any employee who has made an election under section 8347(p)(2) to remain covered by a retirement system established for employees described in section 2105(c))” for “(other than an employee described in clause (x))”.

Par. (1)(v). Pub. L. 101-474 amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: “a temporary employee of the Administrative Office of the United States Courts or of a court named by section 610 of title 28;”.

Par. (7). Pub. L. 101-508, §7202(j)(1)(E), substituted “Gallaudet College, and, in the case of an employee described in paragraph (1)(L), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c)” for “and Gallaudet College”.

Par. (26). Pub. L. 101-650 added par. (26).

1988—Par. (1)(K). Pub. L. 100-679 added subpar. (K).

Par. (1)(xii). Pub. L. 100-238, §112, added cl. (xii).

Par. (18). Pub. L. 100-238, §123, inserted “but does not include any amount attributable to—

“(i) the Federal Employees’ Retirement System; or  
 “(ii) contributions made under the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 by or on behalf of any individual who became subject to the Federal Employees’ Retirement System;”.

1987—Par. (22). Pub. L. 100-53, §2(a)(1), amended par. (22) generally. Prior to amendment, par. (22) read as follows: “‘bankruptcy judge’ means an individual appointed under section 34 of the Bankruptcy Act (11 U.S.C. 62) or under section 404(d) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549)—

“(A) who is serving as a United States bankruptcy judge on March 31, 1984;

“(B) whose service as United States bankruptcy judge at any time in the period beginning on October 1, 1979, and ending on July 10, 1984, is terminated by reason of death or disability; or

“(C) who is appointed as a bankruptcy judge under section 152 of title 28;”.

Par. (25). Pub. L. 100-53, §2(a)(2)–(4), added par. (25).

1986—Par. (1)(G). Pub. L. 99-335, §207(f)(1), amended subpar. (G) generally, substituting “first employed” for “employed” and inserting “before October 1, 1987”.

Par. (1)(ii). Pub. L. 99-335, §202(a)(1), amended cl. (ii) generally, inserting “(other than an employee described in clause (x))”.

Par. (1)(x). Pub. L. 99-335, §202(a)(2)–(4), added cl. (x).  
 Par. (1)(xi). Pub. L. 99-335, §207(f)(2), added cl. (xi).

Par. (2). Pub. L. 99-335, §202(b), inserted “, but does not include any such Member of Congress who is subject to the Federal Employees’ Retirement System or who makes an election under section 8401(20) of this title not to be subject to such System”.

1984—Par. (22). Pub. L. 98-353, §116(a)(1), substituted “of November 6, 1978 (Public Law 95-598; 92 Stat. 2549)” for “adding this paragraph” in provision preceding subpar. (A).

Par. (22)(A). Pub. L. 98-531 substituted “who is serving as a United States bankruptcy judge on March 31, 1984;” for “who is serving as a United States bankruptcy judge on the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984, and continues to serve as a bankruptcy judge after such date until either the date on which a successor for such judge is appointed, or October 1, 1986, whichever date is earlier;”.

Pub. L. 98-353, §121(g), substituted “the day before the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984” for “June 27, 1984”.

Pub. L. 98-353, §116(a)(2), substituted “who is serving as a United States bankruptcy judge on the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984, and continues to serve as a bankruptcy judge after such date until either the date on which a successor for such judge is appointed, or October 1, 1986, whichever date is earlier;” for “who is serving as a United States bankruptcy judge on June 27, 1984, and that has agreed by filing a notice of such agreement with the President, the Senate, and the Director of the Administrative Office of the United States Courts, to accept an appointment as a judge of a United States bankruptcy court established under section 201 of this Act but that is not appointed by the President as a judge of such court; or”.

Pub. L. 98-325 substituted “June 27, 1984” for “June 20, 1984”.

Pub. L. 98-299 substituted “June 20, 1984” for “May 25, 1984”.

Pub. L. 98-271 substituted “May 25, 1984” for “April 30, 1984”.

Pub. L. 98-249 substituted “April 30, 1984” for “March 31, 1984”.

Par. (22)(B). Pub. L. 98-531 substituted “whose service as United States bankruptcy judge at any time in the period beginning on October 1, 1979, and ending on July 10, 1984, is terminated by reason of death or disability” for “whose service as a United States bankruptcy judge during the period beginning on October 1, 1979, and ending on the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984 is terminated by reason of death or disability”.

Pub. L. 98-353, §116(a)(3)(A), substituted “period beginning on October 1, 1979, and ending on the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984” for “transition period”.

Par. (22)(C). Pub. L. 98-353, §116(a)(4), added subpar. (C).

Pars. (23), (24). Pub. L. 98-615 added pars. (23) and (24).  
 1982—Par. (8)(B). Pub. L. 97-253, §306(a), inserted “, including any amounts deposited under section 8334(j) of this title”.

1980—Par. (6). Pub. L. 96-499 struck out par. (6) which defined “disabled” and “disability” as meaning totally disabled or total disability for useful and efficient service in the grade or class of position last occupied by the employee or Member because of disease or injury not due to vicious habits, intemperance, or wilful misconduct on his part within 5 years of becoming disabled.

1979—Par. (2). Pub. L. 96-54, §2(a)(47)(A), struck out “and a Delegate to Congress,” after “title;”.

Par. (19)(C). Pub. L. 96-54, §2(a)(47)(B), struck out “and” after “determined;”.

1978—Pars. (1), (17), (20). Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively, wherever appearing.

Par. (22). Pub. L. 95-598 added par. (22).

1975—Par. (4). Pub. L. 94-183 struck out provision relating to member's option of having average pay computed from averaging rates of basic pay in effect over all periods of member's service after August 2, 1946.

1974—Par. (3). Pub. L. 93-350, §2(a), added subpar. (D) and inserted reference to subpar. (D) in closing provisions of par. (3).

Pars. (20), (21). Pub. L. 93-350, §2(b), added pars. (20) and (21).

1972—Par. (1)(J). Pub. L. 92-352 added par. (1)(J).

1969—Par. (4)(A). Pub. L. 91-93, §201(a), reduced the number of years of creditable service from 5 to 3 consecutive years and provided for averaging rate of basic pay over the total service in the case of an annuity under subsec. (d) or (e)(1) of section 8341 of this title based on service of less than three years.

Pars. (17) to (19). Pub. L. 91-93, §101, added pars. (17) to (19).

1968—Par. (3)(B)(ii). Pub. L. 90-623 inserted reference to section 60e-14 of title 2.

1966—Par. (3). Pub. L. 89-737 added subpar. (C) and, in the exception set out in provisions following subpar. (C), substituted reference to subpars. (B) and (C) for reference to subpar. (B).

### Statutory Notes and Related Subsidiaries

#### CHANGE OF NAME

Reference to Reserve Corps of the Public Health Service deemed to be a reference to the Ready Reserve Corps, see section 204(c)(3) of Title 42, The Public Health and Welfare.

Words “magistrate judge” and “United States magistrate judge” substituted for “magistrate” and “United States magistrate”, respectively, in par. (25) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

Gallaudet College, referred to in par. (1)(H), redesignated Gallaudet University by section 101(a) of Pub. L. 99-371, which is classified to section 4301(a) of Title 20, Education.

Commissioned Officer Corps of Environmental Science Services Administration, referred to in par. (13)(C), changed to Commissioned Officer Corps of National Oceanic and Atmospheric Administration, see 1970 Reorg. Plan No. 4, §4(d), eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to this title.

#### EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-126, §4, Mar. 18, 2020, 134 Stat. 177, provided that: “The amendments made by section 2 [enacting sections 8345a and 8466a of this title and amending this section and sections 8345, 8401, and 8466 of this title]—

“(1) shall take effect on the date of the enactment of this Act [Mar. 18, 2020]; and

“(2) apply on and after the effective date of the regulations promulgated under section 3(b)(1) [set out as a note under this section].”

#### EFFECTIVE DATE OF 2018 AMENDMENT; APPLICABILITY

Pub. L. 115-254, div. K, title I, §1908(b), Oct. 5, 2018, 132 Stat. 3549, provided that:

“(1) IN GENERAL.—Subject to paragraph (2), this section [amending this section], and the amendments made by this section, shall take effect on the first day of the first pay period commencing on or after the date of enactment of this section [Oct. 5, 2018].

“(2) RETROACTIVE APPLICATION.—

“(A) IN GENERAL.—Any availability pay received for any pay period commencing before the date of enactment of this Act by a Federal air marshal or criminal investigator employed by the Transportation Security Administration shall be deemed basic pay under section 8331(3) of title 5, United States Code, if the Transportation Security Administration treated such pay as retirement-creditable basic pay, but the Office

of Personnel Management, based on an interpretation of section 8331(3) of title 5, United States Code, did not accept such pay as retirement-creditable basic pay.

“(B) IMPLEMENTATION.—Not later than 3 months after the date of enactment of this Act, the Director of the Office of Personnel Management shall commence taking such actions as are necessary to implement the amendments made by this section with respect to availability pay deemed to be basic pay under subparagraph (A).”

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-277 effective on the first day of the first pay period beginning on or after Jan. 1, 2016, subject to certain exceptions, see section 2(i) of Pub. L. 113-277, set out as a note under section 5542 of this title.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112-141, div. F, title I, §100121(d), July 6, 2012, 126 Stat. 914, provided that: “The amendments made by subsections (a) and (b) [enacting sections 8336a and 8412a of this title and amending this section] shall take effect on the effective date of the implementing regulations issued by the Director of the Office of Personnel Management [Nov. 6, 2014; see 79 F.R. 46608].”

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title XI, §1115(c), Jan. 28, 2008, 122 Stat. 361, provided that: “The amendments made by this section [amending this section and section 8401 of this title] shall apply to—

“(1) any annuity, eligibility for which is based upon a separation occurring before, on, or after the date of enactment of this Act [Jan. 28, 2008]; and

“(2) any period of service as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, occurring before, on, or after the date of enactment of this Act.”

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

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

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-176 effective on 60th day after Dec. 12, 2003, and applicable with respect to any annuity entitlement based on an individual's separation from service occurring on or after such effective date, and any service performed by any such individual before, on, or after such effective date, subject to special rule relating to deposit requirement, see section 226(c) of Pub. L. 108-176, set out as a note under section 8401 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105-277 effective on first day of first applicable pay period which begins on or after Oct. 1, 1998, see section 101(h) [title VI, §628(e)] of Pub. L. 105-277, set out as a note under section 4109 of this title.

Pub. L. 105-261, div. C, title XXXI, §3154(m), (n), Oct. 17, 1998, 112 Stat. 2256, provided that:

“(m) APPLICABILITY.—Subsections (b) through (l) [amending this section and sections 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title and enacting provisions set out as notes under sections 8334, 8348, and 8422 of this title] shall apply only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of title 5, United States Code (as amended by this section), after the later of—



“(1) September 30, 1998; or

“(2) the date of the enactment of this Act [Oct. 17, 1998].

“(n) EFFECTIVE DATES.—(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 3307, 8334 to 8336, 8401, 8412, 8415, 8422, and 8425 of this title] shall take effect at the beginning of the first pay period that begins after the later of—

“(A) October 1, 1998; or

“(B) the date of the enactment of this Act.

“(2)(A) The amendments made by subsection (a) [amending section 3307 of this title] shall take effect on the date of the enactment of this Act.

“(B) The amendments made by subsections (d) and (k) [amending sections 8335 and 8425 of this title] shall take effect 1 year after the date of the enactment of this Act.”

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103-353, set out as an Effective Date note under section 4301 of Title 38, Veterans' Benefits.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-66, title XIII, §13812(c)(1), Aug. 10, 1993, 107 Stat. 671, provided that: “The amendments made by subsection (a) [amending this section] take effect on January 1, 1994, and apply only with respect to service performed on or after such date.”

#### EFFECTIVE DATE OF 1992 AMENDMENTS

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

Amendment by section 2(57)(A) of Pub. L. 102-378 effective Nov. 5, 1990, and amendment by section 2(57)(B) of Pub. L. 102-378 effective Oct. 2, 1992, see section 9(a), (b)(6) of Pub. L. 102-378, set out as a note under section 6303 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENTS

Pub. L. 101-650, title III, §306(f), Dec. 1, 1990, 104 Stat. 5112, as amended by Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516, provided that: “This section and the amendments made by this section [enacting section 8440b [now 8440c] of this title and section 178 of Title 28, Judiciary and Judicial Procedure and amending this section, sections 8334, 8336, 8339, and 8402 of this title, and sections 376 and 604 of Title 28] shall apply to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after the date of the enactment of this Act [Dec. 1, 1990].”

Amendment by Pub. L. 101-508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101-508, set out as a note under section 2105 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-53, §3, June 18, 1987, 101 Stat. 368, as amended by Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117, provided that: “This Act [amending this section and sections 8334, 8336, and 8339 of this title and enacting provisions set out as a note under this section] shall take effect on October 1, 1987, and shall apply to bankruptcy judges and United States mag-

istrate judges in office on that date and to individuals subsequently appointed to such positions to whom chapter 83 of title 5, United States Code, otherwise applies.”

#### EFFECTIVE DATE OF 1986 AMENDMENT

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

#### EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions and specific applicability provisions, see section 4(a)(1) of Pub. L. 98-615 as amended, set out as a note under section 8341 of this title.

Pub. L. 98-531, §3, Oct. 19, 1984, 98 Stat. 2704, provided that:

“(a) Except as provided in subsection (b), this Act and the amendments made by this Act [renumbering a provision set out as a note under section 101 of Title 11, Bankruptcy] shall take effect on July 10, 1984.

“(b) The amendments made by section 2 [amending this section and sections 8336 and 8339 of this title] shall take effect on March 31, 1984.”

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

Pub. L. 98-353, title I, §116(e), July 10, 1984, 98 Stat. 344, provided that: “The amendments made by this section [amending this section and sections 8334, 8336, and 8339 of this title] shall take effect on the date of enactment [July 10, 1984] and shall apply to bankruptcy judges who retire on or after such date.”

#### EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-253, title III, §306(g), Sept. 8, 1982, 96 Stat. 797, as amended by Pub. L. 97-346, §3(e)(2), Oct. 15, 1982, 96 Stat. 1648; Pub. L. 98-369, div. B, title II, §2205, July 18, 1984, 98 Stat. 1059, provided that: “The amendments made by this section [amending this section and sections 8332, 8334, and 8348 of this title] shall take effect October 1, 1982; except that any employee or Member who retired after the date of the enactment of this Act [Sept. 8, 1982] and before October 1, 1985, or is entitled to an annuity under chapter 83 of title 5, United States Code, based on a separation from service occurring during such period, or a survivor of such individual, may make a payment under section 8334(j)(1) of title 5, United States Code. Regulations required to be issued under section 8334(j)(1) of title 5, United States Code, shall be issued by the Office of Personnel Management within 90 days after such effective date.”

#### EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-499, title IV, §403(c), Dec. 5, 1980, 94 Stat. 2606, provided that: “The amendments made by this section [amending this section and section 8337 of this title] shall take effect on the 90th day after the date of the enactment of this Act [Dec. 5, 1980].”

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

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

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2(a) of Pub. L. 93-350 effective at beginning of first applicable pay period which begins

after Dec. 31, 1974, and amendment by section 2(b) of Pub. L. 93-350 effective July 12, 1974, see section 7 of Pub. L. 93-350, set out as a note under section 3307 of this title.

#### EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92-352, title I, §105(b), July 13, 1972, 86 Stat. 491, provided that: “Subsection (a) of this section [amending this section] shall become effective on the first day of the second month which begins after its enactment [July 13, 1972].”

#### EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-93, title II, §207(a), Oct. 20, 1969, 83 Stat. 140, provided that: “The amendments made by sections 201, 202, 203, and 206(a) of this Act [amending this section and sections 8333, 8334, 8339, and 8341 of this title] shall not apply in the case of persons retired or otherwise separated prior to the date of enactment of this Act [Oct. 20, 1969], and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if such sections had not been enacted.”

#### EFFECTIVE DATE OF 1968 AMENDMENT

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

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-737 applicable with respect to premium pay payable from and after first day of first pay period which begins after Nov. 2, 1966, see section 4 of Pub. L. 89-737, set out in the note under section 8114 of this title.

#### SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-358, §1, Oct. 14, 1994, 108 Stat. 3420, provided that: “This Act [amending sections 8345, 8437, and 8467 of this title and enacting provisions set out as a note under section 8345 of this title] may be cited as the ‘Child Abuse Accountability Act’.”

#### SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-428, §1(a), Oct. 15, 1990, 104 Stat. 928, provided that: “This Act [amending sections 8335 to 8337, 8339, 8341, 8344, 8412, and 8425 of this title and enacting provisions set out as notes under sections 8335, 8339, and 8425 of this title] may be cited as the ‘Capitol Police Retirement Act’.”

#### SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100-53, §1, June 18, 1987, 101 Stat. 367, provided that: “This Act [amending this section and sections 8334, 8336, and 8339 of this title and enacting provisions set out as a note under this section] may be cited as the ‘Magistrates’ Retirement Parity Act of 1987’.”

#### SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-638, §2(a), Nov. 10, 1986, 100 Stat. 3535, provided that: “This section [amending sections 2105 and 8332 of this title and enacting provisions set out as a note under section 8332 of this title] may be cited as the ‘Nonappropriated Fund Instrumentalities Employees’ Retirement Credit Act of 1986’.”

#### SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-615, §1, Nov. 8, 1984, 98 Stat. 3195, provided: “That this Act [enacting sections 3595a, 4302a and sections 5406-5410 of this title, amending this section and sections 3135, 3393, 3395, 3593-3595, 4312, 4501, 5332, 5334-5336, 5361, 5362, 5383, 5384, 5401-5405, 5948, 7543, 8334, 8336, 8339, 8341, 8342, 8345, 8348, 8901-8903, 8905, 8907, 8909, and 8913 of this title, section 1602 of Title 10, Armed Forces, and section 731 of Title 31, Money and Finance, and enacting provisions set out as notes under sections 3131, 3135, 5401, and 8341 of this title] may be cited as the ‘Civil Service Retirement Spouse Equity Act of 1984’.”

#### SHORT TITLE OF 1969 AMENDMENT

Pub. L. 91-93, §1, Oct. 20, 1969, 83 Stat. 136, provided: “That this Act [amending this section and sections 1308, 8333, 8334, 8339, 8340, 8341, and 8348 of this title, enacting provisions set out as notes under sections 8334, 8340, 8341, and 8348 of this title, and repealing provisions set out as a note under section 8339 of this title] may be cited as the ‘Civil Service Retirement Amendments of 1969’.”

#### REGULATIONS

Pub. L. 116-126, §3(b), Mar. 18, 2020, 134 Stat. 177, provided that: “Not later than 1 year after the date of enactment of this Act [Mar. 18, 2020], the Office of Personnel Management—

“(1) shall promulgate regulations to carry out the amendments made by section 2 [enacting sections 8345a and 8466a of this title and amending this section and sections 8345, 8401, and 8466 of this title]; and

“(2) may promulgate additional regulations relating to the administration of the representative payee program.”

#### SAVINGS PROVISION

Pub. L. 92-352, title I, §105(c), July 13, 1972, 86 Stat. 491, provided that: “The amendments made by such subsection (a) [amending this section] shall not apply in the cases of persons retired or otherwise separated prior to the effective date established under subsection (b) of this section [see Effective Date of 1972 Amendment note above], and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if such amendments had not been enacted.”

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### RETIREMENT TREATMENT FOR CAPITOL POLICE HAZARDOUS MATERIALS RESPONSE TEAM MEMBERS

Pub. L. 108-83, title I, §1004, Sept. 30, 2003, 117 Stat. 1022, provided that:

“(a) RETIREMENT TREATMENT.—

“(1) IN GENERAL.—For purposes of chapters 83 and 84 of title 5, United States Code, a hazardous materials response team member of the Capitol Police shall be treated as a member of the Capitol Police.

“(2) APPLICATION.—This subsection shall apply to periods of service performed as a hazardous materials response team member of the Capitol Police on and after December 1, 2002.

“(b) TREATMENT OF INCUMBENTS.—

“(1) DEFINITIONS.—In this subsection, the term—

“(A) ‘incumbent’ means an individual who—

“(i) is first appointed as a hazardous materials response team member of the Capitol Police before the effective date of this section; and

“(ii) is employed as a hazardous materials response team member of the Capitol Police on that date; and

“(B) ‘prior service’ means any period of service performed by an incumbent as a hazardous materials response team member of the Capitol Police before the effective date of this section.

“(2) INDIVIDUAL CONTRIBUTIONS.—

“(A) IN GENERAL.—An incumbent shall pay with respect to prior service an amount into the Civil Service Retirement and Disability Fund equal to—

“(i) the difference between the individual contributions that were actually made for such prior

service and the individual contributions that would have been made for such service if subsection (a) had then been in effect; and

“(ii) interest computed on the amount under clause (i) based on section 8334(e) of title 5, United States Code.

“(B) EFFECT OF NOT CONTRIBUTING.—If no part of or less than the full amount required under subparagraph (A) is paid, all prior service of the incumbent shall remain fully creditable as treated under subsection (a), but the resulting annuity shall be reduced in a manner similar to that described under section 8334(d)(2) of title 5, United States Code, to the extent necessary to make up the amount unpaid.

“(3) GOVERNMENT CONTRIBUTIONS FOR PRIOR SERVICE.—The Capitol Police shall pay with respect to prior service of each incumbent an amount into the Civil Service Retirement and Disability Fund equal to—

“(A) the difference between the Government contributions that were actually made for such prior service and the Government contributions that would have been made for such service if subsection (a) had then been in effect; and

“(B) interest computed on the amount under subparagraph (A) based on section 8334(e) of title 5, United States Code.

“(c) EFFECTIVE DATE.—This section shall take effect on the first day of the first applicable pay period beginning on or after the date of enactment of this Act [Sept. 30, 2003].”

#### SUPREME COURT POLICE RETIREMENT

Pub. L. 106-553, §1(a)(2) [title III, §308], Dec. 21, 2000, 114 Stat. 2762, 2762A-86, provided that:

“(a) SUPREME COURT POLICE RETIREMENT.—

“(1) SERVICE DEEMED TO BE SERVICE AS LAW ENFORCEMENT OFFICER.—Any period of service performed before the effective date of this section by an individual as a member of the Supreme Court Police, who is such a member on such date, shall be deemed to be service performed as a law enforcement officer for purposes of chapters 83 and 84 of title 5, United States Code. Notwithstanding any amendment made by this section, any period of service performed before the effective date of this section by an individual as a member of the Supreme Court Police, who is not such a member on such date, shall be employee service for purposes of chapters 83 and 84 of title 5, United States Code.

“(2) CONTRIBUTIONS.—The Marshal of the Supreme Court of the United States shall pay an amount determined by the Office of Personnel Management equal to—

“(A)(i) the difference between—

“(I) the amount that was deducted and withheld from basic pay under chapters 83 and 84 of title 5, United States Code, for the period of service described in the first sentence of paragraph (1); and

“(II) the amount that should have been deducted and withheld for such period of service, if it had instead been performed as a law enforcement officer; and

“(ii) interest as prescribed under section 8334(e) of title 5, United States Code, based on the amount determined under clause (i); and

“(B) with respect to the period of service described in subparagraph (A), the difference between the Government contributions that were in fact made to the Civil Service Retirement and Disability Fund for such service, and the amount that would have been required if such service had instead been performed as a law enforcement officer, subject to subsection (f).

“(3) DEPOSIT OF PAYMENTS.—Payments under paragraph (2) shall be paid from the salaries and expenses account from appropriations to the Supreme Court of the United States, including any prior year unobligated balances, and deposited in the Civil Service Retirement and Disability Fund.

“(b) AMENDMENTS TO CHAPTER 83.—[Amended sections 8334 to 8336 and 8339 of this title.]

“(c) AMENDMENTS TO CHAPTER 84.—[Amended sections 8412, 8415, 8422, 8423, and 8425 of this title.]

“(d) PAYMENTS FOR OTHER LIABILITY.—

“(1) IN GENERAL.—The Marshal of the Supreme Court of the United States shall pay into the Civil Service Retirement and Disability Fund an amount determined by the Director of the Office of Personnel Management to be necessary to reimburse the Fund for any estimated increase in the unfunded liability of the Fund resulting from the amendments related to the Civil Service Retirement System under this section, and for any estimated increase in the supplemental liability of the Fund resulting from the amendments related to the Federal Employees' Retirement System under this section.

“(2) INSTALLMENTS.—The amount determined under paragraph (1) shall be paid in 5 equal annual installments with interest computed at the rates used in the most recent valuation of the Federal Employees' Retirement System.

“(3) SOURCE OF FUNDS.—Payments under this subsection shall be made from amounts available from the salaries and expenses account from appropriations to the Supreme Court of the United States, including any prior year unobligated balances.

“(e) NO MANDATORY SEPARATION FOR A 2-YEAR PERIOD.—Nothing in section 8335(e) or 8425(d) of title 5, United States Code, as added by this section, shall require the automatic separation of any member of the Supreme Court Police before the end of the 2-year period beginning on the effective date of this section.

“(f) NONREDUCTION IN GOVERNMENT CONTRIBUTIONS.—Notwithstanding any other provision of this section, Government contributions to the Civil Service Retirement and Disability Fund on behalf of a member of the Supreme Court Police shall, with respect to any service performed during the period beginning on January 1, 1999, and ending on December 31, 2002, while subject to the Federal Employees' Retirement System, be determined in the same way as if this section had never been enacted.

“(g) SAVINGS PROVISION.—Nothing in this section or in any amendment made by this section shall, with respect to any service performed before the effective date of such amendment, have the effect of reducing the percentage applicable in computing any portion of an annuity based on service as a member of the Supreme Court Police below the percentage which would otherwise apply if this section had not been enacted.

“(h) TECHNICAL AND CONFORMING AMENDMENTS.—[Amended sections 8337, 8339, 8341, 8343a, and 8344 of this title.]

“(i) APPLICABILITY.—This section and the amendments made by this section shall apply only to an individual who is employed as a member of the Supreme Court Police after the later of October 1, 2000, or the date of enactment of this Act [Dec. 21, 2000].

“(j) EFFECTIVE DATE.—Except as otherwise provided in this section, this section and the amendments made by this section shall take effect on the first day of the first applicable pay period that begins on the later of October 1, 2000, or the date of enactment of this Act.”

#### FEDERAL RETIREMENT COVERAGE ERRORS CORRECTION

Pub. L. 106-265, title II, Sept. 19, 2000, 114 Stat. 770, provided that:

“SEC. 2001. SHORT TITLE; TABLE OF CONTENTS.

“(a) SHORT TITLE.—This title may be cited as the ‘Federal Erroneous Retirement Coverage Corrections Act’.

“(b) TABLE OF CONTENTS.—[Omitted.]

“SEC. 2002. DEFINITIONS.

“For purposes of this title:

“(1) ANNUITANT.—The term ‘annuitant’ has the meaning given such term under section 8331(9) or 8401(2) of title 5, United States Code.

“(2) CSRS.—The term ‘CSRS’ means the Civil Service Retirement System.

“(3) CSRDF.—The term ‘CSRDF’ means the Civil Service Retirement and Disability Fund.

“(4) CSRS COVERED.—The term ‘CSRS covered’, with respect to any service, means service that is subject to the provisions of subchapter III of chapter 83 of title 5, United States Code, other than service subject to section 8334(k) of such title.

“(5) CSRS-OFFSET COVERED.—The term ‘CSRS-Offset covered’, with respect to any service, means service that is subject to the provisions of subchapter III of chapter 83 of title 5, United States Code, and to section 8334(k) of such title.

“(6) EMPLOYEE.—The term ‘employee’ has the meaning given such term under section 8331(1) or 8401(11) of title 5, United States Code.

“(7) EXECUTIVE DIRECTOR.—The term ‘Executive Director of the Federal Retirement Thrift Investment Board’ or ‘Executive Director’ means the Executive Director appointed under section 8474 of title 5, United States Code.

“(8) FERS.—The term ‘FERS’ means the Federal Employees’ Retirement System.

“(9) FERS COVERED.—The term ‘FERS covered’, with respect to any service, means service that is subject to chapter 84 of title 5, United States Code.

“(10) FORMER EMPLOYEE.—The term ‘former employee’ means an individual who was an employee, but who is not an annuitant.

“(11) OASDI TAXES.—The term ‘OASDI taxes’ means the OASDI employee tax and the OASDI employer tax.

“(12) OASDI EMPLOYEE TAX.—The term ‘OASDI employee tax’ means the tax imposed under section 3101(a) of the Internal Revenue Code of 1986 [26 U.S.C. 3101(a)] (relating to Old-Age, Survivors and Disability Insurance).

“(13) OASDI EMPLOYER TAX.—The term ‘OASDI employer tax’ means the tax imposed under section 3111(a) of the Internal Revenue Code of 1986 [26 U.S.C. 3111(a)] (relating to Old-Age, Survivors and Disability Insurance).

“(14) OASDI TRUST FUNDS.—The term ‘OASDI trust funds’ means the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

“(15) OFFICE.—The term ‘Office’ means the Office of Personnel Management.

“(16) RETIREMENT COVERAGE DETERMINATION.—The term ‘retirement coverage determination’ means a determination by an employee or agent of the Government as to whether a particular type of Government service is CSRS covered, CSRS-Offset covered, FERS covered, or Social Security-Only covered.

“(17) RETIREMENT COVERAGE ERROR.—The term ‘retirement coverage error’ means an erroneous retirement coverage determination that was in effect for a minimum period of 3 years of service after December 31, 1986.

“(18) SOCIAL SECURITY-ONLY COVERED.—The term ‘Social Security-Only covered’, with respect to any service, means Government service that—

“(A) constitutes employment under section 210 of the Social Security Act (42 U.S.C. 410); and

“(B)(i) is subject to OASDI taxes; but

“(ii) is not subject to CSRS or FERS.

“(19) SURVIVOR.—The term ‘survivor’ has the meaning given such term under section 8331(10) or 8401(28) of title 5, United States Code.

“(20) THRIFT SAVINGS FUND.—The term ‘Thrift Savings Fund’ means the Thrift Savings Fund established under section 8437 of title 5, United States Code.

#### “SEC. 2003. APPLICABILITY.

“(a) IN GENERAL.—This title shall apply with respect to retirement coverage errors that occur before, on, or after the date of the enactment of this Act [Sept. 19, 2000].

“(b) LIMITATION.—Except as otherwise provided in this title, this title shall not apply to any erroneous retirement coverage determination that was in effect for a period of less than 3 years of service after December 31, 1986.

#### “SEC. 2004. IRREVOCABILITY OF ELECTIONS.

“Any election made (or deemed to have been made) by an employee or any other individual under this title shall be irrevocable.

#### “SUBTITLE A—DESCRIPTION OF RETIREMENT COVERAGE ERRORS TO WHICH THIS TITLE APPLIES AND MEASURES FOR THEIR RECTIFICATION

#### “CHAPTER 1—EMPLOYEES AND ANNUITANTS WHO SHOULD HAVE BEEN FERS COVERED, BUT WHO WERE ERRONEOUSLY CSRS COVERED OR CSRS-OFFSET COVERED INSTEAD, AND SURVIVORS OF SUCH EMPLOYEES AND ANNUITANTS

#### “SEC. 2101. EMPLOYEES.

“(a) APPLICABILITY.—This section shall apply in the case of any employee or former employee who should be (or should have been) FERS covered but, as a result of a retirement coverage error, is (or was) CSRS covered or CSRS-Offset covered instead.

“(b) UNCORRECTED ERROR.—

“(1) APPLICABILITY.—This subsection applies if the retirement coverage error has not been corrected before the effective date of the regulations described under paragraph (3). As soon as practicable after discovery of the error, and subject to the right of an election under paragraph (2), if CSRS covered or CSRS-Offset covered, such individual shall be treated as CSRS-Offset covered, retroactive to the date of the retirement coverage error.

“(2) COVERAGE.—

“(A) ELECTION.—Upon written notice of a retirement coverage error, an individual may elect to be CSRS-Offset covered or FERS covered, effective as of the date of the retirement coverage error. Such election shall be made not later than 180 days after the date of receipt of such notice.

“(B) NONELECTION.—If the individual does not make an election by the date provided under subparagraph (A), a CSRS-Offset covered individual shall remain CSRS-Offset covered and a CSRS covered individual shall be treated as CSRS-Offset covered.

“(3) REGULATIONS.—The Office shall prescribe regulations to carry out this subsection.

“(c) CORRECTED ERROR.—

“(1) APPLICABILITY.—This subsection applies if the retirement coverage error was corrected before the effective date of the regulations described under subsection (b).

“(2) COVERAGE.—

“(A) ELECTION.—

“(i) CSRS-OFFSET COVERED.—Not later than 180 days after the date of the enactment of this Act [Sept. 19, 2000], the Office shall prescribe regulations authorizing individuals to elect, during the 18-month period immediately following the effective date of such regulations, to be CSRS-Offset covered, effective as of the date of the retirement coverage error.

“(ii) THRIFT SAVINGS FUND CONTRIBUTIONS.—If under this section an individual elects to be CSRS-Offset covered, all employee contributions to the Thrift Savings Fund made during the period of FERS coverage (and earnings on such contributions) may remain in the Thrift Savings Fund in accordance with regulations prescribed by the Executive Director, notwithstanding any limit under title 5, United States Code, that would otherwise be applicable.

“(B) PREVIOUS SETTLEMENT PAYMENT.—An individual who previously received a payment ordered by a court or provided as a settlement of claim for losses resulting from a retirement coverage error

shall not be entitled to make an election under this subsection unless that amount is waived in whole or in part under section 2208, and any amount not waived is repaid.

“(C) INELIGIBILITY FOR ELECTION.—An individual who, subsequent to correction of the retirement coverage error, received a refund of retirement deductions under section 8424 of title 5, United States Code, or a distribution under section 8433(b), (c), or (h)(1)(A) of title 5, United States Code, may not make an election under this subsection.

“(3) CORRECTIVE ACTION TO REMAIN IN EFFECT.—If an individual is ineligible to make an election or does not make an election under paragraph (2) before the end of any time limitation under this subsection, the corrective action taken before such time limitation shall remain in effect.

“SEC. 2102. ANNUITANTS AND SURVIVORS.

“(a) IN GENERAL.—This section shall apply in the case of an individual who is—

“(1) an annuitant who should have been FERS covered but, as a result of a retirement coverage error, was CSRS covered or CSRS-Offset covered instead; or

“(2) a survivor of an employee who should have been FERS covered but, as a result of a retirement coverage error, was CSRS covered or CSRS-Offset covered instead.

“(b) COVERAGE.—

“(1) ELECTION.—Not later than 180 days after the date of the enactment of this Act [Sept. 19, 2000], the Office shall prescribe regulations authorizing an individual described under subsection (a) to elect CSRS-Offset coverage or FERS coverage, effective as of the date of the retirement coverage error.

“(2) TIME LIMITATION.—An election under this subsection shall be made not later than 18 months after the effective date of the regulations prescribed under paragraph (1).

“(3) REDUCED ANNUITY.—

“(A) AMOUNT IN ACCOUNT.—If the individual elects CSRS-Offset coverage, the amount in the employee's Thrift Savings Fund account under subchapter III of chapter 84 of title 5, United States Code, on the date of retirement that represents the Government's contributions and earnings on those contributions (whether or not such amount was subsequently distributed from the Thrift Savings Fund) will form the basis for a reduction in the individual's annuity, under regulations prescribed by the Office.

“(B) REDUCTION.—The reduced annuity to which the individual is entitled shall be equal to an amount which, when taken together with the amount referred to in subparagraph (A), would result in the present value of the total being actuarially equivalent to the present value of an unreduced CSRS-Offset annuity that would have been provided the individual.

“(4) REDUCED BENEFIT.—If—

“(A) a surviving spouse elects CSRS-Offset benefits; and

“(B) a FERS basic employee death benefit under section 8442(b) of title 5, United States Code, was previously paid,

then the survivor's CSRS-Offset benefit shall be subject to a reduction, under regulations prescribed by the Office. The reduced annuity to which the individual is entitled shall be equal to an amount which, when taken together with the amount of the payment referred to under subparagraph (B) would result in the present value of the total being actuarially equivalent to the present value of an unreduced CSRS-Offset annuity that would have been provided the individual.

“(5) PREVIOUS SETTLEMENT PAYMENT.—An individual who previously received a payment ordered by a court or provided as a settlement of claim for losses resulting from a retirement coverage error may not make an election under this subsection unless repay-

ment of that amount is waived in whole or in part under section 2208, and any amount not waived is repaid.

“(c) NONELECTION.—If the individual does not make an election under subsection (b) before any time limitation under this section, the retirement coverage shall be subject to the following rules:

“(1) CORRECTIVE ACTION PREVIOUSLY TAKEN.—If corrective action was taken before the end of any time limitation under this section, that corrective action shall remain in effect.

“(2) CORRECTIVE ACTION NOT PREVIOUSLY TAKEN.—If corrective action was not taken before such time limitation, the employee shall be CSRS-Offset covered, retroactive to the date of the retirement coverage error.

“CHAPTER 2—EMPLOYEE WHO SHOULD HAVE BEEN FERS COVERED, CSRS-OFFSET COVERED, OR CSRS COVERED, BUT WHO WAS ERRONEOUSLY SOCIAL SECURITY-ONLY COVERED INSTEAD

“SEC. 2111. APPLICABILITY.

“This chapter shall apply in the case of any employee who—

“(1) should be (or should have been) FERS covered but, as a result of a retirement coverage error, is (or was) Social Security-Only covered instead;

“(2) should be (or should have been) CSRS-Offset covered but, as a result of a retirement coverage error, is (or was) Social Security-Only covered instead; or

“(3) should be (or should have been) CSRS covered but, as a result of a retirement coverage error, is (or was) Social Security-Only covered instead.

“SEC. 2112. CORRECTION MANDATORY.

“(a) UNCORRECTED ERROR.—If the retirement coverage error has not been corrected, as soon as practicable after discovery of the error, such individual shall be covered under the correct retirement coverage, effective as of the date of the retirement coverage error.

“(b) CORRECTED ERROR.—If the retirement coverage error has been corrected, the corrective action previously taken shall remain in effect.

“CHAPTER 3—EMPLOYEE WHO SHOULD OR COULD HAVE BEEN SOCIAL SECURITY-ONLY COVERED BUT WHO WAS ERRONEOUSLY CSRS-OFFSET COVERED OR CSRS COVERED INSTEAD

“SEC. 2121. EMPLOYEE WHO SHOULD BE SOCIAL SECURITY-ONLY COVERED, BUT WHO IS ERRONEOUSLY CSRS OR CSRS-OFFSET COVERED INSTEAD.

“(a) APPLICABILITY.—This section applies in the case of a retirement coverage error in which a Social Security-Only covered employee was erroneously CSRS covered or CSRS-Offset covered.

“(b) UNCORRECTED ERROR.—

“(1) APPLICABILITY.—This subsection applies if the retirement coverage error has not been corrected before the effective date of the regulations described in paragraph (3).

“(2) COVERAGE.—In the case of an individual who is erroneously CSRS covered, as soon as practicable after discovery of the error, and subject to the right of an election under paragraph (3), such individual shall be CSRS-Offset covered, effective as of the date of the retirement coverage error.

“(3) ELECTION.—

“(A) IN GENERAL.—Upon written notice of a retirement coverage error, an individual may elect to be CSRS-Offset covered or Social Security-Only covered, effective as of the date of the retirement coverage error. Such election shall be made not later than 180 days after the date of receipt of such notice.

“(B) NONELECTION.—If the individual does not make an election before the date provided under

subparagraph (A), the individual shall remain CSRS-Offset covered.

“(C) REGULATIONS.—The Office shall prescribe regulations to carry out this paragraph.

“(c) CORRECTED ERROR.—

“(1) APPLICABILITY.—This subsection applies if the retirement coverage error was corrected before the effective date of the regulations described under subsection (b)(3).

“(2) ELECTION.—Not later than 180 days after the date of the enactment of this Act [Sept. 19, 2000], the Office shall prescribe regulations authorizing individuals to elect, during the 18-month period immediately following the effective date of such regulations, to be CSRS-Offset covered or Social Security-Only covered, effective as of the date of the retirement coverage error.

“(3) NONELECTION.—If an eligible individual does not make an election under paragraph (2) before the end of any time limitation under this subsection, the corrective action taken before such time limitation shall remain in effect.

“CHAPTER 4—EMPLOYEE WHO WAS ERRONEOUSLY FERS COVERED

“SEC. 2131. EMPLOYEE WHO SHOULD BE SOCIAL SECURITY-ONLY COVERED, CSRS COVERED, OR CSRS-OFFSET COVERED AND IS NOT FERS-ELIGIBLE, BUT WHO IS ERRONEOUSLY FERS COVERED INSTEAD.

“(a) APPLICABILITY.—This section applies in the case of a retirement coverage error in which a Social Security-Only covered, CSRS covered, or CSRS-Offset covered employee not eligible to elect FERS coverage under authority of section 8402(c) of title 5, United States Code, was erroneously FERS covered.

“(b) UNCORRECTED ERROR.—

“(1) APPLICABILITY.—This subsection applies if the retirement coverage error has not been corrected before the effective date of the regulations described in paragraph (2).

“(2) COVERAGE.—

“(A) ELECTION.—

“(i) IN GENERAL.—Upon written notice of a retirement coverage error, an individual may elect to remain FERS covered or to be Social Security-Only covered, CSRS covered, or CSRS-Offset covered, as would have applied in the absence of the erroneous retirement coverage determination, effective as of the date of the retirement coverage error. Such election shall be made not later than 180 days after the date of receipt of such notice.

“(ii) TREATMENT OF FERS ELECTION.—An election of FERS coverage under this subsection is deemed to be an election under section 301 of the Federal Employees Retirement System Act of 1986 (5 U.S.C. 8331 note; Public Law 99-335; 100 Stat. 599).

“(B) NONELECTION.—If the individual does not make an election before the date provided under subparagraph (A), the individual shall remain FERS covered, effective as of the date of the retirement coverage error.

“(3) EMPLOYEE CONTRIBUTIONS IN THRIFT SAVINGS FUND.—If under this section, an individual elects to be Social Security-Only covered, CSRS covered, or CSRS-Offset covered, all employee contributions to the Thrift Savings Fund made during the period of erroneous FERS coverage (and all earnings on such contributions) may remain in the Thrift Savings Fund in accordance with regulations prescribed by the Executive Director, notwithstanding any limit under section 8351 or 8432 of title 5, United States Code.

“(4) REGULATIONS.—Except as provided under paragraph (3), the Office shall prescribe regulations to carry out this subsection.

“(c) CORRECTED ERROR.—

“(1) APPLICABILITY.—This subsection applies if the retirement coverage error was corrected before the

effective date of the regulations described under paragraph (2).

“(2) ELECTION.—Not later than 180 days after the date of the enactment of this Act [Sept. 19, 2000], the Office shall prescribe regulations authorizing individuals to elect, during the 18-month period immediately following the effective date of such regulations to remain Social Security-Only covered, CSRS covered, or CSRS-Offset covered, or to be FERS covered, effective as of the date of the retirement coverage error.

“(3) NONELECTION.—If an eligible individual does not make an election under paragraph (2), the corrective action taken before the end of any time limitation under this subsection shall remain in effect.

“(4) TREATMENT OF FERS ELECTION.—An election of FERS coverage under this subsection is deemed to be an election under section 301 of the Federal Employees Retirement System Act of 1986 (5 U.S.C. 8331 note; Public Law 99-335; 100 Stat. 599).

“SEC. 2132. FERS-ELIGIBLE EMPLOYEE WHO SHOULD HAVE BEEN CSRS COVERED, CSRS-OFFSET COVERED, OR SOCIAL SECURITY-ONLY COVERED, BUT WHO WAS ERRONEOUSLY FERS COVERED INSTEAD WITHOUT AN ELECTION.

“(a) IN GENERAL.—

“(1) FERS ELECTION PREVENTED.—If an individual was prevented from electing FERS coverage because the individual was erroneously FERS covered during the period when the individual was eligible to elect FERS under title III of the Federal Employees Retirement System Act [Pub. L. 99-335] or the Federal Employees' Retirement System Open Enrollment Act of 1997 (Public Law 105-61; 111 Stat. 1318 et seq.) [5 U.S.C. 8331 notes], the individual—

“(A) is deemed to have elected FERS coverage; and

“(B) shall remain covered by FERS, unless the individual declines, under regulations prescribed by the Office, to be FERS covered.

“(2) DECLINING FERS COVERAGE.—If an individual described under paragraph (1)(B) declines to be FERS covered, such individual shall be CSRS covered, CSRS-Offset covered, or Social Security-Only covered, as would apply in the absence of a FERS election, effective as of the date of the erroneous retirement coverage determination.

“(b) EMPLOYEE CONTRIBUTIONS IN THRIFT SAVINGS FUND.—If under this section, an individual declines to be FERS covered and instead is Social Security-Only covered, CSRS covered, or CSRS-Offset covered, as would apply in the absence of a FERS election, all employee contributions to the Thrift Savings Fund made during the period of erroneous FERS coverage (and all earnings on such contributions) may remain in the Thrift Savings Fund in accordance with regulations prescribed by the Executive Director, notwithstanding any limit under title 5, United States Code, that would otherwise be applicable.

“(c) INAPPLICABILITY OF DURATION OF ERRONEOUS COVERAGE.—This section shall apply regardless of the length of time the erroneous coverage determination remained in effect.

“SEC. 2133. RETROACTIVE EFFECT.

“This chapter shall be effective as of January 1, 1987, except that section 2132 shall not apply to individuals who made or were deemed to have made elections similar to those provided in this section under regulations prescribed by the Office before the effective date of this title.

“CHAPTER 5—EMPLOYEE WHO SHOULD HAVE BEEN CSRS-OFFSET COVERED, BUT WHO WAS ERRONEOUSLY CSRS COVERED INSTEAD

“SEC. 2141. APPLICABILITY.

“This chapter shall apply in the case of any employee who should be (or should have been) CSRS-Offset covered but, as a result of a retirement coverage error, is (or was) CSRS covered instead.

“SEC. 2142. CORRECTION MANDATORY.

“(a) UNCORRECTED ERROR.—If the retirement coverage error has not been corrected, as soon as practicable after discovery of the error, such individual shall be covered under the correct retirement coverage, effective as of the date of the retirement coverage error.

“(b) CORRECTED ERROR.—If the retirement coverage error has been corrected before the effective date of this title, the corrective action taken before such date shall remain in effect.

“CHAPTER 6—EMPLOYEE WHO SHOULD HAVE BEEN CSRS COVERED, BUT WHO WAS ERRONEOUSLY CSRS-OFFSET COVERED INSTEAD

“SEC. 2151. APPLICABILITY.

“This chapter shall apply in the case of any employee who should be (or should have been) CSRS covered but, as a result of a retirement coverage error, is (or was) CSRS-Offset covered instead.

“SEC. 2152. CORRECTION MANDATORY.

“(a) UNCORRECTED ERROR.—If the retirement coverage error has not been corrected, as soon as practicable after discovery of the error, such individual shall be covered under the correct retirement coverage, effective as of the date of the retirement coverage error.

“(b) CORRECTED ERROR.—If the retirement coverage error has been corrected before the effective date of this title, the corrective action taken before such date shall remain in effect.

“SUBTITLE B—GENERAL PROVISIONS

“SEC. 2201. IDENTIFICATION AND NOTIFICATION REQUIREMENTS.

“Government agencies shall take all such measures as may be reasonable and appropriate to promptly identify and notify individuals who are (or have been) affected by a retirement coverage error of their rights under this title.

“SEC. 2202. INFORMATION TO BE FURNISHED TO AND BY AUTHORITIES ADMINISTERING THIS TITLE.

“(a) APPLICABILITY.—The authorities identified in this subsection are—

“(1) the Director of the Office of Personnel Management;

“(2) the Commissioner of Social Security; and

“(3) the Executive Director of the Federal Retirement Thrift Investment Board.

“(b) AUTHORITY TO OBTAIN INFORMATION.—Each authority identified in subsection (a) may secure directly from any department or agency of the United States information necessary to enable such authority to carry out its responsibilities under this title. Upon request of the authority involved, the head of the department or agency involved shall furnish that information to the requesting authority.

“(c) AUTHORITY TO PROVIDE INFORMATION.—Each authority identified in subsection (a) may provide directly to any department or agency of the United States all information such authority believes necessary to enable the department or agency to carry out its responsibilities under this title.

“(d) LIMITATION; SAFEGUARDS.—Each of the respective authorities under subsection (a) shall—

“(1) request or provide only such information as that authority considers necessary; and

“(2) establish, by regulation or otherwise, appropriate safeguards to ensure that any information obtained under this section shall be used only for the purpose authorized.

“SEC. 2203. SERVICE CREDIT DEPOSITS.

“(a) CSRS DEPOSIT.—In the case of a retirement coverage error in which—

“(1) a FERS covered employee was erroneously CSRS covered or CSRS-Offset covered;

“(2) the employee made a service credit deposit under the CSRS rules; and

“(3) there is a subsequent retroactive change to FERS coverage,

the excess of the amount of the CSRS civilian or military service credit deposit over the FERS civilian or military service credit deposit, together with interest computed in accordance with paragraphs (2) and (3) of section 8334(e) of title 5, United States Code, and regulations prescribed by the Office, shall be paid to the employee, the annuitant or, in the case of a deceased employee, to the individual entitled to lump-sum benefits under section 8424(d) of title 5, United States Code.

“(b) FERS DEPOSIT.—

“(1) APPLICABILITY.—This subsection applies in the case of an erroneous retirement coverage determination in which—

“(A) the employee owed a service credit deposit under section 8411(f) of title 5, United States Code; and

“(B)(i) there is a subsequent retroactive change to CSRS or CSRS-Offset coverage; or

“(ii) the service becomes creditable under chapter 83 of title 5, United States Code.

“(2) REDUCED ANNUITY.—

“(A) IN GENERAL.—If at the time of commencement of an annuity there is remaining unpaid CSRS civilian or military service credit deposit for service described under paragraph (1), the annuity shall be reduced based upon the amount unpaid together with interest computed in accordance with section 8334(e)(2) and (3) of title 5, United States Code, and regulations prescribed by the Office.

“(B) AMOUNT.—The reduced annuity to which the individual is entitled shall be equal to an amount that, when taken together with the amount referred to under subparagraph (A), would result in the present value of the total being actuarially equivalent to the present value of the unreduced annuity benefit that would have been provided the individual.

“(3) SURVIVOR ANNUITY.—

“(A) IN GENERAL.—If at the time of commencement of a survivor annuity, there is remaining unpaid any CSRS service credit deposit described under paragraph (1), and there has been no actuarial reduction in an annuity under paragraph (2), the survivor annuity shall be reduced based upon the amount unpaid together with interest computed in accordance with section 8334(e)(2) and (3) of title 5, United States Code, and regulations prescribed by the Office.

“(B) AMOUNT.—The reduced survivor annuity to which the individual is entitled shall be equal to an amount that, when taken together with the amount referred to under subparagraph (A), would result in the present value of the total being actuarially equivalent to the present value of an unreduced survivor annuity benefit that would have been provided the individual.

“SEC. 2204. PROVISIONS RELATED TO SOCIAL SECURITY COVERAGE OF MISCLASSIFIED EMPLOYEES.

“(a) DEFINITIONS.—In this section, the term—

“(1) ‘covered individual’ means any employee, former employee, or annuitant who—

“(A) is or was employed erroneously subject to CSRS coverage as a result of a retirement coverage error; and

“(B) is or was retroactively converted to CSRS-offset coverage, FERS coverage, or Social Security-Only coverage; and

“(2) ‘excess CSRS deduction amount’ means an amount equal to the difference between the CSRS deductions withheld and the CSRS-Offset or FERS deductions, if any, due with respect to a covered individual during the entire period the individual was erroneously subject to CSRS coverage as a result of a retirement coverage error.

“(b) REPORTS TO COMMISSIONER OF SOCIAL SECURITY.—  
 “(1) IN GENERAL.—In order to carry out the Commissioner of Social Security’s responsibilities under title II of the Social Security Act [42 U.S.C. 401 et seq.], the Commissioner may request the head of each agency that employs or employed a covered individual to report (in coordination with the Office of Personnel Management) in such form and within such timeframe as the Commissioner may specify, any or all of—

“(A) the total wages (as defined in section 3121(a) of the Internal Revenue Code of 1986 [26 U.S.C. 3121(a)]) paid to such individual during each year of the entire period of the erroneous CSRS coverage; and

“(B) such additional information as the Commissioner may require for the purpose of carrying out the Commissioner’s responsibilities under title II of the Social Security Act (42 U.S.C. 401 et seq.).

“(2) COMPLIANCE.—The head of an agency or the Office shall comply with a request from the Commissioner under paragraph (1).

“(3) WAGES.—For purposes of section 201 of the Social Security Act (42 U.S.C. 401), wages reported under this subsection shall be deemed to be wages reported to the Secretary of the Treasury or the Secretary’s delegates pursuant to subtitle F of the Internal Revenue Code of 1986 [26 U.S.C. 6001 et seq.].

“(c) PAYMENT RELATING TO OASDI EMPLOYEE TAXES.—The Office shall transfer from the Civil Service Retirement and Disability Fund to the General Fund of the Treasury an amount equal to the lesser of the excess CSRS deduction amount or the OASDI taxes due for covered individuals (as adjusted by amounts transferred relating to applicable OASDI employee taxes as a result of corrections made, including corrections made before the date of the enactment of this Act [Sept. 19, 2000]). If the excess CSRS deductions exceed the OASDI taxes, any difference shall be paid to the covered individual or survivors, as appropriate.

“(d) PAYMENT OF OASDI EMPLOYER TAXES.—

“(1) IN GENERAL.—Each employing agency shall pay an amount equal to the OASDI employer taxes owed with respect to covered individuals during the applicable period of erroneous coverage (as adjusted by amounts transferred for the payment of such taxes as a result of corrections made, including corrections made before the date of the enactment of this Act [Sept. 19, 2000]).

“(2) PAYMENT.—Amounts paid under this subsection shall be determined subject to any limitation under section 6501 of the Internal Revenue Code of 1986 [26 U.S.C. 6501].

“SEC. 2205. THRIFT SAVINGS PLAN TREATMENT FOR CERTAIN INDIVIDUALS.

“(a) APPLICABILITY.—This section applies to an individual who—

“(1) is eligible to make an election of coverage under section 2101 or 2102, and only if FERS coverage is elected (or remains in effect) for the employee involved; or

“(2) is described in section 2111, and makes or has made retroactive employee contributions to the Thrift Savings Fund under regulations prescribed by the Executive Director.

“(b) PAYMENT INTO THRIFT SAVINGS FUND.—

“(1) IN GENERAL.—

“(A) PAYMENT.—With respect to an individual to whom this section applies, the employing agency shall pay to the Thrift Savings Fund under subchapter III of chapter 84 of title 5, United States Code, for credit to the account of the employee involved, an amount equal to the earnings which are disallowed under section 8432a(a)(2) of such title on the employee’s retroactive contributions to such Fund.

“(B) AMOUNT.—Earnings under subparagraph (A) shall be computed in accordance with the procedures for computing lost earnings under section

8432a of title 5, United States Code. The amount paid by the employing agency shall be treated for all purposes as if that amount had actually been earned on the basis of the employee’s contributions.

“(C) EXCEPTIONS.—If an individual made retroactive contributions before the effective date of the regulations under section 2101(c), the Director may provide for an alternative calculation of lost earnings to the extent that a calculation under subparagraph (B) is not administratively feasible. The alternative calculation shall yield an amount that is as close as practicable to the amount computed under subparagraph (B), taking into account earnings previously paid.

“(2) ADDITIONAL EMPLOYEE CONTRIBUTION.—In cases in which the retirement coverage error was corrected before the effective date of the regulations under section 2101(c), the employee involved shall have an additional opportunity to make retroactive contributions for the period of the retirement coverage error (subject to applicable limits), and such contributions (including any contributions made after the date of the correction) shall be treated in accordance with paragraph (1).

“(c) REGULATIONS.—

“(1) EXECUTIVE DIRECTOR.—The Executive Director shall prescribe regulations appropriate to carry out this section relating to retroactive employee contributions and payments made on or after the effective date of the regulations under section 2101(c).

“(2) OFFICE.—The Office, in consultation with the Federal Retirement Thrift Investment Board, shall prescribe regulations appropriate to carry out this section relating to the calculation of lost earnings on retroactive employee contributions made before the effective date of the regulations under section 2101(c).

“SEC. 2206. CERTAIN AGENCY AMOUNTS TO BE PAID INTO OR REMAIN IN THE CSRDF.

“(a) CERTAIN EXCESS AGENCY CONTRIBUTIONS TO REMAIN IN THE CSRDF.—

“(1) IN GENERAL.—Any amount described under paragraph (2) shall—

“(A) remain in the CSRDF; and

“(B) may not be paid or credited to an agency.

“(2) AMOUNTS.—Paragraph (1) refers to any amount of contributions made by an agency under section 8423 of title 5, United States Code, on behalf of any employee, former employee, or annuitant (or survivor of such employee, former employee, or annuitant) who makes an election to correct a retirement coverage error under this title, that the Office determines to be excess as a result of such election.

“(b) ADDITIONAL EMPLOYEE RETIREMENT DEDUCTIONS TO BE PAID BY AGENCY.—If a correction in a retirement coverage error results in an increase in employee deductions under section 8334 or 8422 of title 5, United States Code, that cannot be fully paid by a reallocation of otherwise available amounts previously deducted from the employee’s pay as employment taxes or retirement deductions, the employing agency—

“(1) shall pay the required additional amount into the CSRDF; and

“(2) shall not seek repayment of that amount from the employee, former employee, annuitant, or survivor.

“SEC. 2207. CSRS COVERAGE DETERMINATIONS TO BE APPROVED BY OPM.

“No agency shall place an individual under CSRS coverage unless—

“(1) the individual has been employed with CSRS coverage within the preceding 365 days; or

“(2) the Office has agreed in writing that the agency’s coverage determination is correct.

“SEC. 2208. DISCRETIONARY ACTIONS BY DIRECTOR.

“(a) IN GENERAL.—The Director of the Office of Personnel Management may—

“(1) extend the deadlines for making elections under this title in circumstances involving an indi-



vidual's inability to make a timely election due to a cause beyond the individual's control;

“(2) provide for the reimbursement of necessary and reasonable expenses incurred by an individual with respect to settlement of a claim for losses resulting from a retirement coverage error, including attorney's fees, court costs, and other actual expenses;

“(3) compensate an individual for monetary losses that are a direct and proximate result of a retirement coverage error, excluding claimed losses relating to forgone contributions and earnings under the Thrift Savings Plan under subchapter III of chapter 84 of title 5, United States Code, and all other investment opportunities; and

“(4) waive payments required due to correction of a retirement coverage error under this title.

“(b) SIMILAR ACTIONS.—In exercising the authority under this section, the Director shall, to the extent practicable, provide for similar actions in situations involving similar circumstances.

“(c) JUDICIAL REVIEW.—Actions taken under this section are final and conclusive, and are not subject to administrative or judicial review.

“(d) REGULATIONS.—The Office of Personnel Management shall prescribe regulations regarding the process and criteria used in exercising the authority under this section.

“(e) REPORT.—The Office of Personnel Management shall, not later than 180 days after the date of the enactment of this Act [Sept. 19, 2000], and annually thereafter for each year in which the authority provided in this section is used, submit a report to each House of Congress on the operation of this section.

#### “SEC. 2209. REGULATIONS.

“(a) IN GENERAL.—In addition to the regulations specifically authorized in this title, the Office may prescribe such other regulations as are necessary for the administration of this title.

“(b) FORMER SPOUSE.—The regulations prescribed under this title shall provide for protection of the rights of a former spouse with entitlement to an apportionment of benefits or to survivor benefits based on the service of the employee.

#### “SUBTITLE C—OTHER PROVISIONS

#### “SEC. 2301. PROVISIONS TO AUTHORIZE CONTINUED CONFORMITY OF OTHER FEDERAL RETIREMENT SYSTEMS.

“(a) FOREIGN SERVICE.—Sections 827 and 851 of the Foreign Service Act of 1980 (22 U.S.C. 4067 and 4071) shall apply with respect to this title in the same manner as if this title were part of—

“(1) the Civil Service Retirement System, to the extent this title relates to the Civil Service Retirement System; and

“(2) the Federal Employees' Retirement System, to the extent this title relates to the Federal Employees' Retirement System.

“(b) CENTRAL INTELLIGENCE AGENCY.—Sections 292 and 301 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2141 and 2151) shall apply with respect to this title in the same manner as if this title were part of—

“(1) the Civil Service Retirement System, to the extent this title relates to the Civil Service Retirement System; and

“(2) the Federal Employees' Retirement System, to the extent this title relates to the Federal Employees' Retirement System.

#### “SEC. 2302. AUTHORIZATION OF PAYMENTS.

“All payments authorized or required by this title to be paid from the Civil Service Retirement and Disability Fund, together with administrative expenses incurred by the Office in administering this title, shall be deemed to have been authorized to be paid from that Fund, which is appropriated for the payment thereof.

#### “SEC. 2303. INDIVIDUAL RIGHT OF ACTION PRESERVED FOR AMOUNTS NOT OTHERWISE PROVIDED FOR UNDER THIS TITLE.

“Nothing in this title shall preclude an individual from bringing a claim against the Government of the

United States which such individual may have under section 1346(b) or chapter 171 of title 28, United States Code, or any other provision of law (except to the extent the claim is for any amounts otherwise provided for under this title).

#### “SUBTITLE D—EFFECTIVE DATE

#### “SEC. 2401. EFFECTIVE DATE.

“Except as otherwise provided in this title, this title shall take effect on the date of the enactment of this Act [Sept. 19, 2000].”

#### FEDERAL EMPLOYEES' RETIREMENT SYSTEM OPEN ENROLLMENT ACT OF 1997

Pub. L. 105-61, title VI, §642(a)–(c), Oct. 10, 1997, 111 Stat. 1318, as amended by Pub. L. 105-66, title III, §348, Oct. 27, 1997, 111 Stat. 1451, known as the “Federal Employees' Retirement System Open Enrollment Act of 1997”, provided that any individual who, as of Jan. 1, 1998, was employed by the Federal Government, and on such date was subject to subchapter III of chapter 83 of this title, other than a Member of Congress, could elect to become subject to chapter 84 of this title, and directed Office of Personnel Management to promulgate regulations which would provide for an election to be made not before July 1, 1998, or after Dec. 31, 1998.

#### PILOT PROGRAMS FOR DEFENSE EMPLOYEES CONVERTED TO CONTRACTOR EMPLOYEES DUE TO PRIVATIZATION AT CLOSED MILITARY INSTALLATIONS

Pub. L. 104-201, div. A, title XVI, §1616, Sept. 23, 1996, 110 Stat. 2741, as amended by Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814, provided that:

“(a) PILOT PROGRAMS AUTHORIZED.—(1) The Secretary of Defense, after consultation with the Director of the Office of Personnel Management, may establish one or more pilot programs under which Federal retirement benefits are provided in accordance with this section to persons who convert from Federal employment to employment by a Department of Defense contractor in connection with the privatization of the performance of functions at selected military installations being closed under the base closure and realignment process.

“(2) The Secretary of Defense shall select the military installations to be covered by a pilot program under this section.

“(b) ELIGIBLE CONVERTED EMPLOYEES.—(1) A person is a converted employee eligible for Federal retirement benefits under this section if the person is a former employee of the Department of Defense (other than a temporary employee) who—

“(A) while employed by the Department of Defense at a military installation selected to participate in a pilot program, performed a function that was recommended, in a report of the Defense Base Closure and Realignment Commission submitted to the President under the Defense Base Closure and Realignment Act of 1990 ([part A of] title XXIX of Public Law 101-510; 10 U.S.C. 2687 note), to be privatized for performance by a defense contractor at the same installation or in the vicinity of the installation;

“(B) while so employed, separated from Federal service after being notified that the employee would be separated in a reduction in force resulting from such privatization;

“(C) at the time separated from Federal service, was covered under the Civil Service Retirement System, but was not eligible for an immediate annuity under the Civil Service Retirement System;

“(D) does not withdraw retirement contributions under section 8342 of title 5, United States Code;

“(E) within 60 days following such separation, is employed by the defense contractor selected to privatize the function to perform substantially the same function performed by the person before the separation; and

“(F) remains employed by the defense contractor (or a successor defense contractor) or subcontractor of the defense contractor (or successor defense con-

tractor) until attaining early deferred retirement age (unless the employment is sooner involuntarily terminated for reasons other than performance or conduct of the employee).

“(2) A person who, under paragraph (1), would otherwise be eligible for an early deferred annuity under this section shall not be eligible for such benefits if the person received separation pay or severance pay due to a separation described in subparagraph (B) of that paragraph unless the person repays the full amount of such pay with interest (computed at a rate determined appropriate by the Director of the Office of Personnel Management) to the Department of Defense before attaining early deferred retirement age.

“(C) RETIREMENT BENEFITS OF CONVERTED EMPLOYEES.—In the case of a converted employee covered by a pilot program, payment of a deferred annuity for which the converted employee is eligible under section 8338(a) of title 5, United States Code, shall commence on the first day of the first month that begins after the date on which the converted employee attains early deferred retirement age, notwithstanding the age requirement under that section. If the employment of a converted employee is involuntarily terminated by the defense contractor or subcontractor as described in subsection (b)(1)(F) and the converted employee resumes Federal service before the converted employee attains early deferred retirement age, the converted employee shall once again be covered under the Civil Service Retirement System instead of the pilot program.

“(d) COMPUTATION OF AVERAGE PAY.—(1)(A) This paragraph applies to a converted employee who was employed in a position classified under the General Schedule immediately before the employee's covered separation from Federal service.

“(B) Subject to subparagraph (C), for purposes of computing the deferred annuity for a converted employee referred to in subparagraph (A), the average pay of the converted employee, computed under section 8331(4) of title 5, United States Code, as of the date of the employee's covered separation from Federal service, shall be adjusted at the same time and by the same percentage that rates of basic pay are increased under section 5303 of such title during the period beginning on that date and ending on the date on which the converted employee attains early deferred retirement age.

“(C) The average pay of a converted employee, as adjusted under subparagraph (B), may not exceed the amount to which an annuity of the converted employee could be increased under section 8340 of title 5, United States Code, in accordance with the limitation in subsection (g)(1) of such section (relating to maximum pay, final pay, or average pay).

“(2)(A) This paragraph applies to a converted employee who was a prevailing rate employee (as defined under section 5342(2) [5342(a)(2)] of title 5, United States Code) immediately before the employee's covered separation from Federal service.

“(B) For purposes of computing the deferred annuity for a converted employee referred to in subparagraph (A), the average pay of the converted employee, computed under section 8331(4) of title 5, United States Code, as of the date of the employee's covered separation from Federal service, shall be adjusted at the same time and by the same percentage that pay rates for positions that are in the same area as, and are comparable to, the last position the converted employee held as a prevailing rate employee, are increased under section 5343(a) of such title during the period beginning on that date and ending on the date on which the converted employee attains early deferred retirement age.

“(e) PAYMENT OF UNFUNDED LIABILITY.—(1) The military department concerned shall be liable for that portion of any estimated increase in the unfunded liability of the Civil Service Retirement and Disability Fund established under section 8348 of title 5, United States Code, which is attributable to any benefits payable from such Fund to a converted employee, and any survivor of a converted employee, when the increase results from—

“(A) an increase in the average pay of the converted employee under subsection (d) upon which such benefits are computed; and

“(B) the commencement of an early deferred annuity in accordance with this section before the attainment of 62 years of age by the converted employee.

“(2) The estimated increase in the unfunded liability for each department referred to in paragraph (1) shall be determined by the Director of the Office of Personnel Management. In making the determination, the Director shall consider any savings to the Fund as a result of a pilot program established under this section. The Secretary of the military department concerned shall pay the amount so determined to the Director in 10 equal annual installments with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System, with the first payment thereof due at the end of the fiscal year in which an increase in average pay under subsection (d) becomes effective.

“(f) CONTRACTOR SERVICE NOT CREDITABLE.—Service performed by a converted employee for a defense contractor after the employee's covered separation from Federal service is not creditable service for purposes of subchapter III of chapter 83 of title 5, United States Code.

“(g) RECEIPT OF BENEFITS WHILE EMPLOYED BY A DEFENSE CONTRACTOR.—A converted employee may commence receipt of an early deferred annuity in accordance with this section while continuing to work for a defense contractor.

“(h) LUMP-SUM CREDIT PAYMENT.—If a converted employee dies before attaining early deferred retirement age, such employee shall be treated as a former employee who dies not retired for purposes of payment of the lump-sum credit under section 8342(d) of title 5, United States Code.

“(i) CONTINUED FEDERAL HEALTH BENEFITS COVERAGE.—Notwithstanding section 8905a(e)(1)(A) of title 5, United States Code, the continued coverage of a converted employee for health benefits under chapter 89 of such title by reason of the application of section 8905a of such title to such employee shall terminate 90 days after the date of the employee's covered separation from Federal employment. For the purposes of the preceding sentence, a person who, except for subsection (b)(2), would be a converted employee shall be considered a converted employee.

“(j) REPORT BY GOVERNMENT ACCOUNTABILITY OFFICE.—The Comptroller General shall conduct a study of each pilot program, if any, established under this section and submit a report on the pilot program to Congress not later than two years after the date on which the program is established. The report shall contain the following:

“(1) A review and evaluation of the program, including—

“(A) an evaluation of the success of the privatization outcomes of the program;

“(B) a comparison and evaluation of such privatization outcomes with the privatization outcomes with respect to facilities at other military installations closed or realigned under the base closure laws;

“(C) an evaluation of the impact of the program on the Federal workforce and whether the program results in the maintenance of a skilled workforce for defense contractors at an acceptable cost to the military department concerned; and

“(D) an assessment of the extent to which the program is a cost-effective means of facilitating privatization of the performance of Federal activities.

“(2) Recommendations relating to the expansion of the program to other installations and employees.

“(3) Any other recommendation relating to the program.

“(k) IMPLEMENTING REGULATIONS.—Not later than 30 days after the Secretary of Defense notifies the Director of the Office of Personnel Management of a decision

to establish a pilot program under this section, the Director shall prescribe regulations to carry out the provisions of this section with respect to that pilot program. Before prescribing the regulations, the Director shall consult with the Secretary.

“(7) DEFINITIONS.—In this section:

“(1) The term ‘converted employee’ means a person who, pursuant to subsection (b), is eligible for benefits under this section.

“(2) The term ‘covered separation from Federal service’ means a separation from Federal service as described under subsection (b)(1)(B).

“(3) The term ‘Civil Service Retirement System’ means the retirement system under subchapter III of chapter 83 of title 5, United States Code.

“(4) The term ‘defense contractor’ means any entity that—

“(A) contracts with the Department of Defense to perform a function previously performed by Department of Defense employees;

“(B) performs that function at the same installation at which such function was previously performed by Department of Defense employees or in the vicinity of that installation; and

“(C) is the employer of one or more converted employees.

“(5) The term ‘early deferred retirement age’ means the first age at which a converted employee would have been eligible for immediate retirement under subsection (a) or (b) of section 8336 of title 5, United States Code, if such converted employee had remained an employee within the meaning of section 8331(1) of such title continuously until attaining such age.

“(6) The term ‘severance pay’ means severance pay payable under section 5595 of title 5, United States Code.

“(7) The term ‘separation pay’ means separation pay payable under section 5597 of title 5, United States Code.

“(m) APPLICATION OF PILOT PROGRAM.—In the event that a pilot program is established for a military installation, the pilot program shall apply to a covered separation from Federal service by an employee of the Department of Defense at the installation occurring on or after August 1, 1996.”

#### ADDITIONAL AGENCY CONTRIBUTIONS TO RETIREMENT FUND

Pub. L. 103-226, § 4, Mar. 30, 1994, 108 Stat. 114, as amended by Pub. L. 104-52, title IV, § 3, Nov. 19, 1995, 109 Stat. 490; Pub. L. 108-487, title IV, § 401(b)(2), Dec. 23, 2004, 118 Stat. 3946, provided that:

“(a) RELATING TO VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

“(1) IN GENERAL.—In addition to any other payments which it is required to make under subchapter III of chapter 83 of title 5, United States Code, an agency shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to 9 percent of the final basic pay of each employee of the agency—

“(A) who, on or after the date of the enactment of this Act [Mar. 30, 1994] retires under section 8336(d)(2) of such title; and

“(B) to whom a voluntary separation incentive payment has been or is to be paid by such agency based on that retirement.

“(2) DEFINITIONS.—For the purpose of this subsection—

“(A) the term ‘final basic pay’, with respect to an employee, means the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee’s final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor; and

“(B) the term ‘voluntary separation incentive payment’ means—

“(i) a voluntary separation incentive payment under section 3 [5 U.S.C. 5597 note] (including under any program established under section 3(f)); and

“(ii) any separation pay under section 5597 of title 5, United States Code.

“(b) RELATING TO FISCAL YEARS 1995 THROUGH 1998.—

“(1) IN GENERAL.—In addition to any other payments which it is required to make under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, in fiscal years 1995, 1996, 1997, and 1998 (and in addition to any amounts required under subsection (a)), each agency shall, before the end of each such fiscal year, remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to the product of—

“(A) the number of employees of such agency who, as of March 31st of such fiscal year, are subject to subchapter III of chapter 83 or chapter 84 of such title; multiplied by

“(B) \$80.

“(2) DEFINITION.—For the purpose of this subsection, the term ‘agency’ means an Executive agency (as defined by section 105 of title 5, United States Code), but does not include the General Accounting Office [now Government Accountability Office].

“(c) REGULATIONS.—The Director of the Office of Personnel Management may prescribe any regulations necessary to carry out this section.”

#### COORDINATION WITH PAY PERIODS

Pub. L. 99-556, title V, § 505, Oct. 27, 1986, 100 Stat. 3141, provided that: “Under regulations prescribed by the Office of Personnel Management, any reference to a specific date in section 302, 303, 305 [5 U.S.C. 8331 notes], or 702(a) [5 U.S.C. 8401 note] of the Federal Employees’ Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 514) shall, for purposes of individual contributions (including deductions from basic pay), Government contributions, and refunds, be deemed to be a reference to the first day of the first applicable pay period beginning on or after such date, or to the day before such first day, as appropriate.”

#### CONTINUED COVERAGE UNDER CERTAIN FEDERAL EMPLOYEE BENEFIT PROGRAMS FOR CERTAIN EMPLOYEES OF SAINT ELIZABETHS HOSPITAL

Pub. L. 99-335, title II, § 207(o), as added by Pub. L. 100-238, title I, § 109(a), Jan. 8, 1988, 101 Stat. 1748, provided that: “An employee of Saint Elizabeths Hospital who is appointed to a position in the government of the District of Columbia on October 1, 1987, pursuant to the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act (Public Law 98-621; 98 Stat. 3369 and following) [see Short Title note set out under section 225 of Title 24, Hospitals and Asylums] shall, for purposes of chapters 83, 87, and 89 of title 5, United States Code, be treated in the same way as an individual first employed by the government of the District of Columbia before October 1, 1987.”

[Pub. L. 100-238, title I, § 109(b), Jan. 8, 1988, 101 Stat. 1749, provided that: “The amendment made by this section [enacting note above] shall be effective as of October 1, 1987.”]

#### ELECTION OF COVERAGE UNDER CHAPTER 84

Pub. L. 99-335, title III, §§ 301-303, June 6, 1986, 100 Stat. 599-605, as amended by Pub. L. 99-556, title III, §§ 301, 302, Oct. 27, 1986, 100 Stat. 3135, 3136; Pub. L. 100-20, § 1(a), Apr. 7, 1987, 101 Stat. 265; Pub. L. 100-238, title I, §§ 106, 107, 113(a)(1), 118, 119, 134(b), (c), Jan. 8, 1988, 101 Stat. 1746, 1747, 1750, 1752, 1764, 1765; Pub. L. 108-176, title II, § 226(b)(2)(D), Dec. 12, 2003, 117 Stat. 2530, provided that:

“SEC. 301. ELECTIONS.

“(a) ELECTIONS FOR INDIVIDUALS SUBJECT TO THE CIVIL SERVICE RETIREMENT SYSTEM.—(1)(A) Any individual

(other than an individual under subsection (b)) who, as of June 30, 1987, is employed by the Federal Government, and who is then subject to subchapter III of chapter 83 of title 5, United States Code, may elect to become subject to chapter 84 of such title.

“(B) An election under this paragraph may not be made before July 1, 1987, or after December 31, 1987.

“(2)(A) Any individual who, after June 30, 1987, becomes reemployed by the Federal Government, and who is then subject to subchapter III of chapter 83 of title 5, United States Code, may elect to become subject to chapter 84 of such title.

“(B) An election under this paragraph shall not be effective unless it is made during the six-month period beginning on the date on which reemployment commences.

“(3)(A) Except as provided in subparagraph (B), any individual—

“(i) who is excluded from the operation of subchapter III of chapter 83 of title 5, United States Code, under subsection (g), (i), (j), or (l) of section 8347 of such title, and

“(ii) with respect to whom chapter 84 of title 5, United States Code, does not apply because of section 8402(b)(2) of such title, shall, for purposes of an election under paragraph (1) or (2), be treated as if such individual were subject to subchapter III of chapter 83 of title 5, United States Code.

“(B) An election under this paragraph may not be made by any individual who would be excluded from the operation of chapter 84 of title 5, United States Code, under section 8402(c) of such title (relating to exclusions based on the temporary or intermittent nature of one's employment).

“(4) A member of the Foreign Service described in section 103(6) of the Foreign Service Act of 1980 [22 U.S.C. 3903(6)] shall be ineligible to make any election under this subsection.

“(b) ELECTIONS FOR CERTAIN INDIVIDUALS SERVING CONTINUOUSLY SINCE DECEMBER 31, 1983.—The following rules shall apply in the case of any individual described in section 8402(b)(1) of title 5, United States Code:

“(1) If, as of December 31, 1986, the individual is subject to subchapter III of chapter 83 of title 5, United States Code, but is not subject to section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [section 204 of Pub. L. 98-168, set out below], the individual shall remain so subject to such subchapter unless the individual elects, after June 30, 1987, and before January 1, 1988—

“(A) to become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter; or

“(B) to become subject to chapter 84 of such title. An individual eligible to make an election under this paragraph may make the election described in subparagraph (A) or (B), but not both.

“(2) If, as of December 31, 1986, the individual is subject to subchapter III of chapter 83 of title 5, United States Code, and is also subject to section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [set out below], the individual—

“(A) shall, as of January 1, 1987, become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter; and

“(B) may (during the six-month period described in subsection (a)(1)(B)) elect to become subject to chapter 84 of such title.

“(3)(A) If, as of December 31, 1986, the individual is not subject to subchapter III of chapter 83 of title 5, United States Code, such individual may, during the 6-month period described in subsection (a)(1)(B)—

“(i) elect to become subject to chapter 84 of such title; or

“(ii) if such individual has not since made an election described in subparagraph (B), elect to be-

come subject to subchapter III of chapter 83 of such title under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter.

“(B) Nothing in this paragraph shall be considered to preclude the individual from electing to become subject to subchapter III of chapter 83 of such title pursuant to notification under section 8331(2) of such title—

“(i) during the period after December 31, 1986, and before July 1, 1987; or

“(ii) after December 31, 1987, if such individual has not since become subject to subchapter III of chapter 83, or chapter 84, of such title.

“(C) Any individual who becomes subject to subchapter III of chapter 83 of such title pursuant to notification under section 8331(2) of such title after December 31, 1986, shall become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter.

“(c) EFFECTIVE DATE; IRREVOCABILITY.—An election made under this section—

“(1) shall take effect beginning with the first pay period beginning after the date of the election; and

“(2) shall be irrevocable.

“(d) CONDITION FOR MAKING AN ELECTION; EXTENSION TO SATISFY CONDITION.—(1) An election under this section to become subject to chapter 84 of title 5, United States Code, shall not be considered effective in the case of an individual having one or more former spouses, unless the election is made with the written consent of such former spouse (or each such former spouse, if there is more than one).

“(2)(A) This subsection applies with respect to a former spouse who (based on the service of the individual involved) is entitled to benefits under section 8341(h) or 8345(j) of title 5, United States Code, under the terms of a decree of divorce or annulment, or a court order or court-approved property settlement incident to any such decree, with respect to which the Office of Personnel Management has been duly notified.

“(B) This subsection does not apply with respect to a former spouse who has ceased to be so entitled as a result of remarrying before age 55.

“(3) The requirement under paragraph (1) shall be considered satisfied with respect to a former spouse if the individual seeking to make the election establishes to the satisfaction of the Office (in accordance with regulations prescribed by the Office)—

“(A) that the former spouse's whereabouts cannot be determined; or

“(B) that, due to exceptional circumstances, requiring the individual to seek the former spouse's consent would otherwise be inappropriate.

“(4)(A) The Office shall, upon application of an individual, grant an extension for such individual to make an election referred to in paragraph (1) if such individual—

“(i) files application for extension before the end of the period during which such individual would otherwise be eligible to make such election; and

“(ii) demonstrates to the satisfaction of the Office that the extension is needed to secure the modification of a decree of divorce or annulment (or a court order or court-approved property settlement incident to any such decree) in order to satisfy the consent requirement under paragraph (1).

“(B) An extension under this paragraph shall be for 6 months or for such longer period as the Office considers appropriate.

“(e) EXCLUSIONS.—This section does not apply to an individual under section 8331(1)(G) of title 5, United States Code.

“SEC. 302. EFFECT OF AN ELECTION UNDER SECTION 301 TO BECOME SUBJECT TO THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM.

“(a) GENERAL AND SPECIAL RULES.—All provisions of chapter 84 of title 5, United States Code (including

those relating to disability benefits, survivor benefits, and any reductions to provide for survivor benefits) shall apply with respect to any individual who becomes subject to such chapter pursuant to an election under section 301, except if, or to the extent that, such provisions are inconsistent with the following:

“(1)(A) Any civilian service which is performed before the effective date of the election under section 301 shall not be creditable under chapter 84 of title 5, United States Code, except as otherwise provided in this subsection.

“(B) Any service described in subparagraph (A) which is covered service within the meaning of section 203(a)(3) of the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1107; 5 U.S.C. 8331 note) (hereinafter in this section referred to as ‘covered service’) shall be creditable under chapter 84 of title 5, United States Code, if—

“(i) with respect to any such service performed before January 1, 1987, 1.3 percent of basic pay for such service was withheld in accordance with such Act or, if either such withholding was not made or was made, but the amount so withheld was subsequently refunded, 1.3 percent of basic pay for such period is deposited to the credit of the Civil Service Retirement and Disability Fund (hereinafter in this section referred to as the ‘Fund’), with interest (computed under section 8334(e) of such title); and

“(ii) with respect to any such service performed after December 31, 1986, and before the effective date of the election, an amount equal to the percentage of basic pay for such service which would be required to be withheld under section 8422(a) of title 5, United States Code, has been contributed to the Fund by the individual involved, whether by withholdings from pay or, if either no withholding was made or was made, but the amount withheld was subsequently refunded, the aforementioned percentage of basic pay for such period is deposited to the credit of the Fund, with interest (computed under section 8334(e) of such title).

“(C) Any service described in subparagraph (A)—

“(i) which is not covered service;

“(ii) which constitutes service of a type described in section 8411(b)(3) of title 5, United States Code (determined without regard to whether such service was performed before, on, or after January 1, 1989, and without regard to the provisions of section 8411(f) of such title); and

“(iii) which, in the aggregate, is equal to less than 5 years;

shall be creditable under chapter 84 of such title, subject to section 8411(f) of such title.

“(D) Any service described in subparagraph (A)—

“(i) which is not covered service;

“(ii) which constitutes service of a type described in section 8411(b)(3) of title 5, United States Code (determined without regard to whether such service was performed before, on, or after January 1, 1989, and without regard to the provisions of section 8411(f) of such title); and

“(iii) which, in the aggregate, is equal to 5 years or more;

shall be creditable for purposes of—

“(I) section 8410 of such title, relating to the minimum period of civilian service required to be eligible for an annuity;

“(II) any provision of section 8412 (other than subsection (d) or (e) thereof), 8413, 8414, 8442(b)(1), 8443(a)(1), or 8451 of such title which relates to a minimum period of service for entitlement to an annuity;

“(III) the provisions of paragraphs (4) and (6);

“(IV) any provision of section 8412(d) of such title which relates to a minimum period of service for entitlement to an annuity, but only if and to the extent that the service described in subparagraph (A) was as a law enforcement officer or firefighter;

“(V) any provision of section 8412(e) of such title which relates to a minimum period of service for

entitlement to an annuity, but only if and to the extent that the service described in subparagraph (A) was as an air traffic controller; and

“(VI) the provision of subsection (h) [now (i)] of section 8415 which relates to the minimum period of service required to qualify for the higher accrual rate under such subsection.

“(2)(A) Except as provided in subparagraph (B), the creditability under chapter 84 of title 5, United States Code, of any military service which is performed before the effective date of the election under section 301 shall be determined in accordance with applicable provisions of such chapter.

“(B) If the electing individual has performed service described in clauses (i) through (iii) of paragraph (1)(D), service described in subparagraph (A) which, but for the provisions of subsection (b), would be creditable under subchapter III of chapter 83 of title 5, United States Code, as in effect on December 31, 1986, shall be creditable for purposes of—

“(i) any provision of section 8412 (other than subsection (d) or (e) thereof), 8413, or 8414 of such title which relates to a minimum period of service for entitlement to an annuity; and

“(ii) the provisions of paragraph (4).

“(3)(A)(i) If the electing individual becomes entitled to an annuity under subchapter II of chapter 84 of title 5, United States Code, or dies leaving a survivor or survivors entitled to benefits under subchapter IV of such chapter, the annuity for such individual shall be equal to the sum of the individual’s accrued benefits under the Civil Service Retirement System (as determined under paragraph (4)) and the individual’s accrued benefits under the Federal Employees’ Retirement System (as determined under paragraph (5)).

“(ii) An annuity computed under this subparagraph shall be deemed to be the individual’s annuity computed under section 8415 of title 5, United States Code.

“(B) If the electing individual becomes entitled to an annuity under subchapter V of chapter 84 of title 5, United States Code, and if it becomes necessary to compute an annuity under section 8415 of such title with respect to such individual as a result of such individual’s having become so entitled, the methodology set forth in subparagraph (A) shall be used in computing any such annuity under section 8415.

“(4) Accrued benefits under this paragraph shall be computed in accordance with applicable provisions of subchapter III of chapter 83 of title 5, United States Code (but without regard to subsection (j) or (k), or the second sentence of subsection (e), of section 8339 of such title) using only any civilian service under paragraph (1)(D), and any military service under paragraph (2)(B), which would be creditable for purposes of computing an annuity under such subchapter. Notwithstanding the preceding sentence, in computing accrued benefits under this paragraph for an individual retiring under section 8412(g) or 8413(b) of title 5, United States Code, section 8339(h) of such title (relating to reductions based on age at date of separation) shall not apply.

“(5) Accrued benefits under this paragraph shall be computed under section 8415 of title 5, United States Code, using—

“(A) total service creditable under chapter 84 of such title which is performed on or after the effective date of the election under section 301; and

“(B) with respect to service performed before such effective date—

“(i) creditable civilian service (as determined under applicable provisions of this subsection) other than any service described in paragraph (1)(D); and

“(ii) creditable military service (as determined under applicable provisions of this subsection) other than any service described in paragraph (2)(B).

“(6)(A) For purposes of any computation under paragraph (4) or (5), the average pay to be used shall

be the largest annual rate resulting from averaging the individual's rates of basic pay in effect over any 3 consecutive years of creditable service or, in the case of an annuity based on service of less than 3 years, over the total period of service so creditable, with each rate weighted by the period it was in effect.

“(B) For purposes of subparagraph (A), service shall be considered creditable if it would be considered creditable for purposes of determining average pay under chapter 83 or 84 of title 5, United States Code.

“(7) The cost-of-living adjustments for the annuity of the electing individual shall be made as follows:

“(A) The portion of the annuity attributable to paragraph (4) shall be adjusted at the time and in the amount provided for under section 8340 of title 5, United States Code.

“(B) The portion of the annuity attributable to paragraph (5) shall be adjusted at the time and in the amount provided for under section 8462 of title 5, United States Code.

“(8) For purposes of any computation under paragraph (4) in the case of an individual who retires under section 8412 or 8414 of title 5, United States Code, or who dies leaving a survivor or survivors entitled to benefits under subchapter IV of such chapter, sick leave creditable under section 8339(m) of such title shall be equal to the number of days of unused sick leave to the individual's credit as of the date of retirement or as of the effective date of the individual's election under section 301, whichever is less.

“(9) In computing the annuity under paragraph (3) for an individual retiring under section 8412(g) or 8413(b) of title 5, United States Code, the reduction under section 8415(g) [now 8415(h)] of such title shall apply with respect to the sum computed under such paragraph.

“(10) An annuity supplement under section 8421 of title 5, United States Code, shall be computed using the same service as is used for the computation under paragraph (5).

“(11) Effective from its commencing date, an annuity payable to an annuitant's survivor (other than a child under section 8443 of title 5, United States Code) shall be increased by the total percent by which the deceased annuitant's annuity was increased under paragraph (7).

“(12)(A)(i) If the electing individual is a reemployed annuitant under section 8344 of title 5, United States Code, under conditions allowing the annuity to continue during reemployment, payment of the annuitant's annuity shall continue after the effective date of the election, and an amount equal to the annuity allocable to the period of actual employment shall continue to be deducted from the annuitant's pay and deposited as provided in subsection (a) of such section. Deductions from pay under section 8422(a) of such title and contributions under section 8423 of such title shall begin effective on the effective date of the election.

“(ii) Notwithstanding any provision of section 301, an election under such section shall not be available to any reemployed annuitant who would be excluded from the operation of chapter 84 of title 5, United States Code, under section 8402(c) of such title (relating to exclusions based on the temporary or intermittent nature of one's employment).

“(B) If the annuitant serves on a full-time basis for at least 1 year, or on a part-time basis for periods equivalent to at least 1 year of full-time service, such annuitant's annuity, on termination of reemployment, shall be increased by an annuity computed—

“(i) with respect to reemployment service before the effective date of the election, under section 8339(a), (b), (d), (e), (h), (i), and (n) of title 5, United States Code, as may apply based on the reemployment in which such annuitant was engaged before such effective date; and

“(ii) with respect to reemployment service on or after the effective date of the election, under section 8415(a) through (g) [now 8415(a)–(c), (e)–(h)] of

such title, as may apply based on the reemployment in which such annuitant was engaged on or after such effective date;

with the ‘average pay’ used in any computation under clause (i) or (ii) being determined (based on rates of pay in effect during the period of reemployment, whether before, on, or after the effective date of the election) in the same way as provided for in paragraph (6). If the annuitant is receiving a reduced annuity as provided in section 8339(j) or section 8339(k)(2) of title 5, United States Code, the increase in annuity payable under this subparagraph is reduced by 10 percent and the survivor annuity payable under section 8341(b) of such title is increased by 55 percent of the increase in annuity payable under this subparagraph, unless, at the time of claiming the increase payable under this subparagraph, the annuitant notifies the Office of Personnel Management in writing that such annuitant does not desire the survivor annuity to be increased. If the annuitant dies while still reemployed, after having been reemployed for at least 1 full year (or the equivalent thereof, in the case of part-time employment), any survivor annuity payable under section 8341(b) of such title based on the service of such annuitant is increased as though the reemployment had otherwise terminated. In applying paragraph (7) to an amount under this subparagraph, any portion of such amount attributable to clause (i) shall be adjusted under subparagraph (A) of such paragraph, and any portion of such amount attributable to clause (ii) shall be adjusted under subparagraph (B) of such paragraph.

“(C)(i) If the annuitant serves on a full-time basis for at least 5 years, or on a part-time basis for periods equivalent to at least 5 years of full-time service, such annuitant may elect, instead of the benefit provided by subparagraph (B), to have such annuitant's rights redetermined, effective upon separation from employment. If the annuitant so elects, the redetermined annuity will become payable as if such annuitant were retiring for the first time based on the separation from reemployment service, and the provisions of this section concerning computation of annuity (other than any provision of this paragraph) shall apply.

“(ii) If the annuitant dies while still reemployed, after having been reemployed for at least 5 full years (or the equivalent thereof, in the case of part-time employment), any person entitled to a survivor annuity under section 8341(b) of title 5, United States Code, based on the service of such annuitant shall be permitted to elect to have such person's rights redetermined in accordance with regulations which the Office shall prescribe. Redetermined benefits elected under this clause shall be in lieu of any increased benefits which would otherwise be payable in accordance with the next to last sentence of subparagraph (B).

“(D) If the annuitant serves on a full-time basis for less than 1 year (or the equivalent thereof, in the case of part-time employment), any amounts withheld under section 8422(a) of title 5, United States Code, from such annuitant's pay for the period (or periods) involved shall, upon written application to the Office, be payable to such annuitant (or the appropriate survivor or survivors, determined in the order set forth in section 8342(c) of such title).

“(E) For purposes of determining the period of an annuitant's reemployment service under this paragraph, a period of reemployment service shall not be taken into account unless—

“(i) with respect to service performed before the effective date of the election under section 301, it is service which, if performed for at least 1 full year, would have allowed such annuitant to elect under section 8344(a) of title 5, United States Code, to have deductions withheld from pay; or

“(ii) with respect to service performed on or after the effective date of the election under section 301, it is service with respect to which deductions from

pay would be required to be withheld under the second sentence of section 8468(a) of title 5, United States Code.

“(b) CHAPTER 83 GENERALLY INAPPLICABLE.—(1) Except as provided in subsection (a) or paragraph (2), subchapter III of chapter 83 of title 5, United States Code, shall not apply with respect to any individual who becomes subject to chapter 84 of title 5, United States Code, pursuant to an election under section 301.

“(2)(A) Nothing in paragraph (1), or in subchapter III of chapter 83 of title 5, United States Code, shall preclude the making of a deposit under such subchapter with respect to any civilian service under subsection (a)(1)(D) or military service under subsection (a)(2)(B) either by the electing individual or, for purposes of survivor annuities, by a survivor of such individual.

“(B) Nothing in paragraph (1) shall preclude the payment of any lump-sum credit in accordance with section 8342 of title 5, United States Code.

“(c) REFUNDS RELATING TO CERTAIN CIVILIAN SERVICE.—(1) Any individual who makes an election under section 301 to become subject to chapter 84 and who, with respect to any period before the effective date of the election, has made a contribution to the Civil Service Retirement System (whether by deductions from pay or by a deposit or redeposit) and has not taken a refund of the contribution (as so made), shall be entitled to a refund equal to—

“(A) for a period of service under clause (i) of subsection (a)(1)(B), the amount by which—

“(i) the amount contributed with respect to such period, exceeds

“(ii) the amount required under such clause (i) with respect to such period;

“(B) for a period of service under clause (ii) of subsection (a)(1)(B), the amount by which—

“(i) the amount so contributed with respect to such period, exceeds

“(ii) the amount required under such clause (ii) with respect to such period; and

“(C) for a period of service under subparagraph (C) of subsection (a)(1), the amount by which—

“(i) the amount so contributed with respect to such period, exceeds

“(ii) the amount required under such subparagraph with respect to such period.

“(2) In accordance with regulations prescribed by the Office of Personnel Management, a refund under this subsection shall be payable upon written application therefor filed with the Office and shall include interest at the rate provided in section 8334(e)(3) of title 5, United States Code. Interest on the refund shall accrue monthly and shall be compounded annually.

“SEC. 303. PROVISIONS RELATING TO AN ELECTION TO BECOME SUBJECT TO CHAPTER 83 SUBJECT TO CERTAIN OFFSETS RELATING TO SOCIAL SECURITY.

“(a) REFUND.—Any individual who makes an election under section 301(b)(1)(A) shall, upon written application to the Office of Personnel Management, be entitled to a refund equal to—

“(1) for the period beginning on January 1, 1984, and ending on December 31, 1986, the amount by which—

“(A) the total amount deducted from such individual's basic pay under section 8334(a)(1) of title 5, United States Code, for such period, exceeds

“(B) 1.3 percent of such individual's total basic pay for such period; and

“(2) for the period beginning on January 1, 1987, and ending on the day before the effective date of the election, the amount by which—

“(A) the total amount deducted from such individual's basic pay under such section 8334(a)(1) for such period, exceeds

“(B) the total amount which would have been deducted if such individual's basic pay had instead been subject to section 8334(k) of such title during such period.

A refund under this subsection shall be computed with interest in accordance with section 302(c)(2) and regula-

tions prescribed by the Office of Personnel Management.

“(b) DEPOSIT REQUIREMENTS.—(1) In the case of an individual who becomes subject to subchapter III of chapter 83 of title 5, United States Code, pursuant to notification as described in the second sentence of section 301(b)(3)(B), service performed by such individual before the effective date of the notification shall not be considered creditable under such subchapter unless—

“(A) for any service during the period beginning on January 1, 1987, and ending on the day before such effective date, there is deposited to the credit of the Fund a percentage of basic pay for such period equal to the percentage which would have applied under section 8334(k) of such title if such individual's pay had been subject to such section during such period;

“(B) for any period of service beginning on January 1, 1984, and ending on December 31, 1986, there is deposited to the credit of the Fund an amount equal to 1.3 percent of basic pay for such period; and

“(C) for any period of service before January 1, 1984, there is deposited to the credit of the Fund any amount required with respect to such period under such subchapter.

“(2) A deposit under this subsection may be made by the individual or, for purposes of survivor annuities, a survivor of such individual.”

[Pub. L. 100-238, title I, §113(a)(2), Jan. 8, 1988, 101 Stat. 1750, provided that: “The amendment made by paragraph (1) [amending section 301(a) of Pub. L. 99-335 set out above] shall be effective as of June 30, 1987. Any refund which becomes payable as a result of the preceding sentence shall, to the extent that such refund involves an individual's contributions to the Thrift Savings Fund (established under section 8437 of title 5, United States Code), be adjusted to reflect any earnings attributable thereto.”]

[Amendment by section 134(b) of Pub. L. 100-238 to section 302(a) of Pub. L. 99-335 applicable with respect to any election made by a reemployed annuitant on or after Jan. 8, 1988, see section 134(d) of Pub. L. 100-238, set out as an Effective Date of 1988 Amendment note under section 8468 of this title.]

#### CONSTRUCTION OF ADJUSTMENTS IN RETIREMENT PROVISIONS MADE BY PUB. L. 98-353

Pub. L. 98-353, title I, §117, July 10, 1984, 98 Stat. 344, provided that: “The adjustments in the retirement provisions made by this Act shall not be construed to be a ‘new government retirement system’ for purposes of the Federal Employees Retirement Contribution Temporary Adjustment Act of 1983 (Public Law 98-168) [set out below].”

#### ELECTION OF RETIREMENT PLAN UNDER FEDERAL EMPLOYEES' RETIREMENT CONTRIBUTION TEMPORARY ADJUSTMENT ACT OF 1983

Pub. L. 98-369, div. B, title II, §2206, July 18, 1984, 98 Stat. 1059, provided that:

“(a) For the purposes of this section, the term ‘covered retirement system’ shall have the same meaning as provided in section 203(a)(2) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (Public Law 98-168; 97 Stat. 1107) [set out below].

“(b)(1) Any individual who was entitled to make an election under section 208(a) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1111) [set out below], but who did not make such an election, may make an election under such section not later than September 15, 1984.

“(2)(A) Not later than September 15, 1984, any such individual who made an election under paragraph (1) of section 208(a) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [set out below] may—

“(i) make any other election which such individual was entitled to make under such section before January 1, 1984; or

“(ii) elect to become a participant in a covered retirement system (if such individual is otherwise eligible to participate in such system), subject to sections 201 through 207 of such Act [set out below].

“(B) Not later than September 15, 1984, any such individual who made an election under paragraph (2) of section 208(a) of the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 may—

“(i) make any other election which such individual was entitled to make under such section before January 1, 1984; or

“(ii) elect to terminate participation in the covered retirement system with respect to which such individual made the election under such paragraph (2).

“(3) An election under this subsection shall be made by a written application submitted to the official by whom the electing individual is paid.

“(4) An election made as provided in this subsection shall take effect with respect to service performed on or after the first day of the first applicable pay period commencing after September 15, 1984.

“(c)(1) Section 8342(a)(4) of title 5, United States Code, does not apply for the purpose of determining an entitlement to a refund under section 208(c) of the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1111) [set out below].

“(2) Paragraph (1) shall take effect with respect to any election made under section 208(a) of such Act or this Act before, on, or after January 1, 1984.

“(d) Nothing in this section or the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 [set out below] affects any entitlement to benefits accrued under a covered retirement system before January 1, 1984, except to the extent that any amount refunded under section 208(c) of such Act is not redeposited in the applicable retirement fund.”

#### FEDERAL EMPLOYEES’ RETIREMENT CONTRIBUTION TEMPORARY ADJUSTMENT

Pub. L. 98-168, title II, Nov. 29, 1983, 97 Stat. 1106, as amended by Pub. L. 99-190, §147, Dec. 19, 1985, 99 Stat. 1324; Pub. L. 99-335, title III, §§305(a), 309, June 6, 1986, 100 Stat. 606, 607; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

#### “SHORT TITLE

“SEC. 201. This title may be cited as the ‘Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983’.

#### “STATEMENT OF POLICY

“SEC. 202. It is the policy of the Government—

“(1) that the amount required to be contributed to certain public retirement systems by employees and officers of the Government who are also required to pay employment taxes relating to benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] for service performed after December 31, 1983, be modified until the date on which such employees and officers are covered by a new Government retirement system (the design, structure, and provisions of which have not been determined on the date of enactment of this Act [Nov. 29, 1983]) or January 1, 1987, whichever is earlier;

“(2) that the Treasury be required to pay into such retirement systems the remainder of the amount such employees and officers would have contributed during such period but for the temporary modification;

“(3) that the employing agencies make contributions to the retirement systems with respect to such service in amounts required by law in effect before January 1, 1984, without reduction in such amounts;

“(4) that such employees and officers accrue credit for service for the purposes of the public retirement systems in effect on the date of enactment of this Act [Nov. 29, 1983] until a new Government retirement system covering such employees and officers is established;

“(5) that, where appropriate, deposits to the credit of such a retirement system be required with respect to service performed by an employee or officer of the Government during the period described in clause (1), and, where appropriate, annuities be offset by the amount of certain social security benefits attributable to such service; and

“(6) that such employees and officers who are first employed in civilian service by the Government or first take office in civilian service in the Government on or after January 1, 1984, become subject to such new Government retirement system as may be established for employees and officers of the Government on or after January 1, 1984, and before January 1, 1987, with credit for service performed after December 31, 1983, by such employees and officers transferred to such new Government retirement system.

#### “DEFINITIONS

“SEC. 203. (a) For the purposes of this title—

“(1) the term ‘covered employee’ means any individual whose service is covered service;

“(2) the term ‘covered retirement system’ means—

“(A) the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code;

“(B) the Foreign Service Retirement and Disability System under chapter 8 of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.);

“(C) the Central Intelligence Agency Retirement and Disability System under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees ([former] 50 U.S.C. 403 note); and

“(D) any other retirement system (other than a new Government retirement system) under which a covered employee who is a participant in the system is required to make contributions to the system in an amount equal to a portion of the participant’s basic pay for covered service, as determined by the President;

“(3) the term ‘covered service’ means service which is employment for the purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.] and chapter 21 of the Internal Revenue Code of 1986 [26 U.S.C. 3101 et seq.] by reason of the amendments made by section 101 of the Social Security Amendments of 1983 (97 Stat. 67) [amending section 3121 of Title 26, Internal Revenue Code, and sections 409 and 410 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under section 3121 of Title 26 and section 410 of Title 42]; and

“(4) the term ‘new Government retirement system’ means any retirement system which (A) is established for officers or employees of the Government by or pursuant to a law enacted after December 31, 1983, and before January 1, 1987, and (B) takes effect on or before January 1, 1987.

“(b) The President shall publish the determinations made for the purpose of subsection (a)(2)(D) in an Executive order.

#### “CONTRIBUTION ADJUSTMENTS

“SEC. 204. (a) In the case of a covered employee who is participating in a covered retirement system, an employing agency shall deduct and withhold only 1.3 percent of the basic pay of such employee under—

“(1) section 8334 of title 5, United States Code;

“(2) section 805 of the Foreign Service Act of 1980 (22 U.S.C. 4045);

“(3) section 211 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees ([former] 50 U.S.C. 403 note); or

“(4) any provision of any other covered retirement system which requires a participant in the system to make contributions of a portion of the basic pay of the participant;

for covered service which is performed after December 31, 1983, and before the earlier of the effective date of a new Government retirement system or January 1,



1987. Deductions shall be made and withheld as provided by such provisions in the case of covered service which is performed on or after such effective date or January 1, 1987, as the case may be, and is not subject to a new Government retirement system.

“(b) Employing agencies of the Government shall make contributions with respect to service to which subsection (a) of this section applies under the second sentence of section 8334(a)(1) of title 5, United States Code, the second sentence of section 805(a) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a)), the second sentence of section 211(a) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees ([former] 50 U.S.C. 403 note), and any provision of any other covered retirement system requiring a contribution by the employing agency, as if subsection (a) of this section had not been enacted.

#### “REIMBURSEMENT FOR CONTRIBUTION DEFICIENCY

“SEC. 205. (a) For purposes of this section—

“(1) the term ‘contribution deficiency’, when used with respect to a covered retirement system, means the excess of—

“(A) the total amount which, but for section 204(a) of this Act, would have been deducted and withheld under a provision referred to in such section from the pay of covered employees participating in such retirement system for service to which such section applies, over

“(B) the total amount which was deducted and withheld from the pay of covered employees for such service as provided in section 204(a) of this Act; and

“(2) the term ‘appropriate agency head’ means—

“(A) the Director of the Office of Personnel Management, with respect to the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code;

“(B) the Secretary of State, with respect to the Foreign Service Retirement and Disability System under chapter 8 of the Foreign Service Retirement Act of 1980 (22 U.S.C. 404 et seq.) [22 U.S.C. 4041 et seq.];

“(C) the Director of Central Intelligence, with respect to the Central Intelligence Agency Retirement and Disability System under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees ([former] 50 U.S.C. 403 note); and

“(D) the officer designated by the President for that purpose in the case of any retirement system described in section 203(a)(2)(D) of this Act.

“(b) At the end of each of fiscal years 1984, 1985, 1986, and 1987, the appropriate agency head—

“(1) shall determine the amount of the contribution deficiency for such fiscal year in the case of each covered retirement system, including the interest that those contributions would have earned had they been credited to the fund established for the payment of benefits under such retirement system in the same manner and at the same time as deductions under the applicable provision of law referred to in section 204(a) of this Act; and

“(2) shall notify the Secretary of the Treasury of the amount of the contribution deficiency in each such case.

“(c) Before closing the accounts for each of fiscal years 1984, 1985, 1986, and 1987, the Secretary of the Treasury shall credit to the fund established for the payment of benefits under each covered retirement system, as a Government contribution, out of any money in the Treasury not otherwise appropriated, an amount equal to the amount determined under subsection (b) with respect to that covered retirement system for the fiscal year involved.

“(d) Amounts credited to a fund under subsection (c) shall be accounted for separately than amounts credited to such fund under any other provision of law.

#### “SPECIAL DEPOSIT AND OFFSET RULES RELATING TO RETIREMENT BENEFITS FOR INTERIM COVERED SERVICE

“SEC. 206. (a) For the purposes of this section, the term ‘interim covered service’ means covered service to which section 204(a) applies.

“(b)(1) Paragraphs (2) and (3) apply according to the provisions thereof only with respect to a covered employee who is employed by the Government on December 31, 1983.

“(2)(A) Notwithstanding any other provision of law, the interim covered service of such covered employee shall be considered—

“(i) in determining entitlement to and computing the amount of an annuity (other than a disability or survivor annuity) commencing under a covered retirement system during the period beginning January 1, 1984, and ending on the earlier of the date a new Government retirement system takes effect or January 1, 1987, by reason of the retirement of such covered employee during such period only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f); and

“(ii) in computing a disability or survivor annuity which commences under a covered retirement system during such period and is based in any part on such interim covered service.

“(B) Notwithstanding any other provision of law, an annuity to which subparagraph (A)(ii) applies shall be reduced by the portion of the amount of any benefits which is payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] and is attributable to the interim covered service considered in computing the amount of such annuity, as determined under subsection (g), unless, in the case of a survivor annuity, a covered employee has made a deposit with respect to such covered service for the purposes of subparagraph (A)(i) before the date on which payment of such annuity commences.

“(3) Notwithstanding any other provision of law, if a new Government retirement system is not established or is inapplicable to such a covered employee who retires or dies subject to a covered retirement system after the date on which such new Government retirement system takes effect, the interim covered service of such covered employee shall be considered in determining entitlement to and computing the amount of an annuity under a covered retirement system based on the service of such covered employee only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f).

“(c)(1) Paragraphs (2) and (3) apply according to the provisions thereof only with respect to a covered employee who was not employed by the Government on December 31, 1983.

“(2) Notwithstanding any other provision of law, any annuity which commences under a covered retirement system during the period described in subsection (b)(2)(A)(i) and is based, in any part, on interim covered service shall be reduced by the portion of the amount of any benefits which is payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] to the annuitant and is attributable to such service, as determined under subsection (g).

“(3) Notwithstanding any other provision of law, if a new Government retirement system is not established, the interim covered service of such a covered employee who retires or dies after January 1, 1987, shall be considered in determining entitlement to and computing the amount of an annuity under a covered retirement system based on the service of such covered employee only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f).

“(d) If a covered employee with respect to whom subsection (b)(3) or (c)(3) applies dies without having made

a deposit pursuant to such subsection, any individual who is entitled to an annuity under a covered retirement system based on the service of such covered employee or who would be entitled to such an annuity if such deposit had been made by the covered employee before death may make such deposit after the date of death of such covered employee. Service covered by a deposit made pursuant to the first sentence shall be considered in determining, in the case of each individual to whom the first sentence applies, the entitlement to and the amount of an annuity under a covered retirement system based on the service of such covered employee.

“(e) A reduction in annuity under subsection (b)(2)(B) or (c)(2) shall commence on the first day of the first month after the date on which payment of benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] commence and shall be redetermined each time an increase in such benefits takes effect pursuant to section 215(i) of the Social Security Act [42 U.S.C. 415(i)]. In the case of an annuity of a participant or former participant in a covered retirement system, of a surviving spouse or child of such participant or former participant, or of any other person designated by such participant or former participant to receive an annuity, under a covered retirement system (other than a former spouse) the reduction in annuity under subsection (b)(2)(B) or (c)(2) shall be calculated before any reduction in such annuity provided under such system for the purpose of paying an annuity under such system to any former spouse of such participant or former participant based on the service of such participant or former participant.

“(f) For the purposes of subsection (b) or (c), the amount of a deposit to the credit of the applicable covered retirement system shall be equal to the excess of—

“(1) the total amount which would have been deducted and withheld from the basic pay of the covered employee for the interim covered service under such covered retirement system but for the application of section 204(a), over

“(2) the amount which was deducted and withheld from such basic pay for such interim covered service pursuant to section 204(a) and was not refunded to such covered employee.

“(g) For the purpose of subsections (b)(2)(B) and (c)(2), the portion of the amount of the benefits which is payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] to an individual and is attributable to interim covered service shall be determined by—

“(1) computing the amount of such benefits including credit for such service;

“(2) computing the amount of such benefits, if any, without including credit for such service; and

“(3) subtracting the amount computed under clause (2) from the amount computed under clause (1).

“(h) The Secretary of Health and Human Services shall furnish to the appropriate agency head (as defined in section 205(a)(2)) such information as such agency head considers necessary to carry out this section.

#### “TRANSFER OF CREDIT TO NEW RETIREMENT SYSTEM

“SEC. 207. [Repealed. Pub. L. 99-335, title III, §309, June 6, 1986, 100 Stat. 607]

“SEC. 208. (a) Any individual performing service of a type referred to in clause (i), (ii), (iii), or (iv) of section 210(a)(5) of the Social Security Act [42 U.S.C. 410(a)(5)(i)-(iv)] beginning on or before December 31, 1983, may—

“(1) if such individual is then currently a participant in a covered retirement system, elect by written application submitted before January 1, 1984—

“(A) to terminate participation in such system, effective after December 31, 1983; or

“(B) to remain under such system, as if the preceding sections of this Act [probably means this ‘title’] and the amendments made by this Act had not been enacted; or

“(2) if such individual is then currently not a participant in a covered retirement system, elect by written application—

“(A) to become a participant under such system (if such individual is otherwise eligible to participate in the system), subject to the preceding sections of this Act [probably means this ‘title’] and the amendments made by this Act; or

“(B) to become a participant under such system (if such individual is otherwise eligible to participate in the system), as if the preceding sections of this Act and the amendments made by this Act had not been enacted.

“(b) An application by an individual under subsection (a) shall be submitted to the official by whom such covered employee is paid.

“(c) Any individual who elects to terminate participation in a covered retirement system under subsection (a)(1)(A) is entitled to have such individual’s contributions to the retirement system refunded, in accordance with applicable provisions of law, as if such individual had separated from service as of the effective date of the election.

“(d) Any individual who is eligible to make an election under subparagraph (A) or (B) of subsection (a)(1), but who does not make an election under either such subparagraph, shall be subject to the preceding sections of this Act [probably means this ‘title’] and the amendments made by this Act.”

[Amendment to section 206(c)(3) of Pub. L. 98-168 by section 305(a)(1) of Pub. L. 99-335 directing the substitution of “January 1, 1987” for “January 1, 1986” has been executed by substituting “January 1, 1987” for “April 30, 1986” to reflect the probable intent of Congress.]

[Pub. L. 99-335, title III, §305(b), June 6, 1986, 100 Stat. 606, provided that:

[“(1) The amendments made by subsection (a) [amending Pub. L. 98-168 set out above] shall be effective as of May 1, 1986.

[“(2) Any refund payable to an individual as a result of paragraph (1) shall be paid out of funds of the appropriate retirement system.

[“(3) For purposes of this subsection, the term ‘retirement system’ means a covered retirement system as defined by section 203(a)(2) of the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1107; 5 U.S.C. 8331 note).”]

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 3001 of Title 50, War and National Defense.]

[The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in Pub. L. 98-168, set out above, is Pub. L. 88-643, Oct. 13, 1964, 78 Stat. 1043, which was revised generally by Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196, is known as the Central Intelligence Agency Retirement Act and is classified generally to chapter 38 (§2001 et seq.) of Title 50, War and National Defense.]

#### CANAL ZONE GOVERNMENT AND PANAMA CANAL COMPANY EMPLOYEES

Pub. L. 85-550, §13, July 25, 1958, 72 Stat. 410, as amended by Pub. L. 87-845, §2, Oct. 18, 1962, 76A Stat. 697, provided that:

“(a) Effective on and after the first day of the first pay period which begins in the third calendar month following the calendar month in which this Act is enacted [July 1958]—

“The Act of July 8, 1937 (50 Stat. 478; 68 Stat. 17; Public Numbered 191, Seventy-fifth Congress; Public Law 299, Eighty-third Congress), shall apply only with respect to those individuals within the classes of individuals subject to such Act of July 8, 1937, whose

employment shall have been terminated, prior to such first day of such first pay period, in the manner provided by the first section of such Act; and

“(b) On or before the first day of the first pay period which begins in the third calendar month following the calendar month in which this Act is enacted [July 1958], the Panama Canal Company shall pay, as an agency contribution, into the civil service retirement and disability fund created by the Act of May 22, 1920, for each individual—

“(1) who is employed, on such first day of such first pay period, by the Canal Zone Government or by the Panama Canal Company, and

“(2) who, by reason of the enactment of this section and the operation of the Civil Service Retirement Act (5 U.S.C. 2251-2267) [this subchapter], is subject to such Act on and after such first day of such first pay period,

for service performed by such individual in the employment of—

“(A) the Panama Railroad Company during the period which began on June 29, 1948, and ended on June 30, 1951, or

“(B) the Panama Canal (former independent agency), the Canal Zone Government, or the Panama Canal Company during the period which began on July 1, 1951, and which ends immediately prior to such first day of such first pay period,

an amount equal to the aggregate amount which such individual would have been required to contribute for retirement purposes if he had been subject to the Civil Service Retirement Act during such periods of service.

“(c) Nothing contained in this section shall affect—

“(1) the rights of any individual existing immediately prior to such first day of such first pay period above specified, or

“(2) the continuing obligations of the Canal Zone Government and the Panama Canal Company under section 4(a) of the Civil Service Retirement Act (5 U.S.C. 2254(a)) [section 8334(a) of this title], to reimburse the civil service retirement and disability fund for Government contributions to such fund covering service performed, on or after such first day of such first pay period above specified, by the employees concerned.”

#### MEMBERS OF CIVILIAN FACULTIES OF UNITED STATES NAVAL ACADEMY AND UNITED STATES NAVAL POSTGRADUATE SCHOOL

Act July 31, 1956, ch. 804, title IV, § 402, 70 Stat. 760, provided that:

“(a) On and after the effective date of this title [on the first day of the first month beginning more than sixty days after July 31, 1956] persons employed as members of the civilian faculties of the United States Naval Academy and the United States Naval Postgraduate School shall be included within the terms of the Civil Service Retirement Act [this subchapter], and on and after that date the Act of January 16, 1936 (49 Stat. 1092), as amended [covered by section 7081 et seq. of Title 10, Armed Forces] shall not apply to such persons.

“(b) In lieu of the deposit prescribed by section 4(c) of the Civil Service Retirement Act [section 8334(c) of this title] an employee who by virtue of subsection (a) is included within the terms of such Act [this subchapter] shall deposit, for service rendered prior to the effective date of this title as a member of the civilian faculty of the United States Naval Academy or of the United States Naval Postgraduate School, a sum equal to so much of the repurchase price of his annuity policy carried as required by the Act of January 16, 1936, as amended [covered by section 7081 et seq. of Title 10, Armed Forces], as is based on the monthly allotments which were registered with the Navy Allotment Office toward the purchase of that annuity, the deposit to be made within six months after the effective date of this title. Should the deposit not be made within that period no credit shall be allowed under the Civil Service Retirement Act [this subchapter] for service rendered

as a member of the civilian faculty of the United States Naval Academy or of the United States Naval Postgraduate School subsequent to July 31, 1920, and prior to the effective date of this title. If the deposit is made, such service shall be held and considered to be service during which the employee was subject to the Civil Service Retirement Act [this subchapter].”

#### Executive Documents

##### EX. ORD. NO. 12461. DESIGNATION AS A FEDERAL RETIREMENT SYSTEM

Ex. Ord. No. 12461, Feb. 17, 1984, 49 F.R. 6471, provided: By the authority vested in me as President by the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (title II of Public Law 98-168) (“the Act”) [set out as a note above], it is hereby ordered as follows:

SECTION 1. The District of Columbia Police and Firefighters' Retirement and Disability System, insofar as it applies to Federal employees who are covered under section 203(a)(1) of the Act [set out as a note above], is designated a covered retirement system under section 203(a)(2)(D) of the Act. The Secretary of the Treasury is designated the appropriate agency head with respect to such system, under section 205(a)(2)(D) of the Act [set out as a note above]. In discharging the responsibilities delegated by this Order, the Secretary shall be guided by the information and recommendations provided by the Mayor of the District of Columbia.

SEC. 2. This Order shall be effective as of January 1, 1984.

RONALD REAGAN.

#### § 8332. Creditable service

(a) The total service of an employee or Member is the full years and twelfth parts thereof, excluding from the aggregate the fractional part of a month, if any.

(b) The service of an employee shall be credited from the date of original employment to the date of separation on which title to annuity is based in the civilian service of the Government. Except as provided in paragraph (13)<sup>1</sup> of this subsection, credit may not be allowed for a period of separation from the service in excess of 3 calendar days. The service includes—

(1) employment as a substitute in the postal field service;

(2) service in the Pan American Sanitary Bureau;

(3) subject to sections 8334(c) and 8339(i) of this title, service performed before July 10, 1960, as an employee of a county committee established under section 590h(b) of title 16 or of a committee or an association of producers described by section 610(b) of title 7;

(4) service as a student-employee as defined by section 5351 of this title only if he later becomes subject to this subchapter;

(5) a period of satisfactory service of a volunteer or volunteer leader under chapter 34 of title 22 only if he later becomes subject to this subchapter;

(6) employment under section 709 of title 32 or any prior corresponding provision of law;

(7) a period of service of a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, or a period of service of a full-time volunteer enrolled in a program of at least one year's duration under part A, B,<sup>2</sup> or

<sup>1</sup> So in original. Probably should be paragraph “(14)”.

<sup>2</sup> See References in Text note below.

C of title I of the Domestic Volunteer Service Act of 1973 only if he later becomes subject to this subchapter;

(8) subject to sections 8334(c) and 8339(i) of this title, service performed after February 18, 1929, and before noon on January 3, 1971, as a United States Capitol Guide;

(9) subject to sections 8334(c) and 8339(i) of this title, service as a substitute teacher for the government of the District of Columbia after July 1, 1955, if such service is not credited for benefits under any other retirement system established by a law of the United States;

(10) periods of imprisonment of a foreign national for which compensation is provided under section 410 of the Foreign Service Act of 1980, if the individual (A) was subject to this subchapter during employment with the Government last preceding imprisonment, or (B) is qualified for an annuity under this subchapter on the basis of other service of the individual;

(11) subject to sections 8334(c) and 8339(i) of this title, service in any capacity of at least 130 days (or its equivalent) per calendar year performed after July 1, 1946, for the National Committee for a Free Europe; Free Europe Committee, Incorporated; Free Europe, Incorporated; Radio Liberation Committee; Radio Liberty Committee; subdivisions of any of those organizations; Radio Free Europe/Radio Liberty, Incorporated, Radio Free Asia; the Asia Foundation; or the Armed Forces Network, Europe (AFN-E), but only if such service is not credited for benefits under any other retirement system which is established for such entities and funded in whole or in part by the Government and only if the individual later becomes subject to this subchapter;

(12) service as a justice or judge of the United States, as defined by section 451 of title 28, and service as a judge of a court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States, but no credit shall be allowed for such service if the employee is entitled to a salary or an annuity under section 371, 372, or 373 of title 28;

(13) subject to sections 8334(c) and 8339(i) of this title, service performed on or after December 6, 1967, and before the effective date of this paragraph as an employee of the House Beauty Shop, only if he serves as such an employee for a period of at least five years after such effective date;

(14) one year of service to be credited for each year in which a Native of the Pribilof Islands performs service in the taking and curing of fur seal skins and other activities in connection with the administration of the Pribilof Islands, notwithstanding any period of separation from the service, and regardless of whether the Native who performs the service retires before, on, or after the effective date of this paragraph;

(15) subject to sections 8334(c) and 8339(i) of this title, service performed on or after January 3, 1969, and before January 4, 1973, as the Washington Representative for Guam or the Washington Representative for the Virgin Is-

lands, only if the individual serves as a Member for a period of at least five years after January 2, 1973;

(16) service performed by any individual as an employee described in section 2105(c) of this title after June 18, 1952, and before January 1, 1966, if (A) such service involved conducting an arts and crafts, drama, music, library, service club, youth activities, sports, or recreation program (including any outdoor recreation program) for personnel of the armed forces, and (B) such individual is an employee subject to this subchapter on the day before the date of the enactment of the Nonappropriated Fund Instrumentalities Employees' Retirement Credit Act of 1986; and

(17) service performed by any individual as an employee paid from nonappropriated funds of an instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) that is not covered by paragraph (16) and that is not otherwise creditable, if the individual elects (in accordance with regulations prescribed by the Office) to have such service credited under this paragraph.

The Office of Personnel Management shall accept the certification of the Secretary of Agriculture or his designee concerning service for the purpose of this subchapter of the type performed by an employee named by paragraph (3) of this subsection. The Office of Personnel Management shall accept the certification of the Secretary of Commerce or his designee concerning service for the purpose of this subchapter of the type performed by an employee named by paragraph (14) of this subsection. The Office of Personnel Management shall accept the certification of the Capitol Guide Board concerning service for the purpose of this subchapter of the type described in paragraph (8) of this subsection and performed by an employee. The Office of Personnel Management shall accept the certification of the Chief Administrative Officer of the House of Representatives concerning service for the purpose of this subchapter of the type described in paragraph (13) of this subsection. For the purpose of paragraph (5) of this subsection—

(A) a volunteer and a volunteer leader are deemed receiving pay during their service at the respective rates of readjustment allowances payable under sections 2504(c) and 2505(1) of title 22; and

(B) the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22 is the period between enrollment as a volunteer or volunteer leader and the termination of that service by the President or by death or resignation.

The Office of Personnel Management shall accept the certification of the Executive Director of the Board for International Broadcasting, and the Secretary of State with respect to the Asia Foundation and the Secretary of Defense with respect to the Armed Forces Network, Europe (AFN-E), concerning services for the purposes of this subchapter of the type described in paragraph (11) of this subsection. For the purpose of this subchapter, service of the type described in paragraph (15) of this subsection shall be consid-

ered Member service. The Office of Personnel Management shall accept, for the purposes of this subchapter, the certification of the head of a nonappropriated fund instrumentality of the United States concerning service of the type described in paragraph (16) or (17) of this subsection which was performed for such appropriated fund instrumentality. Service credited under paragraph (17) may not also be credited under any other retirement system provided for employees paid from nonappropriated funds of a nonappropriated fund instrumentality.

(c)(1) Except as provided in paragraphs (2) and (4) of this subsection and subsection (d) of this section—

(A) the service of an individual who first becomes an employee or Member before October 1, 1982, shall include credit for each period of military service performed before the date of the separation on which the entitlement to an annuity under this subchapter is based, subject to section 8332(j) of this title; and

(B) the service of an individual who first becomes an employee or Member on or after October 1, 1982, shall include credit for—

(i) each period of military service performed before January 1, 1957, and

(ii) each period of military service performed after December 31, 1956, and before the separation on which the entitlement to annuity under this subchapter is based, only if a deposit (with interest, if any) is made with respect to that period, as provided in section 8334(j) of this title.

(2) If an employee or Member is awarded retired pay based on any period of military service, the service of the employee or Member may not include credit for such period of military service unless the retired pay is awarded—

(A) based on a service-connected disability—

(i) incurred in combat with an enemy of the United States; or

(ii) caused by an instrumentality of war and incurred in line of duty during a period of war as defined by section 1101 of title 38; or

(B) under chapter 1223 of title 10 (or under chapter 67 of that title as in effect before the effective date of the Reserve Officer Personnel Management Act).

(3)(A) Notwithstanding paragraph (2) of this subsection, for purposes of computing a survivor annuity for a survivor of an employee or Member—

(i) who was awarded retired pay based on any period of military service, and

(ii) whose death occurs before separation from the service,

creditable service of the deceased employee or Member shall include each period of military service includable under subparagraph (A) or (B) of paragraph (1) of this subsection, as applicable. In carrying out this subparagraph, any amount deposited under section 8334(h) of this title shall be taken into account.

(B) A survivor annuity computed based on an amount which, under authority of subparagraph (A), takes into consideration any period of military service shall be reduced by the amount of any survivor's benefits—

(i) payable to a survivor (other than a child) under a retirement system for members of the uniformed services;

(ii) if, or to the extent that, such benefits are based on such period of military service.

(C) The Office of Personnel Management shall prescribe regulations to carry out this paragraph, including regulations under which—

(i) a survivor may elect not to be covered by this paragraph; and

(ii) this paragraph shall be carried out in any case which involves a former spouse.

(4) If, after January 1, 1997, an employee or Member waives retired pay that is subject to a court order for which there has been effective service on the Secretary concerned for purposes of section 1408 of title 10, the military service on which the retired pay is based may be credited as service for purposes of this subchapter only if the employee or Member authorizes the Director to deduct and withhold from the annuity payable to the employee or Member under this subchapter an amount equal to the amount that, if the annuity payment was instead a payment of the employee's or Member's retired pay, would have been deducted and withheld and paid to the former spouse covered by the court order under such section 1408. The amount deducted and withheld under this paragraph shall be paid to that former spouse. The period of civil service employment by the employee or Member shall not be taken into consideration in determining the amount of the deductions and withholding or the amount of the payment to the former spouse. The Director of the Office of Personnel Management shall prescribe regulations to carry out this paragraph.

(d) For the purpose of section 8339(c)(1) of this title, a Member—

(1) shall be allowed credit only for periods of military service not exceeding 5 years, plus military service performed by the Member on leaving his office, for the purpose of performing military service, during a war or national emergency proclaimed by the President or declared by Congress and before his final separation from service as Member; and

(2) may not receive credit for military service for which credit is allowed for purpose of retired pay under other statute.

(e) This subchapter does not affect the right of an employee or Member to retired pay, pension, or compensation in addition to an annuity payable under this subchapter.

(f) Credit shall be allowed for leaves of absence without pay granted an employee while performing military service or while receiving benefits under subchapter I of chapter 81 of this title. An employee or former employee who returns to duty after a period of separation is deemed, for the purpose of this subsection, to have been in a leave of absence without pay for that part of the period in which he was receiving benefits under subchapter I of chapter 81 of this title or any earlier statute on which such subchapter is based. Except for a substitute in the postal field service and service described in paragraph (14) of subsection (b) of this section.,<sup>3</sup>

<sup>3</sup> So in original.

credit may not be allowed for so much of other leaves of absence without pay as exceeds 6 months in the aggregate in a calendar year.

(g) An employee who during the period of a war, or of a national emergency as proclaimed by the President or declared by Congress, leaves his position to enter the military service is deemed, for the purpose of this subchapter, as not separated from his civilian position because of that military service, unless he applies for and receives a lump-sum credit under this subchapter. However, the employee is deemed as not retaining his civilian position after December 31, 1956, or after the expiration of 5 years of that military service, whichever is later.

(h) An employee who—

- (1) has at least 5 years' Member service; and
- (2) serves as a Member at any time after August 2, 1946;

may not be allowed credit for service which is used in the computation of an annuity under section 8339(c) of this title.

(i) An individual who qualifies as an employee under section 8331(1)(E) of this title is entitled to credit for his service as a United States Commissioner, which is not credited for the purpose of this subchapter for service performed by him in a capacity other than Commissioner, on the basis of—

- (1) 1/313 of a year for each day on which he performed service as a Commissioner before July 1, 1945; and
- (2) 1/260 of a year for each day on which he performed service as a Commissioner after June 30, 1945.

Credit for service performed as Commissioner may not exceed 313 days in a year before July 1, 1945, or 260 days in a year after June 30, 1945. For the purpose of this subchapter, the employment and pay of a Commissioner is deemed on a daily basis when actually employed.

(j)(1) Notwithstanding any other provision of this section, military service, except military service covered by military leave with pay from a civilian position, performed by an individual after December 1956, the period of an individual's service as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, the period of an individual's service as a full-time volunteer enrolled in a program of at least 1 year's duration under part A, B,<sup>2</sup> or C of title I of the Domestic Volunteer Service Act of 1973, and the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22, shall be excluded in determining the aggregate period of service on which an annuity payable under this subchapter to the individual or to his spouse, former spouse or child is based, if the individual, spouse, former spouse, or child is entitled, or would on proper application be entitled, at the time of that determination, to monthly old-age or survivors benefits under section 402 of title 42 based on the individual's wages and self-employment income. If the military service or service as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, as a full-time volunteer enrolled in a program of at least 1 year's duration under part A, B,<sup>2</sup> or C of title I of the Domestic Volunteer Service Act of 1973, or as a volunteer or volun-

teer leader under chapter 34 of title 22 is not excluded by the preceding sentence, but on becoming 62 years of age, the individual or spouse, former spouse<sup>4</sup> becomes entitled, or would on proper application be entitled, to the described benefits, the Office of Personnel Management shall redetermine the aggregate period of service on which the annuity is based, effective as of the first day of the month in which he or she becomes 62 years of age, so as to exclude that service. The Secretary of Health, Education, and Welfare, on request of the Office, shall inform the Office whether or not the individual, spouse, former spouse, or child is entitled at any named time to the described benefits. For the purpose of this subsection, the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22 is the period between enrollment as a volunteer or volunteer leader and termination of that service by the President or by death or resignation, and the period of an individual's service as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964 or under part A, B,<sup>2</sup> or C of title I of the Domestic Volunteer Service Act of 1973 is the period between enrollment as a volunteer and termination of that service by the Director of the Office of Economic Opportunity or the Chief Executive Officer of the Corporation for National and Community Service, as appropriate, or by death or resignation.

(2) The provisions of paragraph (1) of this subsection relating to credit for military service shall not apply to—

(A) any period of military service of an employee or Member with respect to which the employee or Member has made a deposit with interest, if any, under section 8334(j) of this title; or

(B) the service of any employee or Member described in section 8332(c)(1)(B) of this title.

(3) The provisions of paragraph (1) relating to credit for service as a volunteer or volunteer leader under the Economic Opportunity Act of 1964, part A, B,<sup>2</sup> or C of title I of the Domestic Volunteer Service Act of 1973, or the Peace Corps Act shall not apply to any period of service as a volunteer or volunteer leader of an employee or Member with respect to which the employee or Member has made the deposit with interest, if any, required by section 8334(l).

(k)(1) An employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to receive full retirement credit for his periods of that leave without pay and arrange to pay currently into the Fund, through his employing agency, amounts equal to the retirement deductions and agency contributions that would be applicable if he were in pay status. If the election and all payments provided by this paragraph are not made, the employee may not receive credit for the periods of leave without pay occurring after July 17, 1966, notwithstanding the third<sup>5</sup> sentence of sub-

<sup>4</sup>So in original. Probably should be "individual, spouse, or former spouse".

<sup>5</sup>See 1986 Amendment note below.

section (f) of this section. For the purpose of the preceding sentence, "employee" includes an employee who was on approved leave without pay and serving as a full-time officer or employee of such an organization on July 18, 1966, and who filed a similar election before September 17, 1966.

(2) An employee may deposit with interest an amount equal to retirement deductions representing any period or periods of approved leave without pay while serving, before July 18, 1966, as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) of this title. An employee who makes the deposit shall be allowed full retirement credit for the period or periods of leave without pay. If the employee dies, a survivor as defined by section 8331(10) of this title may make the deposit. If the deposit is not made in full, retirement credit shall be allowed in accordance with the third<sup>5</sup> sentence of subsection (f) of this section.

(l)(1) Any employee or Member who—

(A) is of Japanese ancestry; and

(B) while a citizen of the United States or an alien lawfully admitted to the United States for permanent residence, was interned or otherwise detained at any time during World War II in any camp, installation, or other facility in the United States, or in any territory or possession of the United States, under any policy or program of the United States respecting individuals of Japanese ancestry which was established during World War II in the interests of national security pursuant to—

(i) Executive Order Numbered 9066, dated February 19, 1942;

(ii) section 67 of the Act entitled "An Act to provide a government for the Territory of Hawaii", approved April 30, 1900 (chapter 339, Fifty-sixth Congress; 31 Stat. 153);

(iii) Executive Order Numbered 9489, dated October 18, 1944;

(iv) sections 4067 through 4070 of the Revised Statutes of the United States; or

(v) any other statute, rule, regulation, or order; or

(C) is of Aleut ancestry and while a citizen of the United States was interned or otherwise detained in, or relocated to any camp, installation, or other facility in the Territory of Alaska which was established during World War II for the purpose of the internment, detention, or relocation of Aleuts pursuant to any statute, rule, regulation, or order;

shall be allowed credit (as civilian service) for any period during which such employee or Member was so interned or otherwise detained after such employee became 18 years of age.

(2) For the purpose of this subsection, "World War II" means the period beginning on December 7, 1941, and ending on December 31, 1946.

(m)(1) Upon application to the Office of Personnel Management, any individual who is an employee on the date of the enactment of this subsection, and who has on such date or thereafter acquires 5 years or more of creditable civilian service under this section (exclusive of service for which credit is allowed under this subsection) shall be allowed credit (as service as a

Congressional employee) for service before the date of the enactment of this subsection while employed by the Democratic Senatorial Campaign Committee, the Republican Senatorial Campaign Committee, the Democratic National Congressional Committee, or the Republican National Congressional Committee, if—

(A) such employee has at least 4 years and 6 months of service on such committees as of December 12, 1980; and

(B) such employee makes a deposit to the Fund in an amount equal to the amount which would be required under section 8334(c) of this title if such service were service as a Congressional employee.

(2) Upon application to the Office of Personnel Management, any individual who was an employee on the date of enactment of this paragraph, and who has on such date or thereafter acquires 5 years or more of creditable civilian service under this section (exclusive of service for which credit is allowed under this subsection) shall be allowed credit (as service as a congressional employee) for service before December 31, 1990, while employed by the Democratic Senatorial Campaign Committee, the 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 makes a deposit to the Fund in an amount equal to the amount which would be required under section 8334(c) if such service were service as a congressional employee.

(3) The Office shall accept the certification of the President of the Senate (or his designee) or the Speaker of the House (or his designee), as the case may be, concerning the service of, and the amount of compensation received by, an employee with respect to which credit is to be sought under this subsection.

(4) An individual receiving credit for service for any period under this subsection shall not be granted credit for such service under the provisions of the Social Security Act.

(n) Any employee who—

(1) served in a position in which the employee was excluded from coverage under this subchapter because the employee was covered under a retirement system established under section 10 of the Federal Reserve Act; and

(2) transferred without a break in service to a position to which the employee was appointed by the President, with the advice and consent of the Senate, and in which position the employee is subject to this subchapter,

shall be treated for all purposes of this subchapter as if any service that would have been creditable under the retirement system established under section 10 of the Federal Reserve Act was service performed while subject to this subchapter if any employee and employer deductions, contributions or rights with respect to the employee's service are transferred from such retirement system to the Fund.

(o)(1) Notwithstanding any other provision of this subchapter, the service of an individual fi-

nally convicted of an offense described in paragraph (2) shall not be taken into account for purposes of this subchapter, except that this sentence applies only to service rendered as a Member (irrespective of when rendered). Any such individual (or other person determined under section 8342(c), if applicable) shall be entitled to be paid so much of such individual's lump-sum credit as is attributable to service to which the preceding sentence applies.

(2)(A) An offense described in this paragraph is any offense described in subparagraph (B) for which the following apply:

(i) Every act or omission of the individual (referred to in paragraph (1)) that is needed to satisfy the elements of the offense occurs while the individual is a Member, the President, the Vice President, or an elected official of a State or local government.

(ii) Every act or omission of the individual that is needed to satisfy the elements of the offense directly relates to the performance of the individual's official duties as a Member, the President, the Vice President, or an elected official of a State or local government.

(iii) The offense—

(I) is committed after the date of enactment of this subsection and—

(aa) is described under subparagraph (B)(i), (iv), (xvi), (xix), (xxiii), (xxiv), or (xxvi); or

(bb) is described under subparagraph (B)(xxix), (xxx), or (xxxi), but only with respect to an offense described under subparagraph (B)(i), (iv), (xvi), (xix), (xxiii), (xxiv), or (xxvi); or

(II) is committed after the date of enactment of the STOCK Act and—

(aa) is described under subparagraph (B)(ii), (iii), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvii), (xviii), (xx), (xxi), (xxii), (xxv), (xxvii), or (xxviii); or

(bb) is described under subparagraph (B)(xxix), (xxx), or (xxxi), but only with respect to an offense described under subparagraph (B)(ii), (iii), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvii), (xviii), (xx), (xxi), (xxii), (xxv), (xxvii), or (xxviii).

(B) An offense described in this subparagraph is only the following, and only to the extent that the offense is a felony:

(i) An offense under section 201 of title 18 (relating to bribery of public officials and witnesses).

(ii) An offense under section 203 of title 18 (relating to compensation to Member of Congress, officers, and others in matters affecting the Government).

(iii) An offense under section 204 of title 18 (relating to practice in the United States Court of Federal Claims or the United States Court of Appeals for the Federal Circuit by Member of Congress).

(iv) An offense under section 219 of title 18 (relating to officers and employees acting as agents of foreign principals).

(v) An offense under section 286 of title 18 (relating to conspiracy to defraud the Government with respect to claims).

(vi) An offense under section 287 of title 18 (relating to false, fictitious or fraudulent claims).

(vii) An offense under section 597 of title 18 (relating to expenditures to influence voting).

(viii) An offense under section 599 of title 18 (relating to promise of appointment by candidate).

(ix) An offense under section 602 of title 18 (relating to solicitation of political contributions).

(x) An offense under section 606 of title 18 (relating to intimidation to secure political contributions).

(xi) An offense under section 607 of title 18 (relating to place of solicitation).

(xii) An offense under section 641 of title 18 (relating to public money, property or records).

(xiii) An offense under section 666 of title 18 (relating to theft or bribery concerning programs receiving Federal funds).

(xiv) An offense under section 1001 of title 18 (relating to statements or entries generally).

(xv) An offense under section 1341 of title 18 (relating to frauds and swindles, including as part of a scheme to deprive citizens of honest services thereby).

(xvi) An offense under section 1343 of title 18 (relating to fraud by wire, radio, or television, including as part of a scheme to deprive citizens of honest services thereby).

(xvii) An offense under section 1503 of title 18 (relating to influencing or injuring officer or juror).

(xviii) An offense under section 1505 of title 18 (relating to obstruction of proceedings before departments, agencies, and committees).

(xix) An offense under section 1512 of title 18 (relating to tampering with a witness, victim, or an informant).

(xx) An offense under section 1951 of title 18 (relating to interference with commerce by threats of violence).

(xxi) An offense under section 1952 of title 18 (relating to interstate and foreign travel or transportation in aid of racketeering enterprises).

(xxii) An offense under section 1956 of title 18 (relating to laundering of monetary instruments).

(xxiii) An offense under section 1957 of title 18 (relating to engaging in monetary transactions in property derived from specified unlawful activity).

(xxiv) An offense under chapter 96 of title 18 (relating to racketeer influenced and corrupt organizations).

(xxv) An offense under section 7201 of the Internal Revenue Code of 1986 (relating to attempt to evade or defeat tax).

(xxvi) An offense under section 104(a) of the Foreign Corrupt Practices Act of 1977 (relating to prohibited foreign trade practices by domestic concerns).

(xxvii) An offense under section 10(b) of the Securities Exchange Act of 1934 (relating to fraud, manipulation, or insider trading of securities).

(xxviii) An offense under section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) (re-



lating to fraud, manipulation, or insider trading of commodities).

(xxix) An offense under section 371 of title 18 (relating to conspiracy to commit offense or to defraud United States), to the extent of any conspiracy to commit an act which constitutes—

(I) an offense under clause (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii), (xviii), (xix), (xx), (xxi), (xxii), (xxiii), (xxiv), (xxv), (xxvi), (xxvii), or (xxviii); or

(II) an offense under section 207 of title 18 (relating to restrictions on former officers, employees, and elected officials of the executive and legislative branches).

(xxx) Perjury committed under section 1621 of title 18 in falsely denying the commission of an act which constitutes—

(I) an offense under clause (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii), (xviii), (xix), (xx), (xxi), (xxii), (xxiii), (xxiv), (xxv), (xxvi), (xxvii), or (xxviii); or

(II) an offense under clause (xxix), to the extent provided in such clause.

(xxxi) Subornation of perjury committed under section 1622 of title 18 in connection with the false denial or false testimony of another individual as specified in clause (xxx).

(3) An individual convicted of an offense described in paragraph (2) shall not, after the date of the final conviction, be eligible to participate in the retirement system under this subchapter or chapter 84 while serving as a Member.

(4) The Office of Personnel Management shall prescribe any regulations necessary to carry out this subsection. Such regulations shall include—

(A) provisions under which interest on any lump-sum payment under the second sentence of paragraph (1) shall be limited in a manner similar to that specified in the last sentence of section 8316(b); and

(B) provisions under which the Office may provide for—

(i) the payment, to the spouse or children of any individual referred to in the first sentence of paragraph (1), of any amounts which (but for this clause) would otherwise have been nonpayable by reason of such first sentence, subject to paragraph (5); and

(ii) an appropriate adjustment in the amount of any lump-sum payment under the second sentence of paragraph (1) to reflect the application of clause (i).

(5) Regulations to carry out clause (i) of paragraph (4)(B) shall include provisions to ensure that the authority to make any payment to the spouse or children of an individual under such clause shall be available only to the extent that the application of such clause is considered necessary and appropriate taking into account the totality of the circumstances, including the financial needs of the spouse or children, whether the spouse or children participated in an offense described in paragraph (2) of which such individual was finally convicted, and what measures, if any, may be necessary to ensure that the convicted individual does not benefit from any such payment.

(6) For purposes of this subsection—

(A) the terms “finally convicted” and “final conviction” refer to a conviction (i) which has not been appealed and is no longer appealable because the time for taking an appeal has expired, or (ii) which has been appealed and the appeals process for which is completed;

(B) the term “Member” has the meaning given such term by section 2106, notwithstanding section 8331(2); and

(C) the term “child” has the meaning given such term by section 8341.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 567; Pub. L. 90-83, §1(73), Sept. 11, 1967, 81 Stat. 214; Pub. L. 90-486, §5(a), Aug. 13, 1968, 82 Stat. 757; Pub. L. 91-177, title I, §112(a), Dec. 30, 1969, 83 Stat. 831; Pub. L. 91-510, title IV, §442(b), Oct. 26, 1970, 84 Stat. 1191; Pub. L. 91-658, §1, Jan. 8, 1971, 84 Stat. 1961; Pub. L. 92-297, §7(1), May 16, 1972, 86 Stat. 144; Pub. L. 92-454, §1, Oct. 2, 1972, 86 Stat. 760; Pub. L. 93-113, title VI, §602, Oct. 1, 1973, 87 Stat. 417; Pub. L. 94-183, §2(32), (33), (39), Dec. 31, 1975, 89 Stat. 1058, 1059; Pub. L. 95-382, §1(a), Sept. 22, 1978, 92 Stat. 727; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-54, §2(a)(48), Aug. 14, 1979, 93 Stat. 384; Pub. L. 96-465, title II, §2313, Oct. 17, 1980, 94 Stat. 2167; Pub. L. 96-523, §4(a), Dec. 12, 1980, 94 Stat. 3040; Pub. L. 97-164, title II, §207(a), Apr. 2, 1982, 96 Stat. 54; Pub. L. 97-253, title III, §306(b), (c), Sept. 8, 1982, 96 Stat. 795, 796; Pub. L. 97-346, §3(a), (b), Oct. 15, 1982, 96 Stat. 1647; Pub. L. 98-51, title I, §111(2), July 14, 1983, 97 Stat. 269; Pub. L. 89-702, title II, §209(a)-(e), as added Pub. L. 98-129, §2, Oct. 14, 1983, 97 Stat. 843; Pub. L. 98-369, div. B, title II, §2208(a), July 18, 1984, 98 Stat. 1060; Pub. L. 99-251, title II, §202, Feb. 27, 1986, 100 Stat. 23; Pub. L. 99-335, title II, §207(g), June 6, 1986, 100 Stat. 595; Pub. L. 99-556, title V, §502(a), Oct. 27, 1986, 100 Stat. 3140; Pub. L. 99-638, §2(b)(2), Nov. 10, 1986, 100 Stat. 3536; Pub. L. 100-204, title V, §503, Dec. 22, 1987, 101 Stat. 1383; Pub. L. 101-530, §1, Nov. 6, 1990, 104 Stat. 2338; Pub. L. 102-83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102-242, title IV, §466(a), Dec. 19, 1991, 105 Stat. 2384; Pub. L. 102-378, §2(58), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 103-82, title III, §371(a)(1), title IV, §405(b), Sept. 21, 1993, 107 Stat. 909, 921; Pub. L. 103-337, div. A, title XVI, §1677(a)(3), Oct. 5, 1994, 108 Stat. 3019; Pub. L. 104-186, title II, §215(11), Aug. 20, 1996, 110 Stat. 1746; Pub. L. 104-201, div. A, title VI, §637(a), Sept. 23, 1996, 110 Stat. 2580; Pub. L. 106-57, title III, §312, Sept. 29, 1999, 113 Stat. 428; Pub. L. 106-554, §1(a)(4) [div. A, §901(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A-195; Pub. L. 107-107, div. A, title XI, §1132(a)(1), Dec. 28, 2001, 115 Stat. 1242; Pub. L. 110-81, title IV, §401(a), Sept. 14, 2007, 121 Stat. 754; Pub. L. 112-105, §15(a)(1), (b), Apr. 4, 2012, 126 Stat. 301.)

#### HISTORICAL AND REVISION NOTES 1966 ACT

| <i>Derivation</i> | <i>U.S. Code</i>                  | <i>Revised Statutes and Statutes at Large</i>  |
|-------------------|-----------------------------------|--|
| .....             | 5 U.S.C. 2253 (less (f) and (g)). | July 31, 1956, ch. 804, §401 “Sec. 3 (less (f) and (g))”, 70 Stat. 745.<br>Aug. 1, 1956, ch. 837, §409, 70 Stat. 877.<br>June 17, 1957, Pub. L. 85-56, §2201(2), 71 Stat. 157. |

HISTORICAL AND REVISION NOTES—CONTINUED  
1966 ACT

| <i>Derivation</i> | <i>U.S. Code</i>   | <i>Revised Statutes and Statutes at Large</i>   |
|-------------------|--|---|
| .....             | 5 U.S.C. 2252(g) (2d sentence).  | Sept. 2, 1958, Pub. L. 85-857, § 13(c), 72 Stat. 1264.<br>Sept. 21, 1959, Pub. L. 86-306, § 1, 73 Stat. 583.<br>Sept. 22, 1961, Pub. L. 87-293, § 21, 75 Stat. 623.<br>July 31, 1956, ch. 804, § 401 "Sec. 2(g) (2d sentence)", 70 Stat. 745. |
| .....             | 5 U.S.C. 2252(h)(2), (3).  | July 1, 1960, Pub. L. 86-568, § 115(b)(1) "(h)(2), (3)", 74 Stat. 302.<br>Oct. 4, 1961, Pub. L. 87-350, § 2(a), 75 Stat. 770.   |
| .....             | 5 U.S.C. 1054 (less 1st 27 words).   | Aug. 4, 1947, ch. 452, § 5 (less 1st 27 words), 61 Stat. 728.   |
| .....             | 22 U.S.C. 2504(f) (as applicable to the Civil Service Retirement Act, as amended). | Sept. 22, 1961, Pub. L. 87-293, § 5(f) (as applicable to the Civil Service Retirement Act, as amended), 75 Stat. 614.<br>Dec. 13, 1963, Pub. L. 88-200, § 2(c) (as applicable to the Civil Service Retirement Act, as amended), 77 Stat. 359. |

The section is reorganized for clarity.

Subsection (b)(B) is added on authority of section 2522(e) of title 22.

In subsection (c)(1)(B), the words "as that term is defined by section 301 of title 38" are coextensive with and substituted for "as that term is used in chapter 11 of Title 38".

In subsection (c)(2), the words "under chapter 67 of title 10" are substituted for "title III of Public Law 810, Eightieth Congress" on authority of the Act of Aug. 10, 1956, ch. 104, § 49(b), 70A Stat. 640.

In subsection (f), the words "without pay" are added after "leaves of absence" in the first sentence for clarity and to align it with the use of the term in the second sentence. The words "postal field service" are coextensive with and substituted for "postal service".

In subsection (g), the words "has left" are omitted as executed.

In subsection (i), the words "but nothing contained in this chapter [chapter 30 of title 5] shall affect, otherwise than for the purposes of this chapter, the basis, under applicable law other than this chapter, on which such United States Commissioner is employed or on which his compensation is determined and paid" are omitted from the last sentence as surplusage as there is nothing in the chapter that can reasonably be construed to affect that basis other than for the purposes of the chapter.

In subsection (j), the words "or section 2504(f) of Title 22" are omitted as unnecessary since the provisions of that section applicable to this subchapter are carried into subsection (b). The last sentence is added on authority of section 2522(e) of title 22.

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

1967 ACT

| <i>Section of title 5</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>                   |
|---------------------------|---------------------------|---|
| 8332(k)(1) ...            | 5 App.: 2253(k)(1).       | July 18, 1966, Pub. L. 89-504, § 503, 80 Stat. 300. |
| 8332(k)(2) ...            | 5 App.: 2253(k)(2).       |   |

In subsection (k)(1), the words "as defined by section 8331(1) of this title" are substituted for "as defined in section 1(a) of this Act". The words "occurring after July 17, 1966" are substituted for "occurring on or after date of enactment of this subsection". The words "notwithstanding the second sentence of subsection (f) of this section" are substituted for "notwithstanding the

provisions of the second sentence of section 3(c) of this Act". The last sentence is substituted for the second sentence of former subsection (k)(1) to reflect the current effect of the subsection with regard to those employees who were on leave without pay on July 18, 1966, and who filed a similar election within the time prescribed by that sentence.

In subsection (k)(2), the words "before July 18, 1966" are substituted for "prior to the date of enactment of this subsection". The words "as defined by section 8331(1) of this title" are substituted for "as defined in section 1(a) of this Act". The second sentence is substituted for "and may receive full retirement credit for such period or periods of leave without pay". The words "If the employee dies" are substituted for "In the event of his death". The words "as defined by section 8331(10) of this title" are substituted for "as defined in section 1(o) of this Act". In the last sentence, the words "described in this paragraph" following "If the deposit" are omitted as unnecessary. The words "the second sentence of subsection (f) of this section" are substituted for "the second sentence of section 3(c) of this Act".

Editorial Notes

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in subsecs. (b)(7) and (j)(1), (3), is Pub. L. 88-452, Aug. 20, 1964, 73 Stat. 508, which was classified generally to chapter 34 (§2701 et seq.) of Title 42, The Public Health and Welfare, prior to repeal, except for titles VIII and X, by Pub. L. 97-35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. Titles VIII and X of the Act are classified generally to subchapters VIII (§2991 et seq.) and X (§2996 et seq.) of chapter 34 of Title 42. Part A of title VIII of that Act is part A of title VIII of Pub. L. 88-452 as added by Pub. L. 90-222, title I, §110, Dec. 23, 1967, 81 Stat. 722, which was classified generally to part A (§2992 et seq.) of subchapter VIII of chapter 34 of Title 42, prior to its repeal by Pub. L. 93-113, title VI, §603, Oct. 1, 1973, 87 Stat. 417. See sections 4951 et seq. and 5055 of Title 42. For complete classification of this Act to the Code, see Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsecs. (b)(7) and (j)(1), (3), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394. Parts A and C of title I of the Act are classified generally to parts A (§4951 et seq.) and C (§4991 et seq.), respectively, of subchapter I of chapter 66 of Title 42, The Public Health and Welfare. Part B of title I of the Act, which was classified generally to part B (§4971 et seq.) of subchapter I of chapter 66 of Title 42, was repealed by Pub. L. 111-13, title II, §2121, Apr. 21, 2009, 123 Stat. 1584. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of Title 42 and Tables.

Section 410 of the Foreign Service Act of 1980, referred to in subsec. (b)(10), is classified to section 3970 of Title 22, Foreign Relations and Intercourse.

The effective date of this paragraph, referred to in subsec. (b)(13), is Jan. 3, 1978, the effective date of section 111(2) of Pub. L. 98-51. See Effective Date of 1983 Amendment note below.

The effective date of this paragraph, referred to in subsec. (b)(14), is Oct. 14, 1983, the date of enactment of Pub. L. 98-129.

The date of the enactment of the Nonappropriated Fund Instrumentalities Employees' Retirement Credit Act of 1986, referred to in subsec. (b)(16), is the date of enactment of section 2 of Pub. L. 99-638, which was approved Nov. 10, 1986.

Chapter 67 of that title as in effect before the effective date of the Reserve Officer Personnel Management Act, referred to in subsec. (c)(2)(B), means chapter 67 (§1331 et seq.) of Title 10, Armed Forces, prior to its transfer to part II of subtitle E of Title 10, its renumbering as chapter 1223, and its general revision by section 1662(j)(1) of Pub. L. 103-337. A new chapter 67 (§1331) of Title 10 was added by section 1662(j)(7) of Pub. L. 103-337. For effective date of the Reserve Officer Per-

sonnel Management Act (Pub. L. 103-337, title XVI, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10.

The Peace Corps Act, referred to in subsec. (j)(3), is Pub. L. 87-293, Sept. 22, 1961, 75 Stat. 612, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

Section 67 of the Act entitled “An Act to provide a government for the Territory of Hawaii”, approved April 30, 1900 (chapter 339, Fifty-sixth Congress; 31 Stat. 153), referred to in subsec. (l)(1)(B)(ii), formerly classified to section 532 of Title 48, Territories and Insular Possessions, was omitted from such Title following the statehood of Hawaii.

Sections 4067 through 4070 of the Revised Statutes, referred to in subsec. (l)(1)(B)(iv), are classified to sections 21 through 24 of Title 50, War and National Defense.

The date of enactment of this subsection, referred to in subsec. (m)(1), means the date of enactment of Pub. L. 96-523 which was approved Dec. 12, 1980.

The date of enactment of this paragraph, referred to in subsec. (m)(2), is the date of enactment of Pub. L. 106-554, which was approved Dec. 21, 2000.

The Social Security Act, referred to in subsec. (m)(4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 10 of the Federal Reserve Act, referred to in subsec. (n), is section 10 of act Dec. 23, 1913, ch. 6, 38 Stat. 260. For classification of section 10 to the Code, see Codification note set out under section 241 of Title 12, Banks and Banking, and Tables.

The date of enactment of this subsection, referred to in subsec. (o)(2)(A)(iii), is the date of enactment of Pub. L. 110-81, which was approved Sept. 14, 2007.

The date of enactment of the STOCK Act, referred to in subsec. (o)(2)(A)(iii)(II), is the date of enactment of Pub. L. 112-105, which was approved Apr. 4, 2012.

Section 7201 of the Internal Revenue Code of 1986, referred to in subsec. (o)(2)(B)(xxv), is classified to section 7201 of Title 26, Internal Revenue Code.

Section 104(a) of the Foreign Corrupt Practices Act of 1977, referred to in subsec. (o)(2)(B)(xxvi), is classified to section 78dd-2(a) of Title 15, Commerce and Trade.

Section 10(b) of the Securities Exchange Act of 1934, referred to in subsec. (o)(2)(B)(xxvii), is classified to section 78j(b) of Title 15, Commerce and Trade.

#### AMENDMENTS

2012—Subsec. (o)(2)(A)(i), (ii). Pub. L. 112-105, §15(a)(1), inserted “, the President, the Vice President, or an elected official of a State or local government” after “Member”.

Subsec. (o)(2)(A)(iii). Pub. L. 112-105, §15(b)(1), added cl. (iii) and struck out former cl. (iii) which read as follows: “The offense is committed after the date of enactment of this subsection.”

Subsec. (o)(2)(B). Pub. L. 112-105, §15(b)(2), added subpar. (B) and struck out former subpar. (B) which described certain offenses set out in cls. (i) to (x).

2007—Subsec. (o). Pub. L. 110-81 added subsec. (o).

2001—Subsec. (b). Pub. L. 107-107, §1132(a)(1)(D), (E), in concluding provisions, inserted “or (17)” after “service of the type described in paragraph (16)” and inserted at end “Service credited under paragraph (17) may not also be credited under any other retirement system provided for employees paid from nonappropriated funds of a nonappropriated fund instrumentality.”

Subsec. (b)(17). Pub. L. 107-107, §1132(a)(1)(A)-(C), added par. (17).

2000—Subsec. (m)(2) to (4). Pub. L. 106-554 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1999—Subsec. (m)(1)(A). Pub. L. 106-57 amended subpar. (A) generally. Prior to amendment, subpar. (A)

read as follows: “such employee has at least 5 years service on such committees as of the effective date of this section, and”.

1996—Subsec. (b). Pub. L. 104-186 substituted “Chief Administrative Officer” for “Clerk” in fourth sentence of concluding provisions.

Subsec. (c)(1). Pub. L. 104-201, §637(a)(2), in introductory provisions, substituted “Except as provided in paragraphs (2) and (4)” for “Except as provided in paragraph (2)”.

Subsec. (c)(4). Pub. L. 104-201, §637(a)(1), added par. (4).

1994—Subsec. (c)(2)(B). Pub. L. 103-337 substituted “chapter 1223 of title 10 (or under chapter 67 of that title as in effect before the effective date of the Reserve Officer Personnel Management Act)” for “chapter 67 of title 10”.

1993—Subsec. (j)(1). Pub. L. 103-82, §405(b), which directed that “the Chief Executive Officer of the Corporation for National and Community Service” be substituted for “the Director of ACTION”, could not be executed because “the Director of ACTION” does not appear in text.

Pub. L. 103-82, §371(a)(1)(A)(i), in first sentence inserted “the period of an individual’s service as a full-time volunteer enrolled in a program of at least 1 year’s duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973,” after “Economic Opportunity Act of 1964.”

Pub. L. 103-82, §371(a)(1)(A)(ii), in second sentence inserted “, as a full-time volunteer enrolled in a program of at least 1 year’s duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973,” after “Economic Opportunity Act of 1964”.

Pub. L. 103-82, §371(a)(1)(A)(iii), in last sentence inserted “or under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973” after “Economic Opportunity Act of 1964”, and inserted “or the Chief Executive Officer of the Corporation for National and Community Service, as appropriate,” after “Director of the Office of Economic Opportunity”.

Subsec. (j)(3). Pub. L. 103-82, §371(a)(1)(B), added par. (3).

1992—Subsec. (b). Pub. L. 102-378 substituted “paragraph (16)” for “paragrph (16)”.

1991—Subsec. (c)(2)(A)(ii). Pub. L. 102-83 substituted “section 1101 of title 38” for “section 301 of title 38”.

Subsec. (n). Pub. L. 102-242 added subsec. (n).

1990—Subsec. (b). Pub. L. 101-530 struck out at beginning of last paragraph “service referred to in paragraph (6) is allowable only in the case of persons performing service under section 709 of title 32 after December 31, 1968.”

1987—Subsec. (b). Pub. L. 100-204 inserted “, and the Secretary of State with respect to the Asia Foundation and the Secretary of Defense with respect to the Armed Forces Network, Europe (AFN-E),” after “Board for International Broadcasting” in last paragraph.

1986—Subsec. (b). Pub. L. 99-638 which directed the amendment of subchapter (b) of section 8332 by adding par. (16) and closing provision relating to acceptance by the Office of Personnel Management of the certification of a nonappropriated fund instrumentality concerning service of the type described in par. (16) was executed to subsec. (b) of this section, as the probable intent of Congress.

Pub. L. 99-335, §207(g)(1)(C), (D), substituted “paragraph (14)” for “paragraph (13)” in second sentence following par. (15), and inserted last sentence providing that for purposes of this subchapter, service of the type described in par. (15) of this subsection shall be considered Member service.

Subsec. (b)(13) to (15). Pub. L. 99-335, §207(g)(1)(A), (B), redesignated the par. (13), relating to service credits for Pribilof Island Natives for taking and curing of fur seal skins and other activities, as par. (14), and added par. (15).

Subsec. (c)(3). Pub. L. 99-556 added par. (3).

Subsec. (f). Pub. L. 99-335, §207(g)(2), substituted “paragraph (14)” for “paragraph (13)”.

Subsec. (j)(1). Pub. L. 99-251 substituted “spouse, former spouse” for “widow” wherever appearing.

Subsec. (k). Pub. L. 99-335, §207(g)(3), which directed the substitution of “third” for “second” in last sentence of par. (1), was executed by substituting “third” for “second” in penultimate sentence of par. (1) and last sentence of par. (2) as the probable intent of Congress.

1984—Subsec. (b)(13). Pub. L. 98-369 inserted in the par. (13) added by Pub. L. 98-129 “, and regardless of whether the Native who performs the service retires before, on, or after the effective date of this paragraph”.

1983—Subsec. (b). Pub. L. 98-129 substituted “Except as provided in paragraph (13) of this subsection, credit” for “Credit” in provisions preceding par. (1), and inserted in provisions immediately following par. (13) the sentence providing that the Office of Personnel Management shall accept the certification of the Secretary of Commerce or his designee concerning service for the purpose of this subchapter of the type performed by an employee named by par. (13) of this subsection.

Pub. L. 98-51, §111(2)(D), inserted in provisions immediately following par. (13) the sentence providing that the Office of Personnel Management shall accept the certification of the Clerk of the House of Representatives concerning service for the purpose of this subchapter of the type described in par. (13) of this subsection.

Subsec. (b)(13). Pub. L. 98-129 added a par. (13) relating to service performed by Pribilof Island Natives.

Pub. L. 98-51, §111(2)(A)–(C), added a par. (13) relating to service by a person as an employee of the House Beauty Shop.

Subsec. (f). Pub. L. 98-129 inserted “and service described in paragraph (13) of subsection (b) of this section,” after “postal field service”.

Subsec. (l)(1)(C). Pub. L. 98-129 added subpar. (C).

1982—Subsec. (b)(12). Pub. L. 97-164 added par. (12).

Subsec. (c). Pub. L. 97-253, §306(b), designated existing first sentence as par. (1), inserted provision differentiating between individuals who become employees or Members before Oct. 1, 1982, and those who become so on or after Oct. 1, 1982, and designated existing second sentence as par. (2) with accommodating redesignations of paragraphs and subparagraphs as subparagraphs and clauses accordingly.

Subsec. (c)(1)(A). Pub. L. 97-346, §3(a), substituted “period” for “month”.

Subsec. (c)(1)(B). Pub. L. 97-346, §3(b), redesignated provisions following “shall include credit for” as cl. (i), substituted “each period of military service performed before January 1, 1957, and” for “each month of military service (performed before the date of the separation on which the entitlement to an annuity under this subchapter is based) only if a deposit with interest, if any, is made with respect to that month, as provided in section 8334(j) of this title”, and added cl. (2).

Subsec. (j). Pub. L. 97-253, §306(c), redesignated existing provisions as par. (1) and added par. (2).

Subsec. (j)(2)(A). Pub. L. 97-346, §3(a), substituted “period” for “month”.

1980—Subsec. (b)(10), (11). Pub. L. 96-465 added pars. (10) and (11) and last sentence relating to acceptance by the Office of Personnel Management of the certification of the Executive Director of the Board for International Broadcasting.

Subsec. (m). Pub. L. 96-523 added subsec. (m).

1979—Subsec. (b). Pub. L. 96-54, §2(a)(48)(B), substituted “after December 31, 1968” for “United States Code, on or after the effective date of the National Guard Technicians Act of 1968” in last sentence.

Subsec. (b)(6). Pub. L. 96-54, §2(a)(48)(A), struck out “, United States Code” after “32”.

1978—Subsecs. (b), (j). Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively, wherever appearing.

Subsec. (l). Pub. L. 95-382 added subsec. (l).

1975—Subsec. (b)(7). Pub. L. 94-183, §2(39), struck out “(—U.S.C.—)” after “Domestic Volunteer Service Act of 1973”.

Subsec. (b)(8). Pub. L. 94-183, §2(32), substituted “after February 18, 1929, and before noon on January 3, 1971” for “on and after February 19, 1929, and prior to the effective date of section 442 of the Legislative Reorganization Act of 1970”.

Subsec. (b)(9). Pub. L. 94-183, §2(33), substituted “8339(i)” for “8339(h)”.

1973—Subsec. (b)(7). Pub. L. 93-113 included period of service of a full-time volunteer enrolled in a program of at least one year’s duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973.

1972—Subsec. (b). Pub. L. 92-454 added par. (9).

Pub. L. 92-297 substituted “8339(i)” for “8339(h)” in pars. (3) and (8).

1971—Subsec. (f). Pub. L. 91-658 provided for leave-without-pay status for retirement purposes of employees or former employees who return to duty after a period of separation during which compensation benefits were received.

1970—Subsec. (b). Pub. L. 91-510 added par. (8) and provision for Civil Service Commission acceptance of certification of Capitol Guide Board concerning service for purpose of this subchapter, respectively.

1969—Subsec. (b)(7). Pub. L. 91-177, §112(a)(1), added par. (7).

Subsec. (j). Pub. L. 91-177, §112(a)(2), excluded period of an individual’s services as a VISTA volunteer under part A of subchapter VIII of title 42, from aggregate period of service determining annuity payments.

Pub. L. 91-177, §112(a)(3), inserted provision for computation of period of service of a VISTA volunteer under part A of subchapter VIII of title 42.

1968—Subsec. (b). Pub. L. 90-486 added par. (6), and provisions that service referred to in par. (6) is allowable only in the case of persons performing service under section 709 of title 32, on or after the specified effective date.

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

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

##### EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title XI, §1132(c), Dec. 28, 2001, 115 Stat. 1244, provided that: “The amendments made by this section [amending this section and sections 8334, 8339, 8411, 8415, and 8422 of this title] shall apply only to separations from service as an employee of the United States on or after the date of the enactment of this Act [Dec. 28, 2001].”

##### EFFECTIVE DATE OF 1996 AMENDMENT

Section 637(c) of Pub. L. 104-201 provided that: “The amendments made by subsections (a) and (b) [amending this section and section 8411 of this title] shall take effect on January 1, 1997.”

##### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

##### EFFECTIVE DATE OF 1993 AMENDMENT

Section 371(c) of Pub. L. 103-82 provided that:

“(1) APPLICABILITY.—

“(A) AMENDMENTS RELATING TO CSRS.—

“(i) IN GENERAL.—The amendments made by subsection (a) [amending this section and section 8334 of this title] shall apply with respect to any individual entitled to an annuity on the basis of a separation from service occurring on or after the effective date of this subtitle [Oct. 1, 1993].

“(ii) RULES RELATING TO ANNUITIES BASED ON EARLIER SEPARATIONS.—An annuity under subchapter

III of chapter 83 of title 5, United States Code, payable to an individual based on a separation from service occurring before the effective date of this subtitle shall be subject to the provisions of paragraph (2).

“(B) AMENDMENTS RELATING TO FERS.—

“(i) IN GENERAL.—The amendments made by subsection (b) [amending sections 8411 and 8422 of this title] shall apply with respect to any individual entitled to an annuity on the basis of a separation from service occurring before, on, or after the effective date of this subtitle [Oct. 1, 1993], subject to clause (ii).

“(ii) RULE RELATING TO ANNUITIES BASED ON EARLIER SEPARATIONS.—In the case of any individual whose entitlement to an annuity is based on a separation from service occurring before the effective date of this subtitle, any increase in such individual's annuity on the basis of a deposit made under section 8442(f) of title 5, United States Code, as amended by subsection (b)(2), shall be effective beginning with the annuity payment payable for the first calendar month beginning after the effective date of this subtitle.

“(2) SPECIAL RULES.—

“(A) OLD-AGE OR SURVIVORS INSURANCE BENEFITS.—Subject to subparagraph (B), in any case in which an individual described in paragraph (1)(A)(ii) is also entitled to old-age or survivors insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing an application therefor), the amount of the annuity to which such individual is entitled under subchapter III of chapter 83 of title 5, United States Code (after taking into account any creditable service as a volunteer or volunteer leader under the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.], the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4950 et seq.], or the Peace Corps Act [22 U.S.C. 2501 et seq.]) which is payable for any month shall be reduced by an amount determined by multiplying the amount of such old-age or survivors insurance benefit for the determination month by a fraction—

“(i) the numerator of which is the total of the wages (within the meaning of section 209 of the Social Security Act [42 U.S.C. 409]) for service as a volunteer or volunteer leader under the Economic Opportunity Act of 1964, the Domestic Volunteer Service Act of 1973, or the Peace Corps Act of such individual credited for years before the calendar year in which the determination month occurs, up to the contribution and benefit base determined under section 230 of the Social Security Act [42 U.S.C. 430] (or other applicable maximum annual amount referred to in section 215(e)(1) of such Act [42 U.S.C. 415(e)(1)] for each such year); and

“(ii) the denominator of which is the total of all wages described in clause (i), plus all other wages (within the meaning of section 209 of such Act [42 U.S.C. 409]) and all self-employment income (within the meaning of section 211(b) of such Act [42 U.S.C. 411(b)]) of such individual credited for years after 1936 and before the calendar year in which the determination month occurs, up to the contribution and benefit base (or such other amount referred to in section 215(e)(1) of such Act [42 U.S.C. 415(e)(1)] for each such year.

“(B) LIMITATIONS.—

“(i) REDUCTION IN ANNUITY.—Subparagraph (A) shall not reduce the annuity of an individual below the amount of the annuity which would be payable to the individual for the determination month if the provisions of section 8332(j) of title 5, United States Code, relating to service as a volunteer or volunteer leader, applied to the individual for such month.

“(ii) APPLICATION.—Subparagraph (A) shall not apply in the case of an individual who, prior to the date of enactment of this Act [Sept. 21, 1993], made a deposit under section 8334(c) of title 5, United

States Code, with respect to service as a volunteer or volunteer leader (as described in subparagraph (A)).

“(iii) DETERMINATION MONTH.—For purposes of this paragraph, the term ‘determination month’ means—

“(I) the first month the individual described in paragraph (1)(A)(ii) is entitled to old-age or survivors benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing an application therefor); or

“(II) the first calendar month beginning after the date of enactment of this Act [Sept. 21, 1993], in the case of any individual entitled to such benefits for such month.

“(iv) RULE RELATING TO ANNUITIES BASED ON EARLIER SEPARATIONS.—Any increase in an annuity which occurs by virtue of the enactment of this paragraph shall be effective beginning with the annuity payment payable for the first calendar month beginning after the effective date of this subtitle [Oct. 1, 1993].

“(3) FURNISHING OF INFORMATION.—The Secretary of Health and Human Services shall furnish such information to the Office of Personnel Management as may be necessary to carry out this subsection.

“(4) ACTION TO INFORM INDIVIDUALS.—The Director of the Office of Personnel Management shall take such action as may be necessary and appropriate to inform individuals entitled to credit under this section for service as a volunteer or volunteer leader, or to have any annuity recomputed, or to make a deposit under this section, of such entitlement.”

Amendment by section 371(a)(1) of Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of Title 42, The Public Health and Welfare.

Section 406(b) of Pub. L. 103-82 provided that: “The amendments made by sections 404 and 405 [amending this section, section 558a of Title 16, Conservation, section 2501-1 of Title 22, Foreign Relations and Inter-course, section 1542 of Title 25, Indians, and sections 3012, 3013, 3035a, 4950, 4953, 4995, 5025, 5043, 5048, 5056, 5061, 5065, 5590, 5616, 6863, 11312, 11851, 12312, 12638, and 12653 of Title 42, and amending provisions set out as notes under section 1701z-6 of Title 12, Banks and Banking, and sections 4954 and 5001 of Title 42] shall take effect on the effective date of section 203(c)(2).” [Section 203(c)(2) of Pub. L. 103-82 is effective Apr. 4, 1994, see section 203(d) of Pub. L. 103-82 and Proc. No. 6662, set out as notes under section 12651 of Title 42.]

EFFECTIVE DATE OF 1991 AMENDMENT

Section 466(c) of Pub. L. 102-242 provided that: “The amendment made by this section [amending this section and section 8411 of this title] shall apply with respect to any individual who transfers to a position in which he or she is subject to subchapter III of chapter 83 or chapter 84 of title 5, United States Code, on or after October 1, 1991.”

EFFECTIVE DATE OF 1990 AMENDMENT

Section 3(a) of Pub. L. 101-530 provided that:

“(1) GENERAL RULE.—

“(A) ELIGIBILITY.—Except as provided in paragraph (2), the amendment made by section 1 [amending this section] applies only with respect to individuals who—

“(i) separate from employment with the Government on or after the date of enactment of this Act [Nov. 6, 1990]; and

“(ii) make an appropriate deposit, in accordance with section 8334(c) or 8411(f) of title 5, United States Code (as appropriate), for additional service that is creditable under such amendment.

“(B) DEPOSIT.—Any such deposit—

“(i) shall include interest, which shall be computed under section 8334(e) of such title (except

that the rate of interest shall be 3 percent a year) from the midpoint of the period of additional service to the date deposit is made; and

“(ii) shall be made before date of retirement.

“(2) EXCEPTION.—

“(A) RULE FOR INDIVIDUALS SEPARATING AFTER DECEMBER 31, 1968, AND BEFORE THE ENACTMENT OF THIS ACT.—In the case of any individual who—

“(i) was employed under section 709 of title 32, United States Code, relating to National Guard technicians, or any prior corresponding provision of law, before January 1, 1969, and

“(ii) was separated from employment with the Government on or after January 1, 1969, and before the date of enactment of this Act [Nov. 6, 1990],

any annuity under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, based on such individual's service (as defined in section 8331(12) or 8401(26) of such title, as applicable) shall be determined or redetermined to take into account the amendment made by section 1 [amending this section], if application therefor is received by the Office of Personnel Management within 1 year after the date of enactment of this Act, and an appropriate deposit is made for any additional service that is creditable under such amendment. Any such deposit shall be computed, and must be paid either in a lump sum at the time of application or in installments over the 2-year period which begins on the date of application, or such shorter period as the Office may by regulation prescribe.

“(B) EARLIER PAYMENTS NOT AFFECTED BY RECOMPUTATION.—Any change in an annuity resulting from a redetermination under subparagraph (A) shall apply only with respect to monthly payments accruing after the date the deposit required under subparagraph (A) is made (or, if payments are to be made in installments, after an agreement has been entered into regarding the manner in which such payments will be made).

“(3) PAYMENT BY SURVIVORS.—For the purpose of survivor annuities, any deposit or installment payment required by paragraph (1) or (2) relating to service of an individual may also be made by a survivor of such individual.”

#### EFFECTIVE DATE OF 1986 AMENDMENTS

Section 2(c) of Pub. L. 99-638 provided that: “Notwithstanding any other provision of this Act [amending this section and section 2105 of this title and enacting provisions set out as notes under this section and section 8331 of this title] which specifies an effective date for amendments made by this Act, the amendments made by this section [amending this section and section 2105 of this title] shall take effect on the date of the enactment of this Act [Nov. 10, 1986].”

Section 502(c) of Pub. L. 99-556 provided that:

“(1) The amendments made by this section [amending this section and section 8411 of this title] shall apply to a survivor of an employee or Member who dies on or after the 180th day after the date of the enactment of this Act [Oct. 27, 1986].

“(2) Upon application to the Office of Personnel Management, such amendments shall also apply to a survivor of an employee or Member whose date of death precedes such 180th day, except that any resulting recomputation shall not be effective for any period beginning before the 60th day after the date on which the application is received.”

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

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Oct. 14, 1983, see section 2208(c) of Pub. L. 98-369, set out as a note under section 1169a of Title 16, Conservation.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Section 111(2) of Pub. L. 98-51 provided that the amendment made by that section is effective Jan. 3, 1978.

#### EFFECTIVE DATE OF 1982 AMENDMENTS

Section 3(n) of Pub. L. 97-346 provided that: “The amendments made by this section [amending this section and sections 8334, 8342, 8344, and 8348 of this title and provisions set out as notes under this section and sections 5504, 5532, 5728, 8331, 8334, and 8337 of this title] shall take effect as of the date of the enactment of the Omnibus Budget Reconciliation Act of 1982 [Sept. 8, 1982].”

Amendment by Pub. L. 97-253 effective Oct. 1, 1982, except that any employee or Member who retired after Sept. 8, 1982, and before Oct. 1, 1985, or is entitled to an annuity under chapter 83 of this title based on a separation from service occurring during such period, or a survivor of such individual, may make a payment under section 8334(j)(1) of this title, and regulations required to be issued under section 8334(j)(1) of this title, to be issued by the Office of Personnel Management within 90 days after such effective date, see section 306(g) of Pub. L. 97-253, as amended, set out as a note under section 8331 of this title.

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1980 AMENDMENTS

Section 4(b) of Pub. L. 96-523 provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 12, 1980].”

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

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

#### EFFECTIVE DATE OF 1978 AMENDMENT; APPLICABILITY TO ANNUITIES; RECOMPUTATION

Section 2 of Pub. L. 95-382 provided that:

“(a) The amendments made by this Act [amending this section and section 8334 of this title] shall take effect on the later of—

“(1) the date of the enactment of this Act [Sept. 22, 1978], or

“(2) October 1, 1978.

“(b) Subject to subsection (c) of this section, the amendments made by the first section of this Act [amending this section and section 8334 of this title], shall apply with respect to annuities which commence before, on, or after the effective date of this Act, but no monetary benefit by reason of such amendments shall accrue for any period before such effective date.

“(c)(1) An annuity or survivor annuity based on the service of an employee or Member who performed service described in section 8332(l) of title 5, United States Code, as added by the first section of this Act, shall, upon application to the Civil Service Commission, be recomputed in accordance with such section 8332(l).

“(2) Any recomputation of an annuity under paragraph (1) shall apply with respect to months beginning more than 30 days after the date on which application for such recomputation is received in the Commission.

“(d)(1) The Civil Service Commission shall take such action as may be necessary and appropriate to inform individuals entitled to have any service credited under section 8332(l) of title 5, United States Code, as added by the first section of this Act, or to have any annuity recomputed under subsection (c), of their entitlement to such credit or recomputation.

“(2) The Civil Service Commission shall, on request, assist any individual referred to in paragraph (1) in obtaining from any department, agency, or other instrumentality of the United States such information possessed by such instrumentality as may be necessary to verify the entitlement of such individual to have any service credited under such section 8332(l) or to have any annuity recomputed under subsection (c).”

“(3) Any department, agency, or other instrumentality of the United States which possesses any information with respect to the internment or other detention of any employee or Member as described in such section 8332(l) shall, at the request of the Commission, furnish such information to the Commission.”

#### EFFECTIVE DATE OF 1972 AMENDMENT

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

#### EFFECTIVE DATE OF 1971 AMENDMENT

Section 5(a) of Pub. L. 91-658 provided that: “The amendment made by the first section of this Act [amending this section] is effective only with respect to annuity accruing for full months beginning after the date of enactment of this Act [Jan. 8, 1971]; but any part of a period of separation referred to in such amendment in which the employee or former employee was receiving benefits under subchapter I of chapter 81 of title 5, United States Code, or any earlier statute on which such subchapter is based shall be counted whether the employee returns to duty before, on, or after such date of enactment. With respect to any person retired before such date of enactment any such part of a period of separation shall be counted only upon application of the former employee.”

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-510 effective immediately prior to noon on Jan. 3, 1971, see section 601(1) of Pub. L. 91-510, set out as a note under section 4301 of Title 2, The Congress.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-177 effective as to all former volunteers employed by the United States Government on or after the effective date of Pub. L. 91-177 which was approved on Dec. 30, 1969, see section 112(c) of Pub. L. 91-177.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-486 effective Jan. 1, 1969, except that no deductions or withholding from salary which result shall commence before first day of first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90-486, set out as a note under section 709 of Title 32, National Guard.

#### REGULATIONS

Section 4 of Pub. L. 101-530 provided that: “The Office of Personnel Management shall prescribe any regulations necessary for the implementation of this Act [amending this section, enacting provisions set out as a note above, and enacting and amending provisions set out as notes under section 709 of Title 32, National Guard].”

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reor-

ganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### RETIREMENT CREDIT FOR SERVICE OF CERTAIN EMPLOYEES TRANSFERRED FROM DISTRICT OF COLUMBIA SERVICE TO FEDERAL SERVICE

Pub. L. 111-84, div. A, title XIX, §1905, Oct. 28, 2009, 123 Stat. 2617, provided that:

“(a) RETIREMENT CREDIT.—

“(1) IN GENERAL.—Any individual who is treated as an employee of the Federal Government for purposes of chapter 83 or chapter 84 of title 5, United States Code, on or after the date of enactment of this Act [Oct. 28, 2009] who performed qualifying District of Columbia service shall be entitled to have such service included in calculating the individual’s creditable service under section 8332 or 8411 of title 5, United States Code, but only for purposes of the following provisions of such title:

“(A) Sections 8333 and 8410 (relating to eligibility for annuity).

“(B) Sections 8336 (other than subsections (d), (h), and (p) thereof) and 8412 (relating to immediate retirement).

“(C) Sections 8338 and 8413 (relating to deferred retirement).

“(D) Sections 8336(d), 8336(h), 8336(p), and 8414 (relating to early retirement).

“(E) Section 8341 and subchapter IV of chapter 84 (relating to survivor annuities).

“(F) Section 8337 and subchapter V of chapter 84 (relating to disability benefits).

“(2) TREATMENT OF DETENTION OFFICER SERVICE AS LAW ENFORCEMENT OFFICER SERVICE.—Any portion of an individual’s qualifying District of Columbia service which consisted of service as a detention officer under section 2604(2) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (sec. 1-626.04(2), D.C. Official Code) shall be treated as service as a law enforcement officer under sections 8331(20) or 8401(17) of title 5, United States Code, for purposes of applying paragraph (1) with respect to the individual.

“(3) SERVICE NOT INCLUDED IN COMPUTING AMOUNT OF ANY ANNUITY.—Qualifying District of Columbia service shall not be taken into account for purposes of computing the amount of any benefit payable out of the Civil Service Retirement and Disability Fund.

“(b) QUALIFYING DISTRICT OF COLUMBIA SERVICE DEFINED.—In this section, ‘qualifying District of Columbia service’ means any of the following:

“(1) Service performed by an individual as a non-judicial employee of the District of Columbia courts—

“(A) which was performed prior to the effective date of the amendments made by section 11246(b) of the Balanced Budget Act of 1997 [Pub. L. 105-33, see Effective Date of 1997 Amendment note set out under section 3121 of Title 26, Internal Revenue Code]; and

“(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

“(2) Service performed by an individual as an employee of an entity of the District of Columbia government whose functions were transferred to the Pretrial Services, Parole, Adult Supervision, and Offender Supervision Trustee under section 11232 of the Balanced Budget Act of 1997 [111 Stat. 746]—

“(A) which was performed prior to the effective date of the individual’s coverage as an employee of the Federal Government under section 11232(f) of such Act [111 Stat. 747]; and

“(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

“(3) Service performed by an individual as an employee of the District of Columbia Public Defender Service—

“(A) which was performed prior to the effective date of the amendments made by section 7(e) of the District of Columbia Courts and Justice Technical Corrections Act of 1998 [112 Stat. 2427]; and

“(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

“(4) In the case of an individual who was an employee of the District of Columbia Department of Corrections who was separated from service as a result of the closing of the Lorton Correctional Complex and who was appointed to a position with the Bureau of Prisons, the District of Columbia courts, the Pretrial Services, Parole, Adult Supervision, and Offender Supervision Trustee, the United States Parole Commission, or the District of Columbia Public Defender Service, service performed by the individual as an employee of the District of Columbia Department of Corrections—

“(A) which was performed prior to the effective date of the individual’s coverage as an employee of the Federal Government; and

“(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

“(c) CERTIFICATION OF SERVICE.—The Office of Personnel Management shall accept the certification of the appropriate personnel official of the government of the District of Columbia or other independent employing entity concerning whether an individual performed qualifying District of Columbia service and the length of the period of such service the individual performed.”

#### FORMER EMPLOYEES OF LEGISLATIVE SERVICE ORGANIZATIONS

Pub. L. 106-554, §1(a)(4) [div. A, §901(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-196, provided that:

“(1) SERVICE OF EMPLOYEES OF LEGISLATIVE SERVICE ORGANIZATIONS.—

“(A) IN GENERAL.—Subject to succeeding provisions of this paragraph, upon application to the Office of Personnel Management in such form and manner as the Office shall prescribe, any individual who performed service as an employee of a legislative service organization of the House of Representatives (as defined and authorized in the One Hundred Third Congress) and whose pay was paid in whole or in part by a source other than the Clerk Hire account of a Member of the House of Representatives (other than an individual described in paragraph (6)) shall be entitled—

“(i) to receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (whichever would be appropriate), as congressional employee service, for all such service; and

“(ii) to have all pay for such service which was so paid by a source other than the Clerk Hire account of a Member included (in addition to any amounts otherwise included in basic pay) for purposes of computing an annuity payable out of the Civil Service Retirement and Disability Fund.

“(B) DEPOSIT REQUIREMENT.—In order to be eligible for the benefits described in subparagraph (A), an individual shall be required to pay into the Civil Service Retirement and Disability Fund an amount equal to the difference between—

“(i) the employee contributions that were actually made to such Fund under applicable provisions of law with respect to the service described in subparagraph (A); and

“(ii) the employee contributions that would have been required with respect to such service if the

amounts described in subparagraph (A)(ii) had also been treated as basic pay.

The amount required under this subparagraph shall include interest, which shall be computed under section 8334(e) of title 5, United States Code.

“(C) CERTAIN OFFSETS REQUIRED IN ORDER TO PREVENT DOUBLE CONTRIBUTIONS AND BENEFITS.—In the case of any period of service as an employee of a legislative service organization which constituted employment for purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.]—

“(i) any pay for such service (as described in subparagraph (A)(ii)) with respect to which the deposit under subparagraph (B) would otherwise be computed by applying the first sentence of section 8334(a)(1) of title 5, United States Code, shall instead be computed in a manner based on section 8334(k) of such title; and

“(ii) any retirement benefits under subchapter III of chapter 83 of title 5, United States Code, shall be subject to offset (to reflect that portion of benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] attributable to pay referred to in subparagraph (A)) similar to that provided for under section 8349 of such title.

“(2) SURVIVOR ANNUITANTS.—For purposes of survivor annuities, an application authorized by this section may, in the case of an individual under paragraph (1) who has died, be made by a survivor of such individual.

“(3) RECOMPUTATION OF ANNUITIES.—Any annuity or survivor annuity payable as of when an individual makes the deposit required under paragraph (1) shall be recomputed to take into account the crediting of service under such paragraph for purposes of amounts accruing for any period beginning on or after the date on which the individual makes the deposit.

“(4) CERTIFICATION OF SPEAKER.—The Office of Personnel Management shall accept the certification of the Speaker of the House of Representatives (or the Speaker’s designee) concerning the service of, and the amount of compensation received by, an employee with respect to whom credit is to be sought under this subsection.

“(5) NOTIFICATION AND OTHER DUTIES OF THE OFFICE OF PERSONNEL MANAGEMENT.—

“(A) NOTICE.—The Office of Personnel Management shall take such action as may be necessary and appropriate to inform individuals of any rights they might have as a result of enactment of this subsection.

“(B) ASSISTANCE.—The Office shall, on request, assist any individual in obtaining from any department, agency, or other instrumentality of the United States any information in the possession of such instrumentality which may be necessary to verify the entitlement of such individual to have any service credited under this subsection or to have an annuity recomputed under paragraph (3).

“(C) INFORMATION.—Any department, agency, or other instrumentality of the United States which possesses any information with respect to an individual’s performance of any service described in paragraph (1) shall, at the request of the office, furnish such information to the Office.

“(6) EXCLUSION OF CERTAIN EMPLOYEES.—An individual is not eligible for credit under this subsection if the individual served as an employee of the House of Representatives for an aggregate period of 5 years or longer after the individual’s final period of service as an employee of a legislative service organization of the House of Representatives.

“(7) MEMBER DEFINED.—In this subsection, the term ‘Member of the House of Representatives’ includes a Delegate or Resident Commissioner to Congress.”

CREDITABILITY OF ICC EMPLOYEE’S ANNUAL LEAVE FOR PURPOSES OF MEETING MINIMUM ELIGIBILITY REQUIREMENTS FOR IMMEDIATE ANNUITY

Pub. L. 104-88, title I, §105, Dec. 29, 1995, 109 Stat. 920, provided that:



“(a) IN GENERAL.—An employee of the Interstate Commerce Commission who is separated from Government service pursuant to the abolition of that agency under section 101 [49 U.S.C. 1301 note] shall, upon appropriate written application, be given credit, for purposes of determining eligibility for and computing the amount of any annuity under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, for accrued annual leave standing to such employee's credit at the time of separation.

“(b) LIMITATION AND OTHER CONDITIONS.—Any regulations necessary to carry out this section shall be prescribed by the Office of Personnel Management. Such regulations shall include provisions—

“(1) defining the types of leave for which credit may be given under this section (such definition to be similar to the corresponding provisions of the regulations under section 351.608(c)(2) of title 5 of the Code of Federal Regulations, as in effect on the date of the enactment of this Act [Dec. 29, 1995]);

“(2) limiting the amount of accrued annual leave which may be used for the purposes specified in subsection (a) to the minimum period of time necessary in order to permit such employee to attain first eligibility for an immediate annuity under section 8336, 8412, or 8414 of title 5, United States Code (in a manner similar to the corresponding provisions of the regulations referred to in paragraph (1));

“(3) under which contributions (or arrangements for the making of contributions) shall be made so that—

“(A) employee contributions for any period of leave for which retirement credit may be obtained under this section shall be made by the employee; and

“(B) Government contributions with respect to such period shall similarly be made by the Interstate Commerce Commission or other appropriate officer or entity (out of appropriations otherwise available for such contributions); and

“(4) under which subsection (a) shall not apply with respect to an employee who declines a reasonable offer of employment in another position in the Department of Transportation made under this Act [see Tables for classification] or any amendment made by this Act.

“(c) EXTINGUISHMENT OF ELIGIBILITY FOR LUMP-SUM PAYMENT.—A lump-sum payment under section 5551 of title 5, United States Code, shall not be payable with respect to any leave for which retirement credit is obtained under this section.”

[Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 1301 of Title 49.]

CREDITABILITY UNDER CSRS OF CERTAIN SERVICE PERFORMED UNDER PERSONAL SERVICE CONTRACT WITH UNITED STATES

Pub. L. 100-238, title I, § 110, Jan. 8, 1988, 101 Stat. 1749, provided that:

“(a) IN GENERAL.—

“(1) CONDITIONS FOR RECEIVING CREDIT.—Subject to the making of a deposit under section 8334(c) of title 5, United States Code, upon application to the Office of Personnel Management within 2 years after the date of the enactment of this Act [Jan. 8, 1988], any individual who is an employee (as defined by section 8331(1) or 8401(11) of such title) on such date shall be allowed credit under subchapter III of chapter 83 of such title for any service if such service was performed—

“(A) before November 5, 1985; and

“(B) under a personal service contract with the United States, except as provided in paragraph (3).

“(2) CERTIFICATION.—

“(A) IN GENERAL.—The Office shall, with respect to any service for which credit is sought under this

subsection, accept the certification of the head of the agency which was party to the contract referred to in paragraph (1)(B), but only if such certification—

“(i) states that the agency had intended, through such contract, that the individual involved (or that persons like the individual involved) be considered as having been appointed to a position in which such individual would be subject to subchapter III of chapter 83 of title 5, United States Code; and

“(ii) indicates the period of service which was performed under the contract by the individual involved, and includes copies of appropriate records or other documentation to support the determination as to the length of such period.

“(B) FINALITY.—A decision by an agency head concerning whether or not to make a certification under this paragraph in any particular instance shall be at the sole discretion of the agency head, and shall not be subject to administrative or judicial review.

“(3) EXCEPTION.—Nothing in this subsection shall apply with respect to any service performed under—

“(A) a contract for which any appropriations, allocations, or funds were used under section 636(a)(3) of the Foreign Assistance Act of 1961 [22 U.S.C. 2396(a)(3)];

“(B) a contract entered into under section 10(a)(5) of the Peace Corps Act [22 U.S.C. 2509(a)(5)];

“(C) a contract under which the services of an individual may be terminated by a person other than the individual or the Government; or

“(D) a contract for a single transaction or a contract under which services are paid for in a single payment.

“(b) APPLICABILITY TO ANNUITANTS.—

“(1) IN GENERAL.—In the case of any individual who—

“(A) performed service for which credit is allowable under subsection (a), and

“(B) retired on an annuity payable under subchapter III of chapter 83 of title 5, United States Code, after January 23, 1980, and before the date of the enactment of this Act [Jan. 8, 1988],

any annuity under such subchapter based on the service of such individual shall be redetermined to take into account the amendment made by subsection (a) if application therefor is made, and the deposit requirement under such subsection is met, within 2 years after the date of the enactment of this Act.

“(2) AMOUNTS TO WHICH APPLICABLE.—Any change in an annuity resulting from a redetermination under paragraph (1) shall be effective with respect to payments accruing for months beginning after the date of the enactment of this Act.”

CLARIFICATION RELATING TO CONSIDERATION OF PRE-1987 SERVICE AS AIR TRAFFIC CONTROLLER FOR RETIREMENT PURPOSES

Pub. L. 100-92, § 2, Aug. 18, 1987, 101 Stat. 679, provided that:

“(a) For purposes of subchapter III of chapter 83 of title 5, United States Code, and chapter 84 of such title—

“(1) service as an air traffic controller shall, with respect to any annuity which is based on a separation from service, or death, occurring on or after January 1, 1987, include any service as an air traffic controller whether performed before, on, or after January 1, 1987; and

“(2) the Office of Personnel Management shall accept the certification of the Secretary, or the designee of the Secretary, in determining the amount of any service performed by an individual as an air traffic controller.

“(b) For purposes of this section—

“(1) the term ‘air traffic controller’ has the meaning given such term by section 2109(1) of title 5, United States Code, as amended by section 207(b) of

the Federal Employees' Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 594); and

"(2) the term 'Secretary' has the meaning given such term by section 2109(2) of title 5, United States Code."

#### CADET NURSE CORPS

Section 1 of Pub. L. 99-638 provided: "That (a) service described in subsection (b) shall be considered creditable civilian service for purposes of subchapter III of chapter 83, or chapter 84, of title 5, United States Code, as applicable, in the case of any individual who meets the requirements of subsection (c).

"(b) This section relates to any period of training as a student or graduate nurse under a plan approved under section 2 of the Act of June 15, 1943 (57 Stat. 153) [former 50 U.S.C. App. 1452], if the total period of training under such plan was at least 2 years.

"(c)(1) An individual may not receive credit for service pursuant to this Act [amending sections 2105 and 8332 of this title and enacting provisions set out as notes under sections 8331 and 8332 of this title] unless—

"(A) within 14 months after the date of the enactment of this Act [Nov. 10, 1986], and in accordance with regulations under subsection (d), the individual files appropriate written application with the Office of Personnel Management;

"(B) at the time of filing the application under subparagraph (A), the individual is employed by the Government and subject to subchapter III of chapter 83 of title 5, United States Code (other than section 8344 of such title), or chapter 84 of such title (other than section 8468 of such title);

"(C) before the date of the separation on which is based the individual's entitlement to an annuity under subchapter III of chapter 83 of title 5, United States Code, or chapter 84 of such title, as applicable, such individual deposits into the Civil Service Retirement and Disability Fund the amount required under paragraph (2) with respect to the period of training involved.

"(2) The amount to be deposited shall be determined by the Office of Personnel Management in a manner consistent with applicable provisions of subchapter III of chapter 83 of title 5, United States Code, chapter 84 of such title or title III of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99-335, title III, see Tables for classification], as the case may be, relating to deposits for earlier periods of civilian service for which deductions from basic pay have not been made.

"(d) The Office of Personnel Management shall, not later than 2 months after the date of the enactment of this Act [Nov. 10, 1986], prescribe regulations to carry out this Act [amending sections 2105 and 8332 of this title and enacting provisions set out as notes under sections 8331 and 8332 of this title]."

#### RECOMPUTATION AT AGE 62 OF CREDIT FOR MILITARY SERVICE OF CURRENT ANNUITANTS

Section 307 of Pub. L. 97-253, as amended by Pub. L. 97-346, § 3(k), Oct. 15, 1982, 96 Stat. 1649, provided that:

"(a) The provisions of section 8332(j) of title 5, United States Code, relating to credit for military service, shall not apply with respect to any individual who is entitled to an annuity under subchapter III of chapter 83 of title 5, United States Code, on or before the date of enactment of this Act [Sept. 8, 1982] or who is entitled to an annuity based on a separation from service occurring on or before such date of enactment.

"(b) Subject to subsection (b), in any case in which an individual described in subsection (a) is also entitled to old-age or survivors' insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing application therefor), the amount of the annuity to which such individual is entitled under subchapter III of chapter 83 of title 5, United States Code, (after taking into account subsection (a)) which is payable for any month shall be reduced by an amount determined by multiplying the

amount of such old-age or survivors' insurance benefit for the determination month by a fraction—

"(1) the numerator of which is the total of the wages (within the meaning of section 209 of the Social Security Act [42 U.S.C. 409]) for service referred to in section 210(7) of such Act [42 U.S.C. 410(7)] (relating to service in the uniformed services) and deemed additional wages (within the meaning of section 229 of such Act [42 U.S.C. 429]) of such individual credited for years after 1956 and before the calendar year in which the determination month occurs, up to the contribution and benefit base determined under section 230 of the Social Security Act [42 U.S.C. 430] (or other applicable maximum annual amount referred to in section 215(e)(1) of such Act [42 U.S.C. 415(e)(1)]) for each such year, and

"(2) the denominator of which is the total of all wages and deemed additional wages described in paragraph (1) of this subsection plus all other wages (within the meaning of section 209 of such Act [42 U.S.C. 409]) and all self-employment income (within the meaning of section 211(b) of such Act [42 U.S.C. 411(b)]) of such individual credited for years after 1936 and before the calendar year in which the determination month occurs, up to the contribution and benefit base (or such other amount referred to in such section 215(e)(1) [42 U.S.C. 415(e)(1)]) for each such year.

"(c) Subsection (b) shall not reduce the annuity of any individual below the amount of the annuity which would be payable under this subchapter to the individual for the determination month if section 8332(j) of title 5, United States Code, applied to the individual for such month.

"(d) For purposes of this section, the term 'determination month' means—

"(1) the first month the individual described in subsection (a) is entitled to old-age or survivors' insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing application therefor); or

"(2) October 1982, in the case of any individual so entitled to such benefits for such month.

"(e) The preceding provisions of this section shall take effect with respect to any annuity payment payable under subchapter III of chapter 83 of title 5, United States Code, for calendar months beginning after September 30, 1982.

"(f) The Secretary of Health and Human Services shall furnish such information to the Office of Personnel Management as may be necessary to carry out the preceding provisions of this section."

#### DISTRICT OF COLUMBIA SUBSTITUTE TEACHERS

Section 2 of Pub. L. 92-454 provided that: "An annuity or survivor annuity based on the service of an employee or annuitant who performed service described in section 1 of this Act [amending this section] shall, upon application to the Civil Service Commission, be recomputed, effective on the first day of the first month following the date of enactment of this Act [Oct. 2, 1972], in accordance with section 1 of this Act."

#### NATIONAL GUARD TECHNICIANS

Amendment by section 5(a)(4) of Pub. L. 90-486 not applicable to persons employed prior to Jan. 1, 1969 whose employment was covered by the civil service retirement provisions of section 8331 et seq. of this title, see section 5(d) of Pub. L. 90-486, set out as a note under section 709 of Title 32, National Guard.

#### CREDITABLE SERVICE OF CERTAIN COMMISSIONED OFFICERS OF THE REGULAR OR RESERVE CORPS OF THE PUBLIC HEALTH SERVICE

Section 6(a), (b) of Pub. L. 86-415, Apr. 8, 1960, 74 Stat. 53, provided that:

"(a) Except as provided in subsection (b), service as a commissioned officer in the Regular Corps of the Public Health Service prior to July 1, 1960, shall be considered, for purposes of credit under the Civil Service Re-

tirement Act [this subchapter], other than section 3(f) thereof [section 8333(a) of this title], as civilian service performed by an employee (as defined in such Act [this subchapter]) and commissioned officers of the Reserve Corps of the Public Health Service, subject to the Civil Service Retirement Act [this subchapter] on June 30, 1960, shall be considered as voluntarily separated on that date, with respect to service as such officers, from civilian positions subject to such Act [this subchapter].

“(b) If a commissioned officer of the Regular or Reserve Corps of the Public Health Service is retired after June 30, 1960, and becomes entitled to retired pay from the Public Health Service, all service in the Regular or Reserve Corps of the Public Health Service prior to July 1, 1960, together with any other service which is performed at any time with the Public Health Service, other than as a commissioned officer, and which is credited to the officer for purposes of such retirement, shall be considered as military service for purposes of section 3(b) of the Civil Service Retirement Act [subsecs. (c)–(e) of this section]; except that, in the case of any such officer who is retired pursuant to subsection (a) of section 211 of the Public Health Service Act [section 212(a) of Title 42], any such service which was performed prior to July 1, 1960, which was subject to the Civil Service Retirement Act [this subchapter], and with respect to which he has not, prior to his retirement, received a refund of deductions under the Civil Service Retirement Act [this subchapter], shall not be considered as military service for purposes of such section 3(b) [subsecs. (c)–(e) of this section], but only if he waives his right to have such service included for purposes of computing the amount of his retired pay from the Service.”

### § 8333. Eligibility for annuity

(a) An employee must complete at least 5 years of civilian service before he is eligible for an annuity under this subchapter.

(b) An employee or Member must complete, within the last 2 years before any separation from service, except a separation because of death or disability, at least 1 year of creditable civilian service during which he is subject to this subchapter before he or his survivors are eligible for annuity under this subchapter based on the separation. If an employee or Member, except an employee or Member separated from the service because of death or disability, fails to meet the service requirement of the preceding sentence, the amounts deducted from his pay during the service for which no eligibility for annuity is established based on the separation shall be returned to him on the separation. Failure to meet this service requirement does not deprive the individual or his survivors of annuity rights which attached on a previous separation.

(c) A Member or his survivor is eligible for an annuity under this subchapter only if the amounts named by section 8334 of this title have been deducted or deposited with respect to his last 5 years of civilian service, or, in the case of a survivor annuity under section 8341(d) or (e)(1) of this title, with respect to his total service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 569; Pub. L. 91–93, title II, § 201(b), Oct. 20, 1969, 83 Stat. 138; Pub. L. 94–183, § 2(34), Dec. 31, 1975, 89 Stat. 1058.)

#### HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i>       | <i>Revised Statutes and Statutes at Large</i>                 |
|-------------------|------------------------|---|
| (a), (b) .....    | 5 U.S.C. 2253(f), (g). | July 31, 1956, ch. 804, § 401 “Sec. 3(f), (g)”, 70 Stat. 746. |

#### HISTORICAL AND REVISION NOTES—CONTINUED

| <i>Derivation</i> | <i>U.S. Code</i>                  | <i>Revised Statutes and Statutes at Large</i>  |
|-------------------|-----------------------------------|--|
| (c) .....         | 5 U.S.C. 2256(f) (last sentence). | July 31, 1956, ch. 804, § 401 “Sec. 6(f) (last sentence)”, 70 Stat. 750.<br>Aug. 27, 1958, Pub. L. 85–772, § 1(a), 72 Stat. 930. |

In subsection (c), the words “eligible for” are substituted for “entitled to”.

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

### Editorial Notes

#### AMENDMENTS

1975—Subsec. (c). Pub. L. 94–183 substituted “of this title” for “of title 5” and “of this title” for “of this chapter”.

1969—Subsec. (c). Pub. L. 91–93 provided for eligibility for a survivor annuity under section 8341(d) or (e)(1) of this title only if the requisite amounts are deducted or deposited with respect to total service period.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–93 inapplicable in cases of persons retired or otherwise separated prior to Oct. 20, 1969, their rights and of their survivors continued as if such amendment had not been enacted, see section 207(a) of Pub. L. 91–93, set out as a note under section 8331 of this title.

### § 8334. Deductions, contributions, and deposits

(a)(1)(A) The employing agency shall deduct and withhold from the basic pay of an employee, Member, Congressional employee, law enforcement officer, firefighter, bankruptcy judge, judge of the United States Court of Appeals for the Armed Forces, United States magistrate,<sup>1</sup> Court of Federal Claims judge, member of the Capitol Police, member of the Supreme Court Police, nuclear materials courier, or customs and border protection officer, as the case may be, the percentage of basic pay applicable under subsection (c).

(B)(i) Except as provided in clause (ii), an equal amount shall be contributed from the appropriation or fund used to pay the employee or, in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment. When an employee in the legislative branch is paid by the Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may pay from the applicable accounts of the House of Representatives the contribution that otherwise would be contributed from the appropriation or fund used to pay the employee.

(ii) In the case of an employee of the United States Postal Service, no amount shall be contributed under this subparagraph.

(2) The amounts so deducted and withheld, together with the amounts so contributed, shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures

<sup>1</sup> So in original. Probably should be “United States magistrate judge.”

as the Secretary of the Treasury may prescribe. Deposits made by an employee or Member also shall be credited to the Fund.

(b) Each employee or Member is deemed to consent and agree to these deductions from basic pay. Notwithstanding any law or regulation affecting the pay of an employee or Member, payment less these deductions is a full and complete discharge and acquittance of all claims and demands for regular services during the period covered by the payment, except the right to the benefits to which the employee or Member is entitled under this subchapter.

(c) Each employee or Member credited with civilian service after July 31, 1920, for which retirement deductions or deposits have not been made, may deposit with interest an amount equal to the following percentages of his basic pay received for that service:

|  | Percentage of basic pay | Service period                          |  | Percentage of basic pay   | Service period  |
|--|-------------------------|---|--|---|---|
| Employee .....   | 2½ .....                | August 1, 1920, to June 30, 1926.       | Judge of the United States Court of Appeals for the Armed Forces for service as a judge of that court. | 8.4 .....   | January 1, 2000, to December 31, 2000.  |
|  | 3½ .....                | July 1, 1926, to June 30, 1942.         |  | 8 .....   | After December 31, 2000.  |
|  | 5 .....                 | July 1, 1942, to June 30, 1948.         |  | 6 .....   | May 5, 1950, to October 31, 1956.   |
|  | 6 .....                 | July 1, 1948, to October 31, 1956.      |  | 6½ .....  | November 1, 1956, to December 31, 1969.   |
|  | 6½ .....                | November 1, 1956, to December 31, 1969. |  | 7 .....   | January 1, 1970, to (but not including) the date of the enactment of the Department of Defense Authorization Act, 1984. |
|  | 7 .....                 | January 1, 1970, to December 31, 1998.  |  | 8 .....   | The date of enactment of the Department of Defense Authorization Act, 1984, to December 31, 1998.                       |
|  | 7.25 .....              | January 1, 1999, to December 31, 1999.  |  | 8.25 .....  | January 1, 1999, to December 31, 1999.  |
|  | 7.4 .....               | January 1, 2000, to December 31, 2000.  |  | 8.4 .....   | January 1, 2000, to December 31, 2000.  |
|  | 7 .....                 | After December 31, 2000.                |  | 8 .....   | After December 31, 2000.  |
|  | 2½ .....                | August 1, 1920, to June 30, 1926.       | United States magistrate judge.  | 2½ .....  | August 1, 1920, to June 30, 1926.   |
| Member or employee for Congressional employee service.   | 3½ .....                | July 1, 1926, to June 30, 1942.         |  | 3½ .....  | July 1, 1926, to June 30, 1942.   |
|  | 5 .....                 | July 1, 1942, to June 30, 1948.         |  | 5 .....   | July 1, 1942, to June 30, 1948.   |
|  | 6 .....                 | July 1, 1948, to October 31, 1956.      |  | 6 .....   | July 1, 1948, to October 31, 1956.  |
|  | 6½ .....                | November 1, 1956, to December 31, 1969. |  | 6½ .....  | November 1, 1956, to December 31, 1969.   |
|  | 7.5 .....               | January 1, 1970, to December 31, 1998.  |  | 7 .....   | January 1, 1970, to September 30, 1987.   |
|  | 7.75 .....              | January 1, 1999, to December 31, 1999.  |  | 8 .....   | October 1, 1987, to December 31, 1998.  |
|  | 7.9 .....               | January 1, 2000, to December 31, 2000.  |  | 8.25 .....  | January 1, 1999, to December 31, 1999.  |
|  | 7.5 .....               | After December 31, 2000.                |  | 8.4 .....   | January 1, 2000, to December 31, 2000.  |
|  | 2½ .....                | August 1, 1920, to June 30, 1926.       | Court of Federal Claims Judge.   | 8 .....   | After December 31, 2000.  |
|  | 3½ .....                | July 1, 1926, to June 30, 1942.         |  | 2½ .....  | August 1, 1920, to June 30, 1926.   |
| Member for Member service.   | 5 .....                 | July 1, 1942, to June 30, 1948.         |  | 3½ .....  | July 1, 1926, to June 30, 1942.   |
|  | 6 .....                 | July 1, 1948, to October 31, 1956.      |  | 5 .....   | July 1, 1942, to June 30, 1948.   |
|  | 6½ .....                | November 1, 1956, to December 31, 1969. |  | 6 .....   | July 1, 1948, to October 31, 1956.  |
|  | 7.5 .....               | January 1, 1970, to December 31, 1998.  |  | 6½ .....  | November 1, 1956, to December 31, 1969.   |
|  | 7.75 .....              | January 1, 1999, to December 31, 1999.  | Member of the Capitol Police.  | 7 .....   | January 1, 1970, to September 30, 1988.   |
|  | 7.9 .....               | January 1, 2000, to December 31, 2000.  |  | 8 .....   | October 1, 1988, to December 31, 1998.  |
|  | 7.5 .....               | After December 31, 2000.                |  | 8.25 .....  | January 1, 1999, to December 31, 1999.  |
|  | 2½ .....                | August 1, 1920, to June 30, 1926.       |  | 8.4 .....   | January 1, 2000, to December 31, 2000.  |
|  | 3½ .....                | July 1, 1926, to June 30, 1942.         |  | 8 .....   | After December 31, 2000.  |
| Law enforcement officer for law enforcement service, member of the Supreme Court Police for Supreme Court Police service, and firefighter for firefighter service. | 5 .....                 | July 1, 1942, to August 1, 1946.        |  | 2.5 .....   | August 1, 1920, to June 30, 1926.   |
|  | 6 .....                 | August 2, 1946, to October 31, 1956.    |  | 3.5 .....   | July 1, 1926, to June 30, 1942.   |
|  | 7½ .....                | November 1, 1956, to December 31, 1969. |  | 5 .....   | July 1, 1942, to June 30, 1948.   |
|  | 8 .....                 | January 1, 1970, to December 31, 1998.  |  | 6 .....   | July 1, 1948, to October 31, 1956.  |
|  | 8.25 .....              | January 1, 1999, to December 31, 1999.  |  | 6.5 .....   | November 1, 1956, to December 31, 1969.   |
|  | 8.4 .....               | January 1, 2000, to December 31, 2000.  | Nuclear materials courier.   | 7.5 .....   | January 1, 1970, to December 31, 1998.  |
|  | 8.5 .....               | January 1, 2001, to December 31, 2002.  |  | 7.75 .....  | January 1, 1999, to December 31, 1999.  |
|  | 8 .....                 | After December 31, 2002.                |  | 7.9 .....   | January 1, 2000, to December 31, 2000.  |
|  | 2½ .....                | August 1, 1920, to June 30, 1926.       |  | 7.5 .....   | After December 31, 2000.  |
|  | 3½ .....                | July 1, 1926, to June 30, 1942.         |  | 7 .....   | October 1, 1977 to October 16, 1998.  |
|  | 5 .....                 | July 1, 1942, to June 30, 1948.         |  | 7.5 .....   | October 17, 1998 to December 31, 1998.  |
|  | 6 .....                 | July 1, 1948, to October 31, 1956.      |  | 7.75 .....  | January 1, 1999 to December 31, 1999.   |
|  | 6½ .....                | November 1, 1956, to December 31, 1969. |  | 7.9 .....   | January 1, 2000 to December 31, 2000.   |
|  | 7 .....                 | January 1, 1970, to December 31, 1974.  | Customs and border protection officer.   | 7.5 .....   | After December 31, 2000.  |
|  | 7.5 .....               | January 1, 1975, to December 31, 1998.  |  | 7.5 .....   | After June 29, 2008.  |
| Bankruptcy judge.  | 7.75 .....              | January 1, 1999, to December 31, 1999.  |  | Notwithstanding the preceding provisions of this subsection and any provision of section 206(b)(3) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, the percentage of basic pay required under this subsection in the case of an individual described in section 8402(b)(2) shall, with respect to any covered service (as defined by section 203(a)(3) of such Act) performed by such individual after December 31, 1983, and before January 1, 1987, be equal to 1.3 percent, and, with respect to any such service performed after December 31, 1986, be equal to the amount that would have been deducted from the employee's basic pay under subsection (k) of this section if the employee's pay had been subject to that subsection during such period. |   |
|  | 7.9 .....               | January 1, 2000, to December 31, 2000.  |  |   |   |
|  | 7.5 .....               | After December 31, 2000.                |  |   |   |
|  | 2½ .....                | August 1, 1920, to June 30, 1926.       |  |   |   |
|  | 3½ .....                | July 3, 1926, to June 30, 1942.         |  |   |   |
|  | 5 .....                 | July 1, 1942, to June 30, 1948.         |  |   |   |
|  | 6 .....                 | July 1, 1948, to October 31, 1956.      |  |   |   |
|  | 6½ .....                | November 1, 1956, to December 31, 1969. |  |   |   |
|  | 7 .....                 | January 1, 1970, to December 31, 1983.  |  |   |   |
|  | 8 .....                 | January 1, 1984, to December 31, 1998.  |  |   |   |
|  | 8.25 .....              | January 1, 1999, to December 31, 1999.  |  |   |   |

(d)(1) Each employee or Member who has received a refund of retirement deductions under this or any other retirement system established for employees of the Government covering service for which he may be allowed credit under this subchapter may deposit the amount received, with interest. Credit may not be allowed for the service covered by the refund until the deposit is made.

(2)(A) This paragraph applies with respect to any employee or Member who—

(i) separates before March 1, 1991, and receives (or elects, in accordance with applicable provisions of this subchapter, to receive) a refund (described in paragraph (1)) which relates to a period of service ending before March 1, 1991;

(ii) is entitled to an annuity under this subchapter (other than a disability annuity) which is based on service of such employee or Member, and which commences on or after December 2, 1990; and

(iii) does not make the deposit (described in paragraph (1)) required in order to receive credit for the period of service with respect to which the refund relates.

(B) Notwithstanding the second sentence of paragraph (1), the annuity to which an employee or Member under this paragraph is entitled shall (subject to adjustment under section 8340) be equal to an amount which, when taken together with the unpaid amount referred to in subparagraph (A)(iii), would result in the present value of the total being actuarially equivalent to the present value of the annuity which would otherwise be provided the employee or Member under this subchapter, as computed under subsections (a)–(i) and (n) of section 8339 (treating, for purposes of so computing the annuity which would otherwise be provided under this subchapter, the deposit referred to in subparagraph (A)(iii) as if it had been timely made).

(C) The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this paragraph.

(e)(1) Interest under subsection (c), (d)(1), (j), (k), or (l) of this section is computed in accordance with paragraphs (2) and (3) of this subsection and regulations prescribed by the Office of Personnel Management.

(2) Interest accrues annually on the outstanding portion of any amount that may be deposited under subsection (c), (d)(1), (j), (k), or (l) of this section, and is compounded annually, until the portion is deposited. Such interest is computed from the mid-point of each service period included in the computation, or from the date refund was paid. The deposit may be made in one or more installments. Interest may not be charged for a period of separation from the service which began before October 1, 1956.

(3) The rate of interest is 4 percent a year through December 31, 1947, and 3 percent a year beginning January 1, 1948, through December 31, 1984. Thereafter, the rate of interest for any calendar year shall be equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 8348(c), (d), and (e) of this title, as determined by the Secretary.

(f) Under such regulations as the Office of Personnel Management may prescribe, amounts deducted under subsection (a) or (k) of this section and deposited under subsections (c) and (d)(1) of this section shall be entered on individual retirement records.

(g) Deposit may not be required for—

(1) service before August 1, 1920;

(2) military service, except to the extent provided under section 8332(c) or section 8334(j) of this title;

(3) service for the Panama Railroad Company before January 1, 1924;

(4) service performed before October 29, 1983,<sup>2</sup> by natives of the Pribilof Islands in the taking and curing of fur seal skins and other activities in connection with the administration of the Pribilof Islands except where deductions, contributions, and deposits were made before October 29, 1983;

(5) days of unused sick leave credited under section 8339(m) of this title; or

(6) any period for which credit is allowed under section 8332(l) of this title.

(h) For the purpose of survivor annuities, deposits authorized by subsections (c), (d)(1), (j), and (k) of this section may also be made by a survivor of an employee or Member.

(i)(1) The Director of the Administrative Office of the United States Courts shall pay to the Fund the amount which an employee may deposit under subsection (c) of this section for service creditable under section 8332(b)(12) of this title if such creditable service immediately precedes service as an employee subject to this subchapter with a break in service of no more than ninety working days. The Director shall pay such amount from any appropriation available to him as a necessary expense of the appropriation concerned.

(2) The amount the Director pays in accordance with paragraph (1) of this subsection shall be reduced by the amount of any refund to the employee under section 376 of title 28. Except to the extent of such reduction, the amount the Director pays to the Fund shall satisfy the deposit requirement of subsection (c) of this section.

(3) Notwithstanding any other provision of law, the amount the Director pays under this subsection shall constitute an employer contribution to the Fund, excludable under section 402 of the Internal Revenue Code of 1986 from the employee's gross income until such time as the contribution is distributed or made available to the employee, and shall not be subject to refund or to lump-sum payment to the employee.

(4) Notwithstanding any other provision of law, a bankruptcy judge or magistrate judge who is covered by section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 shall not be subject to deductions and contributions to the Fund, if the judge or magistrate judge notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such an election, the judge or magistrate judge shall be entitled to a lump-sum credit under section 8342(a) of this title.

<sup>2</sup> So in original.

(5) Notwithstanding any other provision of law, a judge who is covered by section 7296 of title 38 shall not be subject to deductions and contributions to the Fund, if the judge notifies the Director of the Office of Personnel Management of an election of a retirement annuity under that section. Upon such an election, the judge shall be entitled to a lump-sum credit under section 8342(a) of this title.

(6) Notwithstanding any other provision of law, a judge of the United States Court of Federal Claims who is covered by section 178 of title 28 shall not be subject to deductions and contributions to the Fund if the judge notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such an election, the judge shall be entitled to a lump-sum credit under section 8342(a) of this title.

(j)(1)(A) Except as provided in subparagraph (B), and subject to paragraph (5), each employee or Member who has performed military service before the date of the separation on which the entitlement to any annuity under this subchapter is based may pay, in accordance with such regulations as the Office shall issue, to the agency by which the employee is employed, or, in the case of a Member or a Congressional employee, to the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives, as appropriate, an amount equal to 7 percent of the amount of the basic pay paid under section 204 of title 37 to the employee or Member for each period of military service after December 1956. The amount of such payments shall be based on such evidence of basic pay for military service as the employee or Member may provide, or if the Office determines sufficient evidence has not been so provided to adequately determine basic pay for military service, such payment shall be based upon estimates of such basic pay provided to the Office under paragraph (4).

(B) In any case where military service interrupts creditable civilian service under this subchapter and reemployment pursuant to chapter 43 of title 38 occurs on or after August 1, 1990, the deposit payable under this paragraph may not exceed the amount that would have been deducted and withheld under subsection (a)(1) from basic pay during civilian service if the employee had not performed the period of military service.

(2) Any deposit made under paragraph (1) of this subsection more than two years after the later of—

(A) October 1, 1983; or

(B) the date on which the employee or Member making the deposit first becomes an employee or Member following the period of military service for which such deposit is due,

shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the two-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under subsection (e) of this section.

(3) Any payment received by an agency, the Secretary of the Senate, or the Chief Adminis-

trative Officer of the House of Representatives under this subsection shall be immediately remitted to the Office for deposit in the Treasury of the United States to the credit of the Fund.

(4) The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, as appropriate, shall furnish such information to the Office as the Office may determine to be necessary for the administration of this subsection.

(5) Effective with respect to any period of military service after December 31, 1998, the percentage of basic pay under section 204 of title 37 payable under paragraph (1) shall be equal to the same percentage as would be applicable under subsection (c) of this section for that same period for service as an employee, subject to paragraph (1)(B).

(6)(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.

(k)(1) Effective with respect to pay periods beginning after December 31, 1986, in administering this section in the case of an individual described in section 8402(b)(2) of this title—

(A) the amount to be deducted and withheld by the employing agency shall be determined in accordance with paragraph (2) of this subsection instead of subsection (a)(1)(A); and

(B) the amount of the contribution under subparagraph (B) of subsection (a)(1) shall be the amount which would have been contributed under such subparagraph if this subsection had not been enacted.

(2)(A) With respect to Federal wages of an employee or Member (or that portion thereof) not exceeding the contribution and benefit base during the calendar year involved, the appropriate amount to be deducted and withheld under this subsection is the amount by which—

(i) the total deduction for those wages (or for that portion) exceeds;

(ii) the OASDI contribution with respect to those wages (or that portion).

(B) With respect to any portion of Federal wages of an employee or Member which exceed the contribution and benefit base during the calendar year involved, the appropriate amount to be deducted and withheld under this subsection is an amount equal to the total deduction for that portion.

(C) For purposes of this paragraph—

(i) the term “Federal wages” means basic pay for service as an employee or Member, as the case may be;

(ii) the term “contribution and benefit base” means the contribution and benefit base in ef-

fect with respect to the period involved, as determined under section 230 of the Social Security Act;

(iii) the term “total deduction”, as used with respect to any Federal wages (or portion thereof), means an amount equal to the amount of those wages (or of that portion), multiplied by the percentage which (but for this subsection) would apply under subsection (a)(1)(A) with respect to the individual involved; and

(iv) the term “OASDI contribution”, with respect to any income, means the amount of tax which may be imposed under section 3101(a) of the Internal Revenue Code of 1986 with respect to such income (determined without regard to any income which is not a part of Federal wages).

(3) The amount of a deposit under subsection (c) of this section for any service with respect to which paragraph (1) of this subsection applies shall be equal to an amount determined based on the preceding provisions of this subsection, and shall include interest.

(4) In administering paragraphs (1) through (3)—

(A) the term “an individual described in section 8402(b)(2) of this title” shall be considered to include any individual—

(i) who is subject to this subchapter as a result of a provision of law described in section 8347(o), and

(ii) whose employment (as described in section 8347(o)) is also employment for purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986; and

(B) the term “Federal wages”, as applied with respect to any individual to whom this subsection applies as a result of subparagraph (A), means basic pay for any employment referred to in subparagraph (A)(ii).

(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,<sup>3</sup> or C of title I of the Domestic Volunteer Service Act of 1973, or as a volunteer or volunteer leader under the Peace Corps Act before the date of the separation on which the entitlement to any annuity under this subchapter is based may pay, in accordance with such regulations as the Office of Personnel Management shall issue, an amount equal to 7 percent of the readjustment allowance paid to the employee or Member under title VIII of the Economic Opportunity Act of 1964 or section 5(c) or 6(1) of the Peace Corps Act or the stipend paid to the employee or Member under part A, B,<sup>3</sup> or C of title I of the Domestic Volunteer Service Act of 1973, for each period of service as such a volunteer or volunteer leader. This paragraph shall be subject to paragraph (4).

(2) Any deposit made under paragraph (1) more than 2 years after the later of—

(A) October 1, 1993; or

(B) the date on which the employee or Member making the deposit first becomes an employee or Member,

shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the 2-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under subsection (e).

(3) The Director of the Peace Corps and the Chief Executive Officer of the Corporation for National and Community Service shall furnish such information to the Office of Personnel Management as the Office may determine to be necessary for the administration of this subsection.

(4) Effective with respect to any period of service after December 31, 1998, the percentage of the readjustment allowance or stipend (as the case may be) payable under paragraph (1) shall be equal to the same percentage as would be applicable under subsection (c) of this section for the same period for service as an employee.

(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 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.

(m) A Member who has served in a position in the executive branch for which the rate of basic pay was reduced for the duration of the service of the Member to remove the impediment to the appointment of the Member imposed by article I, section 6, clause 2 of the Constitution, or the survivor of such a Member, may deposit to the credit of the Fund an amount equal to the difference between the amount deducted from the basic pay of the Member during that period of service and the amount that would have been deducted if the rate of basic pay which would otherwise have been in effect during that period had been in effect, plus interest computed under subsection (e).

(n) Notwithstanding subsection (c), no deposit may be made with respect to service credited under section 8332(b)(17).

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

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 569; Pub. L. 90-83, §1(74), Sept. 11, 1967, 81 Stat. 214; Pub. L. 90-486, §5(b), Aug. 13, 1968, 82 Stat. 757; Pub. L. 91-93, title I, §102(a), title II, §202, Oct. 20, 1969, 83 Stat. 136, 138; Pub. L. 92-297, §7(2), May 16, 1972, 86 Stat. 144; Pub. L. 93-350, §3, July 12, 1974, 88 Stat. 356; Pub. L. 94-126, §1(a), 2(a), Nov. 12, 1975, 89 Stat. 679; Pub. L. 95-382, §1(b), Sept. 22, 1978, 92 Stat. 727; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-598, title III, §338(b), Nov. 6, 1978, 92 Stat. 2681; Pub. L. 97-164, title II, §207(b), Apr. 2, 1982, 96 Stat. 54; Pub. L. 97-253, title III, §§303(a)(1), 306(d), (e), Sept. 8, 1982, 96 Stat. 793, 796, 797; Pub. L. 97-346, §3(a), (c)-(e)(1), Oct. 15, 1982, 96 Stat. 1647, 1648; Pub. L. 98-94, title XII, §§1256(a), 1257, Sept. 24, 1983, 97 Stat. 701, 702; Pub. L. 89-702, title II, §209(f), as added Pub. L. 98-129, §2, Oct. 14, 1983, 97 Stat. 843; Pub. L. 98-353, title I, §116(b), July 10, 1984, 98 Stat. 344; Pub. L. 98-615, §2(2), Nov. 8, 1984, 98 Stat. 3195; Pub. L. 99-335, title II, §201(a), (c), June 6, 1986, 100 Stat. 588, 591; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-53, §2(b), June 18, 1987, 101 Stat. 367; Pub. L. 100-238, title I, §§102, 108(b)(1), Jan. 8, 1988, 101 Stat. 1744, 1748; Pub. L. 100-659, §6(b), Nov. 15, 1988, 102 Stat. 3919; Pub. L. 101-94, title I, §102(a), Aug. 16, 1989, 103 Stat. 626; Pub. L. 101-508, title VII, §7001(b)(1), (2)(A), (B), Nov. 5, 1990, 104 Stat. 1388-328, 1388-329; Pub. L. 101-650, title III, §§306(c)(2), (e)(2), 321, Dec. 1, 1990, 104 Stat. 5110, 5112, 5117; Pub. L. 102-40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 102-378, §2(59), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 102-572, title IX, §902(b), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103-66, title XI, §11004(a)(3), Aug. 10, 1993, 107 Stat. 412; Pub. L. 103-82, title III, §371(a)(2), Sept. 21, 1993, 107 Stat. 910; Pub. L. 103-337, div. A, title IX, §924(d)(1)(A), Oct. 5, 1994, 108 Stat. 2832; Pub. L. 103-353, §5(b), Oct. 13, 1994, 108 Stat. 3173; Pub. L. 104-186, title II, §215(12), Aug. 20, 1996, 110 Stat. 1746; Pub. L. 104-316, title I, §103(g), Oct. 19, 1996, 110 Stat. 3829; Pub. L. 105-33, title VII, §7001(a)(3), (4), Aug. 5, 1997, 111 Stat. 653, 657; Pub. L. 105-61, title V, §516(a)(1), Oct. 10, 1997, 111 Stat. 1306; Pub. L. 105-261, div. C, title XXXI, §3154(c)(1), (2), Oct. 17, 1998, 112 Stat. 2254; Pub. L. 106-65, div. A, title X, §1066(d)(3), Oct. 5, 1999, 113 Stat. 773; Pub. L. 106-346, §101(a) [title V, §505(a)], Oct. 23, 2000, 114 Stat. 1356, 1356A-50; Pub. L. 106-553, §1(a)(2) [title III, §308(b)(1)], Dec. 21, 2000, 114 Stat. 2762, 2762A-86; Pub. L. 107-107, div. A, title XI, §1132(a)(2), Dec. 28, 2001, 115 Stat. 1243; Pub. L. 108-18, §2(b), Apr. 23, 2003, 117 Stat. 624; Pub. L. 109-435, title VIII, §802(a)(1), Dec. 20, 2006, 120 Stat. 3249; Pub. L. 110-161, div. E, title V, §535(a)(2), Dec. 26, 2007, 121 Stat. 2075; Pub. L. 111-84, div. A, title XIX, §1902(a), Oct. 28, 2009, 123 Stat. 2615; Pub. L. 115-352, §§2(a), 3(a), Dec. 21, 2018, 132 Stat. 5067, 5068.)

HISTORICAL AND REVISION NOTES—CONTINUED  
1966 ACT

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i>   |
|-------------------|------------------|---|
| .....             | 2 U.S.C. 129.    | July 1, 1957, Pub. L. 85-75, §101 (proviso on p. 248), 71 Stat. 248.                                    |
| .....             | 5 U.S.C. 2254.   | July 31, 1956, ch. 804, §401 "Sec. 4", 70 Stat. 747.<br>June 29, 1957, Pub. L. 85-65, §1, 71 Stat. 209. |

HISTORICAL AND REVISION NOTES—CONTINUED  
1966 ACT

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i>  |
|-------------------|------------------|--|
|                   |                  | May 27, 1958, Pub. L. 85-426, §214(b) (words before comma), 72 Stat. 143.<br>Aug. 27, 1958, Pub. L. 85-772, §1(d), 72 Stat. 930. |

In subsection (a), the words "From and after the first day of the first pay period which begins on or after the effective date of the Civil Service Retirement Act Amendments of 1956" and "From and after the first day of the first pay period which begins after June 30, 1957" in former section 2254 are omitted as executed. The words "on and after July 1, 1957" in former section 129 of title 2 are omitted as executed.

In subsection (b), the word "rule" is omitted as unnecessary.

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

1967 ACT

| <i>Section of title 5</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>                     |
|---------------------------|---------------------------|---|
| 8334(g)(4) ...            | 5 App.: 2254(g).          | Nov. 2, 1966, Pub. L. 89-702, §208(c), 80 Stat. 1096. |

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of the Department of Defense Authorization Act, 1984, referred to in the table in subsec. (c), is the date of enactment of Pub. L. 98-94 which was approved Sept. 24, 1983.

Sections 203 and 206 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [Pub. L. 98-168], referred to in subsec. (c), are set out as a note under section 8331 of this title.

Sections 402 and 3101(a) and chapter 21 of the Internal Revenue Code of 1986, referred to in subsecs. (i)(3) and (k)(2)(C)(iv), (4)(A)(ii), are classified to sections 402 and 3101(a) and chapter 21 (§3101 et seq.), respectively, of Title 26, Internal Revenue Code.

Section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, referred to in subsec. (i)(4), is section 2(c) of Pub. L. 100-659, which is set out as a note under section 377 of Title 28, Judiciary and Judicial Procedure.

The Social Security Act, referred to in subsec. (k)(2)(C)(ii), (4)(A)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Section 230 of the Social Security Act is classified to section 430 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Economic Opportunity Act of 1964, referred to in subsec. (l)(1), is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508. Title VIII of the Act probably means title VIII of Pub. L. 88-452 as added by Pub. L. 89-794, title VIII, §801, Nov. 8, 1966, 80 Stat. 1472, and generally revised and amended by Pub. L. 90-222, title I, §110, Dec. 23, 1967, 81 Stat. 722, which was classified generally to subchapter VIII (§2991 et seq.) of chapter 34 of Title 42, prior to its repeal by Pub. L. 93-113, title VI, §603, Oct. 1, 1973, 87 Stat. 417. Part A of title VIII of the Act is part A of title VIII of Pub. L. 88-452 as added by Pub. L. 90-222, §110, which was classified generally to part A (§2992 et seq.) of subchapter VIII of chapter 34 of Title 42, prior to its repeal by Pub. L. 93-113, §603. See sections 4951 et seq. and 5055 of Title 42. For complete classification of this Act to the Code, see Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (l)(1), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat.



394. Parts A and C of title I of the Act are classified generally to parts A (§4951 et seq.) and C (§4991 et seq.), respectively, of subchapter I of chapter 66 of Title 42, The Public Health and Welfare. Part B of title I of the Act, which was classified generally to part B (§4971 et seq.) of subchapter I of chapter 66 of Title 42, was repealed by Pub. L. 111-13, title II, §2121, Apr. 21, 2009, 123 Stat. 1584. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of Title 42 and Tables.

The Peace Corps Act, referred to in subsec. (I)(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. (j)(6). Pub. L. 115-352, §2(a), added par. (6).

Subsec. (I)(5). Pub. L. 115-352, §3(a), added par. (5).

2009—Subsec. (d)(2)(A)(i). Pub. L. 111-84 substituted “March 1, 1991” for “October 1, 1990” in two places.

2007—Subsec. (a)(1)(A). Pub. L. 110-161, §535(a)(2)(A), substituted “nuclear materials courier, or customs and border protection officer,” for “or nuclear materials courier,”.

Subsec. (c). Pub. L. 110-161, §535(a)(2)(B), inserted table relating to customs and border protection officer.

2006—Subsec. (a)(1)(B)(ii). Pub. L. 109-435 added cl. (ii) and struck out former cl. (ii) which read as follows: “In the case of an employee of the United States Postal Service, the amount to be contributed under this subparagraph shall (instead of the amount described in clause (i)) be equal to the product derived by multiplying the employee’s basic pay by the percentage equal to—

“(I) the normal-cost percentage for the applicable employee category listed in subparagraph (A), minus

“(II) the percentage deduction rate that applies with respect to such employee under subparagraph (A).”

2003—Subsec. (a)(1). Pub. L. 108-18, §2(b)(1), designated first sentence as subpar. (A), designated second and third sentences as subpar. (B)(i), substituted “Except as provided in clause (ii), an equal” for “An equal” in subpar. (B)(i), and added subpar. (B)(ii).

Subsec. (k)(1)(A). Pub. L. 108-18, §2(b)(2)(A), substituted “subsection (a)(1)(A)” for “the first sentence of subsection (a)(1) of this section”.

Subsec. (k)(1)(B). Pub. L. 108-18, §2(b)(2)(B), substituted “subparagraph (B) of subsection (a)(1)” for “the second sentence of subsection (a)(1) of this section” and “such subparagraph” for “such sentence”.

Subsec. (k)(2)(C)(iii). Pub. L. 108-18, §2(b)(2)(C), substituted “subsection (a)(1)(A)” for “the first sentence of subsection (a)(1)”.

2001—Subsec. (n). Pub. L. 107-107 added subsec. (n).

2000—Subsec. (a)(1). Pub. L. 106-553, §1(a)(2) [title III, §308(b)(1)(A)], inserted “member of the Supreme Court Police,” after “member of the Capitol Police,”.

Subsec. (c). Pub. L. 106-553, §1(a)(2) [title III, §308(b)(1)(B)], in table relating to law enforcement officer for law enforcement service and firefighter for firefighter service, inserted “, member of the Supreme Court Police for Supreme Court Police service,” after “law enforcement service”.

Pub. L. 106-346, in tables relating to an employee, a Member or employee for Congressional employee service, a law enforcement officer for law enforcement service and firefighter for firefighter service, a bankruptcy judge, a judge of the United States Court of Appeals for the Armed Forces for service as a judge of that court, a United States magistrate judge, a Court of Federal Claims judge, a member of the Capitol Police, and a nuclear materials courier, substituted item relating to service period after December 31, 2000, for former items relating to service periods January 1, 2001, to December 31, 2002, and after December 31, 2002.

1999—Subsec. (c). Pub. L. 106-65, in table relating to nuclear materials courier, substituted “October 16, 1998” for “the day before the date of the enactment of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999” and “October 17, 1998” for “The date of the enactment of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999”.

1998—Subsec. (a)(1). Pub. L. 105-261, §3154(c)(1), substituted “member of the Capitol Police, or nuclear materials courier,” for “or member of the Capitol Police,”.

Subsec. (c). Pub. L. 105-261, §3154(c)(2), inserted table relating to nuclear materials courier.

1997—Subsec. (a)(1). Pub. L. 105-33, §7001(a)(3)(A), amended first sentence generally. Prior to amendment, first sentence read as follows: “The employing agency shall deduct and withhold 7 percent of the basic pay of an employee, 7½ percent of the basic pay of a Congressional employee, a law enforcement officer, and a firefighter, and 8 percent of the basic pay of a Member, a Court of Federal Claims judge, a United States magistrate, a judge of the United States Court of Appeals for the Armed Forces, and a bankruptcy judge.”

Subsec. (c). Pub. L. 105-33, §7001(a)(3)(B)(ix), inserted table relating to member of the Capitol Police.

Pub. L. 105-33, §7001(a)(3)(B)(viii), in table relating to a Court of Federal Claims Judge, substituted items relating to service periods October 1, 1988, to after December 31, 2002, for former item relating to service period after September 30, 1988.

Pub. L. 105-33, §7001(a)(3)(B)(vii), in table relating to a United States magistrate, substituted items relating to service periods October 1, 1987, to after December 31, 2002, for former item relating to service period after September 30, 1987.

Pub. L. 105-33, §7001(a)(3)(B)(vi), in table relating to a judge of the United States Court of Appeals for the Armed Forces for service as a judge of that court, substituted items relating to service periods on and after the date of enactment of the Department of Defense Authorization Act, 1984, to after December 31, 2002, for former item relating to service period on and after the date of the enactment of the Department of Defense Authorization Act, 1984.

Pub. L. 105-33, §7001(a)(3)(B)(v), in table relating to a bankruptcy judge, substituted items relating to service periods January 1, 1984, to after December 31, 2002, for former item relating to service period after December 31, 1983.

Pub. L. 105-33, §7001(a)(3)(B)(iv), in table relating to a law enforcement officer for law enforcement service and firefighter for firefighter service, substituted items relating to service periods January 1, 1975, to after December 31, 2002, for former item relating to service period after December 31, 1974.

Pub. L. 105-33, §7001(a)(3)(B)(i)–(iii), in tables relating to an employee, a Member or employee for Congressional employee service, and a Member for Member service, substituted items relating to service periods January 1, 1970, to after December 31, 2002, for former item relating to service period after December 31, 1969.

Subsec. (j)(1)(A). Pub. L. 105-33, §7001(a)(4)(A)(i), inserted “and subject to paragraph (5),” after “Except as provided in subparagraph (B),”.

Subsec. (j)(5). Pub. L. 105-33, §7001(a)(4)(A)(ii), added par. (5).

Subsec. (I)(1). Pub. L. 105-33, §7001(a)(4)(B)(i), inserted at end “This paragraph shall be subject to paragraph (4).”

Subsec. (I)(4). Pub. L. 105-33, §7001(a)(4)(B)(ii), added par. (4).

Subsec. (m). Pub. L. 105-61 added subsec. (m).

1996—Subsec. (a)(1). Pub. L. 104-186, §215(12)(A), substituted “Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may pay from the applicable accounts of the House of Representatives” for “Clerk of the House of Representatives, the Clerk may pay from the contingent fund of the House”.

Subsec. (a)(2). Pub. L. 104-316 substituted “Secretary of the Treasury” for “Comptroller General of the United States”.

Subsec. (j)(1)(A), (3). Pub. L. 104-186, §215(12)(B), substituted “Chief Administrative Officer” for “Clerk”.

1994—Subsec. (a)(1). Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

Subsec. (c). Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals” in table.

Subsec. (j)(1). Pub. L. 103-353, §5(b)(1), designated existing provisions as subpar. (A) and substituted “Except as provided in subparagraph (B), each employee” for “Each employee” and added subpar. (B).

Subsec. (j)(2)(B). Pub. L. 103-353, §5(b)(2), inserted before comma at end “following the period of military service for which such deposit is due”.

1993—Subsec. (e)(1), (2). Pub. L. 103-82, §371(a)(2)(B), substituted “(k), or (l)” for “or (k)”.

Subsec. (h). Pub. L. 103-66 struck out “and by section 8339(j)(5)(C) and the last sentence of section 8339(k)(2) of this title” before “may also be made”.

Subsec. (l). Pub. L. 103-82, §371(a)(2)(A), added subsec. (l).

1992—Subsec. (a)(1). Pub. L. 102-572, §902(b)(2), substituted “Court of Federal Claims” for “Claims Court”.

Subsec. (c). Pub. L. 102-572, §902(b)(2), substituted “Court of Federal Claims” for “Claims Court” in table.

Subsec. (i)(5). Pub. L. 102-378 redesignated par. (5), relating to United States Claims Court judges, as (6).

Subsec. (i)(6). Pub. L. 102-572, §902(b)(1), substituted “United States Court of Federal Claims” for “United States Claims Court”.

Pub. L. 102-378 redesignated par. (5), relating to United States Claims Court judges, as (6).

1991—Subsec. (i)(5). Pub. L. 102-40 substituted “section 7296 of title 38” for “section 4096 of title 38”.

1990—Subsec. (a)(1). Pub. L. 101-650, §306(c)(2)(A), inserted “a Claims Court Judge,” after “Member,”.

Subsec. (c). Pub. L. 101-650, §306(c)(2)(B), inserted table covering percentages of pay and service periods for a Claims Court Judge.

Subsec. (d). Pub. L. 101-508, §7001(b)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (e)(1), (2). Pub. L. 101-508, §7001(b)(2)(A), substituted “(d)(1),” for “(d),”.

Subsec. (f). Pub. L. 101-508, §7001(b)(2)(B), substituted “(d)(1)” for “(d)”.

Subsec. (h). Pub. L. 101-508, §7001(b)(2)(A), substituted “(d)(1),” for “(d),”.

Subsec. (i)(5). Pub. L. 101-650, §306(e)(2), added par. (5) relating to judges covered by a section of title 28.

1989—Subsec. (i)(5). Pub. L. 101-94 added par. (5) relating to judges covered by a section of title 38.

1988—Subsec. (c). Pub. L. 100-238, §102, struck out period at end and inserted “, and, with respect to any such service performed after December 31, 1986, be equal to the amount that would have been deducted from the employee’s basic pay under subsection (k) of this section if the employee’s pay had been subject to that subsection during such period.”

Subsec. (i)(4). Pub. L. 100-659 added par. (4).

Subsec. (k)(4). Pub. L. 100-238, §108(b)(1), added par. (4).

1987—Subsec. (a)(1). Pub. L. 100-53, §2(b)(1), substituted “Member, a United States magistrate, a judge” for “Member and a judge” and “Appeals,” for “Appeals”.

Subsec. (c). Pub. L. 100-53, §2(b)(2), inserted table covering percentages of basic pay and service periods for United States magistrates.

1986—Subsec. (c). Pub. L. 99-335, §201(c), inserted provision that notwithstanding preceding provisions of this subsection and any provision of section 206(b)(3) of Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983, the percentage of basic pay required under this subsection in case of an individual described in section 8402(b)(2) of this title shall, with respect to any covered service performed after

Dec. 31, 1983, and before Jan. 1, 1987, be equal to 1.3 percent.

Subsec. (e)(1), (2). Pub. L. 99-335, §201(a)(2)(A), substituted “(j), or (k)” for “or (j)”.

Subsec. (f). Pub. L. 99-335, §201(a)(2)(B), inserted “or (k)” after “subsection (a)”.

Subsec. (h). Pub. L. 99-335, §201(a)(2)(C), substituted “(j), and (k)” for “and (j)”.

Subsec. (i)(3). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

Subsec. (k). Pub. L. 99-335, §201(a)(1), added subsec. (k).

Subsec. (k)(2)(C)(iv). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1984—Subsec. (a)(1). Pub. L. 98-353, §116(b)(1), inserted “and a bankruptcy judge”.

Subsec. (c). Pub. L. 98-353, §116(b)(2), substituted in the table relating to bankruptcy judges the items relating to 7 percent for the period Jan. 1, 1970 to Dec. 31, 1983, and 8 percent for the period after Dec. 31, 1983, for the prior item relating to 7 percent for the period after Jan. 1, 1970.

Subsec. (h). Pub. L. 98-615 substituted “annuities, deposits authorized by subsections (c), (d), and (j) of this section and by section 8339(j)(5)(C) and the last sentence of section 8339(k)(2) of this title may also be made by a survivor” for “annuity, deposits authorized by subsections (c), (d), and (j) of this section may also be made by the survivor”.

1983—Subsec. (a)(1). Pub. L. 98-94, §1256(a)(1), inserted “and a judge of the United States Court of Military Appeals” after “and 8 percent of the basic pay of a Member”.

Subsec. (c). Pub. L. 98-94, §1256(a)(2), added to the table items covering a judge of the United States Court of Military Appeals for service as a judge of that court.

Subsec. (g)(4). Pub. L. 98-129 substituted “October 29, 1983,” for “January 1, 1950”, and directed that the phrase “except where deductions, contributions, and deposits were made before October 29, 1983” be inserted after “the Pribilof Islands” which amendment was executed by inserting that phrase after “the Pribilof Islands” the second time those words appear, as the probable intent of Congress.

Subsec. (j)(2)(A). Pub. L. 98-94, §1257, substituted “October 1, 1983” for “October 1, 1982”.

1982—Subsec. (e). Pub. L. 97-253, §303(a)(1), redesignated existing provisions as par. (2), inserted provision that interest accrues annually on the outstanding portion of any amount that may be deposited under subsection (c), (d), or (j) of this section, and is compounded annually until the portion is deposited, substituted “Such interest” for “Interest under subsection (c) or (d) of this section”, struck out “, to the date of deposit or commencing date of annuity, whichever is earlier” after “date refund was paid”, and struck out provision that the interest was computed at the rate of four percent a year to Dec. 31, 1947, and 3 percent thereafter compounded annually, and added pars. (1) and (3).

Subsec. (e)(3). Pub. L. 97-346, §3(c), substituted “the preceding fiscal year” for “the preceding calendar year” and “during such fiscal year” for “during such calendar year”.

Subsec. (g)(2). Pub. L. 97-253, §306(e), inserted “, except to the extent provided under section 8332(c) or section 8334(j) of this title”.

Subsec. (h). Pub. L. 97-346, §3(d), inserted reference to subsec. (j).

Subsec. (i). Pub. L. 97-164 added subsec. (i).

Subsec. (j). Pub. L. 97-253, §306(d), added subsec. (j).

Subsec. (j)(1). Pub. L. 97-346, §3(a), substituted “period” for “month”.

Pub. L. 97-346, §3(e)(1), struck out “within 90 days after the effective date of this subsection” after “regulations as the Office shall issue”, and substituted “The amount of such payments shall be based on such evidence of basic pay for military service as the employee or Member may provide, or if the Office determines suf-

ficient evidence has not been so provided to adequately determine basic pay for military service, such payment shall be based upon estimates of such basic pay provided to the Office under paragraph (4)” for “as certified to the agency, the Secretary of the Senate, or the Clerk of the House of Representatives, as appropriate, by the Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, as appropriate, upon the employee’s or Member’s request”.

1978—Subsec. (c). Pub. L. 95–598 inserted bankruptcy judge schedule of deposits.

Subsec. (f). Pub. L. 95–454 substituted “Office of Personnel Management” for “Civil Service Commission”.

Subsec. (g)(6). Pub. L. 95–382 added par. (6).

1975—Subsec. (c). Pub. L. 94–126, §1(a), struck out last sentence requiring that deposit, with respect to a period of service referred to in section 8332(b)(6) of this title performed before Jan. 1, 1969, shall be an amount equal to 55 percent of a deposit computed in accordance with such provisions.

Subsec. (g)(5). Pub. L. 94–126, §2(a), substituted reference to “section 8339(m) of this title” for “section 8339(n) of this title”.

1974—Subsec. (a)(1). Pub. L. 93–350, §3(a), inserted “a law enforcement officer, and a firefighter,” after “Congressional employee,”.

Subsec. (c). Pub. L. 93–350, §3(b), inserted schedule for law enforcement officer for law enforcement service and firefighter for firefighter service.

1972—Subsec. (g)(5). Pub. L. 92–297 substituted “section 8339(n)” for “section 8339(m)”.

1969—Subsec. (a)(1). Pub. L. 91–93, §102(a)(1), designated first and second sentences of subsec. (a) as subsec. (a)(1), increasing by one-half percent the deduction from the basic pay of an employee and a Member to 7 and 8 percent, respectively, and providing for a 7½ percent deduction from basic pay of a Congressional employee.

Subsec. (a)(2). Pub. L. 91–93, §102(a)(1), designated third and fourth sentences of subsec. (a) as subsec. (a)(2), deleting “under this section” after “Member”.

Subsec. (c). Pub. L. 91–93, §102(a)(2), substituted service period Nov. 1, 1956, to Dec. 31, 1969, for prior service period after Oct. 31, 1956, for deductions of 6½ percent of basic pay of an employee, inserted provision for 7 percent deduction from basic pay of an employee for service period after Dec. 31, 1969, inserted percentage of basic pay and service period provisions for Member or employee for Congressional employee service, substituted service period Nov. 1, 1956; to Dec. 31, 1969, for prior service period after Oct. 31, 1956, for deduction of 7½ percent of basic pay of Member for Member service, inserted provision for 8 percent deduction from basic pay of Member for Member service after Dec. 31, 1969, and inserted provision for amount of deposit for period of service performed before Jan. 1, 1969.

Subsec. (g)(5). Pub. L. 91–93, §202, added par. (5).

1968—Subsec. (c). Pub. L. 90–486 inserted provisions that the deposit with respect to a period of service referred to in section 8332(b)(6) of this title which was performed prior to the specified effective date shall be an amount equal to 55 percent of a deposit computed in accordance with such provisions.

### Statutory Notes and Related Subsidiaries

#### CHANGE OF NAME

“United States magistrate judge” and “magistrate judge” substituted for “United States magistrate” and “magistrate”, respectively, wherever appearing in subsecs. (c) and (1)(4) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title XIX, §1902(b), Oct. 28, 2009, 123 Stat. 2615, provided that: “The amendment made by subsection (a) [amending this section] shall be effective

with respect to any annuity, entitlement to which is based on a separation from service occurring on or after the date of enactment of this Act [Oct. 28, 2009].”

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

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

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–435, title VIII, §805, Dec. 20, 2006, 120 Stat. 3253, provided that:

“(a) IN GENERAL.—Except as provided under subsection (b), this title [see Short Title of 2006 Amendment note set out under section 101 of this title] shall take effect on October 1, 2006.

“(b) TERMINATION OF EMPLOYER CONTRIBUTION.—The amendment made by paragraph (1) of section 802(a) [amending this section] shall take effect on the first day of the first pay period beginning on or after October 1, 2006.”

#### EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–18, §4, Apr. 23, 2003, 117 Stat. 630, provided that: “This Act [see section 1 of Pub. L. 108–18, set out as a Short Title of 2003 Amendments note under section 101 of this title] and the amendments made by this Act shall become effective on the date of the enactment of this Act [Apr. 23, 2003], except that the amendments made by section 2(b) [amending this section] shall apply with respect to pay periods beginning on or after such date.”

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 applicable only to separations from service as an employee of the United States on or after Dec. 28, 2001, see section 1132(c) of Pub. L. 107–107, set out as a note under section 8332 of this title.

#### EFFECTIVE DATE OF 2000 AMENDMENTS

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

Pub. L. 106–346, §101(a) [title V, §505(i)], Oct. 23, 2000, 114 Stat. 1356, 1356A–54, provided that: “The amendments made by this section [amending this section, section 8422 of this title, sections 4045, 4071c, and 4071e of Title 22, Foreign Relations and Intercourse, and section 2082 of Title 50, War and National Defense, enacting provisions set out as notes under this section, section 4045 of Title 22, and section 2021 of Title 50, and amending provisions set out as notes under section 4045 of Title 22 and section 2021 of Title 50] shall take effect upon the close of calendar year 2000, and shall apply thereafter.”

#### EFFECTIVE DATE OF 1998 AMENDMENT

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

#### EFFECTIVE DATE OF 1997 AMENDMENTS

Pub. L. 105–61, title V, §516(b), Oct. 10, 1997, 111 Stat. 1307, provided that: “The amendments made by subsection (a) [amending this section and sections 8337,

8339, 8341, 8343a, 8344, 8415, 8422, and 8468 of this title] shall be applicable to any annuity commencing before, on, or after the date of enactment of this Act [Oct. 10, 1997], and shall be effective with regard to any payment made after the first month following the date of enactment."

Pub. L. 105-33, title VII, §7001(f), Aug. 5, 1997, 111 Stat. 662, provided that:

"(1) IN GENERAL.—This section [amending this section, section 8422 of this title, sections 4045, 4071c, and 4071e of Title 22, Foreign Relations and Intercourse, and section 2082 of Title 50, War and National Defense, and enacting provisions set out as notes under this section, section 8422 of this title, sections 4045 and 4071c of Title 22, and section 2021 of Title 50] shall take effect on—

"(A) October 1, 1997; or

"(B) if later, the date of enactment of this Act [Aug. 5, 1997].

"(2) SPECIAL RULE.—If the date of enactment of this Act is later than October 1, 1997, then any reference to October 1, 1997, in subsection (a)(1), (c)(1), or (d)(1) shall be treated as a reference to the date of enactment of this Act."

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103-353, set out as an Effective Date note under section 4301 of Title 38, Veterans' Benefits.

#### EFFECTIVE DATE OF 1993 AMENDMENTS

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, and applicable with respect to any individual entitled to an annuity on the basis of a separation from service occurring on or after Oct. 1, 1993, see sections 371(c) and 392 of Pub. L. 103-82, set out as notes under section 8332 of this title and section 4951 of Title 42, The Public Health and Welfare, respectively.

Amendment by Pub. L. 103-66 effective on first day of first month beginning at least 30 days after Aug. 10, 1993, and applicable to all deposits required under section 8339(j)(3) or (5), 8339(k)(2), or 8418 of this title, on which no payment has been made prior to such effective date, see section 11004(c) of Pub. L. 103-66, set out as a note under section 8339 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

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

#### EFFECTIVE DATE OF 1990 AMENDMENTS

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

Pub. L. 101-508, title VII, §7001(b)(3), Nov. 5, 1990, 104 Stat. 1388-329, provided that: "The amendments made by this subsection [amending this section and sections 8339 and 8342 of this title] shall be effective with respect to any annuity having a commencement date later than December 1, 1990."

#### EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-659 effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrate judges who retire on or after Nov. 15, 1988, with exception for judges and magistrate judges retiring on or after July 31, 1987, see section 9 of Pub. L. 100-659, as amended, set out as an Effective Date note under section 377 of Title 28, Judiciary and Judicial Procedure.

Pub. L. 100-238, title I, §108(b)(3), Jan. 8, 1988, 101 Stat. 1748, provided that: "The amendments made by this subsection [amending this section and section 8349 of this title] shall be effective as of January 1, 1987."

#### EFFECTIVE DATE OF 1987 AMENDMENT

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

#### EFFECTIVE DATE OF 1986 AMENDMENT

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

#### EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions and specific applicability provisions, see section 4(a)(1) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

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

#### EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98-94, title XII, §1256(f), Sept. 24, 1983, 97 Stat. 702, provided that: "The increase in deductions from the pay of a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] required by section 8334(a) of title 5, United States Code, as amended by subsection (a), shall take effect with respect to the first pay period that begins after the date of the enactment of this Act [Sept. 24, 1983]."

#### EFFECTIVE DATE OF 1982 AMENDMENTS

Pub. L. 97-253, title III, §303(d)(1), Sept. 8, 1982, 96 Stat. 794, as amended by Pub. L. 97-346, §3(j)(1), Oct. 15, 1982, 96 Stat. 1649, provided that:

"The amendments made by subsections (a) and (b) [amending this section and sections 8339 and 8343 of this title] shall apply with respect to deposits for service performed on or after October 1, 1982, and with respect to refunds for which application is received by either the employing agency or the Office of Personnel Management on or after such date. The provisions of section 8334 and section 8339(i) of title 5, United States Code, as in effect the day before the date of the enactment of this Act [Sept. 7, 1982], shall continue to apply with respect to periods of service and refunds occurring on or before September 30, 1982. Notwithstanding the preceding two sentences, the amendments made by subsection (a) shall apply in the case of any deposit for military service under section 8334(j) of title 5, United States Code (as added by section 306(d) of this Act), regardless of whether such military service was performed before or after October 1, 1982."

Amendment by section 306(d), (e) of Pub. L. 97-253 effective Oct. 1, 1982, except that any employee or Member who retired after Sept. 8, 1982, and before Oct. 1, 1985, or is entitled to an annuity under chapter 83 of this title based on a separation from service occurring during such period, or a survivor of such individual, may make a payment under section 8334(j)(1) of this title, and regulations required to be issued under section 8334(j)(1) of this title, to be issued by the Office of Personnel Management within 90 days after such effective date, see section 306(g) of Pub. L. 97-253, as amended, set out as a note under section 8331 of this title.

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective

tive Date note preceding section 101 of Title 11, Bankruptcy.

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

Amendment by Pub. L. 95-382 effective Oct. 1, 1978, and applicable to specified annuities, see section 2 of Pub. L. 95-382, set out as a note under section 8332 of this title.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94-126, § 3, Nov. 12, 1975, 89 Stat. 679, provided that: “The amendments made by the first section of this Act [amending this section and sections 8339 and 8345 of this title] shall become effective as of January 1, 1969, except that such amendments shall not apply to a person who, on the date of enactment of this Act [Nov. 12, 1975], is receiving or is entitled to receive benefits under any retirement system established by the United States or any instrumentality thereof, unless such person requests, in writing, the office which administers his retirement system to apply such amendments to him. Any additional benefits payable pursuant to such a written request shall commence on the first day of the month [December] following the date of the enactment of this Act.”

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-350 effective at beginning of first applicable pay period which begins after Dec. 31, 1974, see section 7 of Pub. L. 93-350, set out as a note under section 3307 of this title.

#### EFFECTIVE DATE OF 1972 AMENDMENT

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

#### EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-93, title I, § 102(b), Oct. 20, 1969, 83 Stat. 137, provided that: “The amendment made by subsection (a)(1) of this section [amending this section] shall become effective at the beginning of the first applicable pay period beginning after December 31, 1969.”

Amendment by Pub. L. 91-93 inapplicable in cases of persons retired or otherwise separated prior to Oct. 20, 1969, their rights and of their survivors continued as if such amendment had not been enacted, see section 207(a) of Pub. L. 91-93, set out as a note under section 8331 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-486 effective Jan. 1, 1969, except that no deductions or withholding from salary which result therefrom shall commence before first day of first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90-486, set out as a note under section 709 of Title 32, National Guard.

#### AUTHORIZATION OF PAYMENTS

Pub. L. 115-352, § 3(c), Dec. 21, 2018, 132 Stat. 5068, provided that: “All payments from the Office of Personnel Management authorized by subsections (a) and (b) [amending this section and section 8422 of this title] shall be paid from the Civil Service Retirement and Disability Fund, and together with administrative expenses incurred by the Office in administering these subsections, shall be deemed to have been authorized to be paid from that Fund, which is appropriated for the payment thereof.”

#### CONTRIBUTIONS TO FEDERAL CIVIL SERVICE RETIREMENT SYSTEM

Pub. L. 106-346, § 101(a) [title V, § 505(f)], Oct. 23, 2000, 114 Stat. 1356, 1356A-54, provided that: “Notwithstanding section 8334(a)(1) or (k)(1) of title 5, United States Code, during the period beginning on October 1,

2002, through December 31, 2002, each employing agency (other than the United States Postal Service or the Metropolitan Washington Airports Authority) shall contribute—

“(1) 7.5 percent of the basic pay of an employee;

“(2) 8 percent of the basic pay of a congressional employee, a law enforcement officer, a member of the Capitol Police, a firefighter, or a nuclear materials courier; and

“(3) 8.5 percent of the basic pay of a Member of Congress, a Court of Federal Claims judge, a United States magistrate [now United States magistrate judge], a judge of the United States Court of Appeals for the Armed Forces, or a bankruptcy judge, in lieu of the agency contributions otherwise required under section 8334(a)(1) of such title 5.”

Pub. L. 105-261, div. C, title XXXI, § 3154(c)(3), Oct. 17, 1998, 112 Stat. 2255, provided that: “Notwithstanding subsection (a)(1) or (k)(1) of section 8334 of title 5, United States Code, or section 7001(a) of Public Law 105-33 [set out as a note below], during the period beginning on the effective date provided for under subsection (n)(1) [set out as an Effective Date of 1998 Amendment note under section 8331 of this title] and ending on September 30, 2002, the Department of Energy shall deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund on behalf of each nuclear materials courier from whose basic pay a deduction is made under such subsection (a)(1) during that period an amount equal to 9.01 percent of such basic pay, in lieu of the agency contributions otherwise required under such subsection (a)(1) during that period.”

Section 7001(a)(1), (2) of Pub. L. 105-33 provided that:

“(1) AGENCY CONTRIBUTIONS.—

“(A) IN GENERAL.—Notwithstanding section 8334(a)(1) or (k)(1) of title 5, United States Code, during the period beginning on October 1, 1997, through September 30, 2002, each employing agency (other than the United States Postal Service or the Metropolitan Washington Airports Authority) shall contribute—

“(i) 8.51 percent of the basic pay of an employee;

“(ii) 9.01 percent of the basic pay of a congressional employee, a law enforcement officer, a member of the Capitol police, or a firefighter; and

“(iii) 9.51 percent of the basic pay of a Member of Congress, a Court of Federal Claims judge, a United States magistrate [now United States magistrate judge], a judge of the United States Court of Appeals for the Armed Forces, or a bankruptcy judge; in lieu of the agency contributions otherwise required under section 8334(a)(1) of title 5, United States Code.

“(B) APPLICATION.—For purposes of subparagraph (A) and notwithstanding the amendments made by paragraph (3) [amending this section], during the period beginning on January 1, 1999 through December 31, 2002, with respect to the United States Postal Service and the Metropolitan Washington Airports Authority, the agency contribution shall be determined as though those amendments had not been made.

“(2) NO REDUCTION IN AGENCY CONTRIBUTIONS BY THE POSTAL SERVICE.—Contributions by the Treasury of the United States or the United States Postal Service under section 8348(g), (h), or (m) of title 5, United States Code—

“(A) shall not be reduced as a result of the amendments made under paragraph (3) of this subsection; and

“(B) shall be computed as though such amendments had not been enacted.”

#### OFFSETS TO PREVENT FULL DOUBLE COVERAGE FOR EMPLOYEES OF PARK POLICE AND SECRET SERVICE

Section 103(e) of Pub. L. 100-238 provided that: “Notwithstanding any other provision of law, in the case of an employee of the United States Secret Service or the United States Park Police whose pay is simultaneously subject to a deposit requirement under the District of

Columbia Police and Firefighters' Retirement and Disability System and the contribution requirement under section 3101(a) of the Internal Revenue Code of 1986 [26 U.S.C. 3101(a)]—

“(1) any deposits under the District of Columbia Police and Firefighters' Retirement and Disability System shall be adjusted in a manner consistent with section 8334(k) of title 5, United States Code (relating to offsets in deductions from pay to reflect OASDI contributions); and

“(2) any benefits payable under the District of Columbia Police and Firefighters' Retirement and Disability System based on the service of any such employee shall be adjusted in a manner consistent with section 8349 of title 5, United States Code (relating to offsets to reflect benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.]).”

[For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

#### REFUNDS OF CERTAIN EXCESS DEDUCTIONS TAKEN AFTER 1983 TO OFFSET EMPLOYEES UNDER CSRS

Section 128 of Pub. L. 100-238 provided that:

“(a) REFUND ELIGIBILITY.—An individual shall upon written application to the Office of Personnel Management, receive a refund under subsection (b), if such individual—

“(1) was subject to section 8334(a)(1) of title 5, United States Code, for any period of service after December 31, 1983, because of an election under section 208(a)(1)(B) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1107; 5 U.S.C. 8331 note);

“(2) is not eligible to make an election under section 301(b) of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 599) [5 U.S.C. 8331 note]; and

“(3) becomes subject to section 8334(k) of title 5, United States Code.

“(b) REFUND COMPUTATION.—An individual eligible for a refund under subsection (a) shall receive a refund—

“(1) for the period beginning on January 1, 1984, and ending on December 31, 1986, for the amount by which—

“(A) the total amount deducted from such individual's basic pay under section 8334(a)(1) of title 5, United States Code, for service described in subsection (a)(1) of this section, exceeds

“(B) 1.3 percent of such individual's total basic pay for such period; and

“(2) for the period beginning on January 1, 1987, and ending on the day before such individual becomes subject to section 8334(k) of title 5, United States Code, for the amount by which—

“(A) the total amount deducted from such individual's basic pay under section 8334(a)(1) of title 5, United States Code, for service described in subsection (a)(1) of this section, exceeds

“(B) the total amount which would have been deducted if such individual's basic pay had instead been subject to section 8334(k) of title 5, United States Code, during such period.

“(c) INTEREST COMPUTATION.—A refund under this section shall be computed with interest in accordance with section 8334(e) of title 5, United States Code, and regulations prescribed by the Office of Personnel Management.”

#### NATIONAL GUARD TECHNICIANS

Amendment by Pub. L. 90-486 not applicable to persons employed prior to Jan. 1, 1969, whose employment was covered by the civil service retirement provisions

of section 8331 et seq. of this title, see section 5(d) of Pub. L. 90-486, set out as a note under section 709 of Title 32, National Guard.

#### § 8335. Mandatory separation

(a) An air traffic controller shall be separated from the service on the last day of the month in which he becomes 56 years of age or completes the age and service requirements for an annuity under section 8336(e), whichever occurs later. The Secretary, under such regulations as he may prescribe, may exempt a controller having exceptional skills and experience as a controller from the automatic separation provisions of this subsection until that controller becomes 61 years of age. The Secretary shall notify the controller in writing of the date of separation at least 60 days before that date. Action to separate the controller is not effective, without the consent of the controller, until the last day of the month in which the 60-day notice expires. For purposes of this subsection, the term “air traffic controller” or “controller” has the meaning given to it under section 8331(29)(A).<sup>1</sup>

(b)(1) A law enforcement officer, firefighter, nuclear materials courier, or customs and border protection officer who is otherwise eligible for immediate retirement under section 8336(c) shall be separated from the service on the last day of the month in which that officer, firefighter, or courier, as the case may be, becomes 57 years of age or completes 20 years of service if then over that age. The head of the agency, when in his judgment the public interest so requires, may exempt such an employee from automatic separation under this subsection until that employee becomes 60 years of age. The employing office shall notify the employee in writing of the date of separation at least 60 days in advance thereof. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.

(2) In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting “65 years of age” for “60 years of age”. The authority to grant exemptions in accordance with the preceding sentence shall cease to be available after December 31, 2011.

(c) A member of the Capitol Police who is otherwise eligible for immediate retirement under section 8336(m) shall be separated from the service on the last day of the month in which such member becomes 57 years of age or completes 20 years of service if then over that age. The Capitol Police Board, when in its judgment the public interest so requires, may exempt such a member from automatic separation under this subsection until that member becomes 60 years of age. The Board shall notify the member in writing of the date of separation at least 60 days in advance thereof. Action to separate the member is not effective, without the consent of the member, until the last day of the month in which the 60-day notice expires.

(d) A member of the Supreme Court Police who is otherwise eligible for immediate retirement under section 8336(n) shall be separated

<sup>1</sup> See References in Text note below.

from the service on the last day of the month in which such member becomes 57 years of age or completes 20 years of service if then over that age. The Marshal of the Supreme Court of the United States, when in his judgment the public interest so requires, may exempt such a member from automatic separation under this subsection until that member becomes 60 years of age. The Marshal shall notify the member in writing of the date of separation at least 60 days in advance thereof. Action to separate the member is not effective, without the consent of the member, until the last day of the month in which the 60-day notice expires.

(f)<sup>2</sup> The President, by Executive order, may exempt an employee (other than a member of the Capitol Police or the Supreme Court Police) from automatic separation under this section when he determines the public interest so requires.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 571; Pub. L. 92-297, § 4, May 16, 1972, 86 Stat. 144; Pub. L. 93-350, § 4, July 12, 1974, 88 Stat. 356; Pub. L. 95-256, § 5(c), Apr. 6, 1978, 92 Stat. 191; Pub. L. 96-70, title III, § 3302(e)(3), Sept. 27, 1979, 93 Stat. 498; Pub. L. 96-347, § 1(b), Sept. 12, 1980, 94 Stat. 1150; Pub. L. 101-428, § 2(b)(1)(A), (2), Oct. 15, 1990, 104 Stat. 928; Pub. L. 101-509, title V, § 529 [title IV, § 409(a)], Nov. 5, 1990, 104 Stat. 1427, 1468; Pub. L. 102-378, § 2(60), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 103-283, title III, § 307(a), July 22, 1994, 108 Stat. 1441; Pub. L. 105-261, div. C, title XXXI, § 3154(d), Oct. 17, 1998, 112 Stat. 2255; Pub. L. 106-553, § 1(a)(2) [title III, § 308(b)(2)], Dec. 21, 2000, 114 Stat. 2762, 2762A-87; Pub. L. 106-554, § 1(a)(4) [div. B, title I, § 141(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-235; Pub. L. 107-27, § 2(a), Aug. 20, 2001, 115 Stat. 207; Pub. L. 107-67, title VI, § 640(a), Nov. 12, 2001, 115 Stat. 554; Pub. L. 108-7, div. J, title VI, § 648(a), Feb. 20, 2003, 117 Stat. 474; Pub. L. 108-176, title II, § 226(a)(3)(A), Dec. 12, 2003, 117 Stat. 2529; Pub. L. 108-447, div. B, title I, § 112(a), Dec. 8, 2004, 118 Stat. 2868; Pub. L. 108-458, title II, § 2005(a), Dec. 17, 2004, 118 Stat. 3704; Pub. L. 110-161, div. E, title V, § 535(a)(3), Dec. 26, 2007, 121 Stat. 2075; Pub. L. 111-259, title IV, § 444(a), Oct. 7, 2010, 124 Stat. 2733.)

#### HISTORICAL AND REVISION NOTES

| Derivation | U.S. Code      | Revised Statutes and Statutes at Large   |
|------------|----------------|--|
| .....      | 5 U.S.C. 2255. | July 31, 1956, ch. 804, § 401<br>“Sec. 5”, 70 Stat. 748.<br>Feb. 7, 1964, Pub. L. 88-267,<br>§ 1 (less (a)-(c)), 78 Stat. 9. |

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

#### Editorial Notes

#### REFERENCES IN TEXT

For definition of Secretary, referred to in subsec. (a), see section 2109 of this title.

Section 8331(29)(A), referred to in subsec. (a), was redesignated as section 8331(30)(A) by Pub. L. 110-161, div. E, title V, § 535(a)(1)(A), Dec. 26, 2007, 121 Stat. 2075.

<sup>2</sup> So in original. Probably should be “(e)”.

#### AMENDMENTS

2010—Subsec. (b)(2). Pub. L. 111-259, § 444(a)(2), struck out par. (2) added by section 2005(a)(2) of Pub. L. 108-458 which read as follows: “In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting ‘65 years of age’ for ‘60 years of age’. The Federal Bureau of Investigation may not grant more than 50 exemptions in any fiscal year in accordance with the preceding sentence, and the authority to grant such exemptions shall cease to be available after September 30, 2007.”

Pub. L. 111-259, § 444(a)(1), amended par. (2) relating to employees of the Federal Bureau of Investigation and providing that authority to grant exemptions shall cease to be available after Dec. 31, 2009, by substituting “2011” for “2009”.

2007—Subsec. (b)(1). Pub. L. 110-161 substituted “nuclear materials courier, or customs and border protection officer” for “or nuclear materials courier” in first sentence.

2004—Subsec. (b). Pub. L. 108-447, § 112(a)(1), and Pub. L. 108-458, § 2005(a)(1), amended subsec. (b) identically, designating existing provisions as par. (1).

Subsec. (b)(2). Pub. L. 108-458, § 2005(a)(2), added par. (2) relating to employees of the Federal Bureau of Investigation, limiting number of exemptions to 50 per fiscal year, and providing that authority to grant such exemptions shall cease to be available after Sept. 30, 2007.

Pub. L. 108-447, § 112(a)(2), added par. (2) relating to employees of the Federal Bureau of Investigation and providing that authority to grant exemptions shall cease to be available after Dec. 31, 2009.

2003—Subsec. (a). Pub. L. 108-176 inserted at end “For purposes of this subsection, the term ‘air traffic controller’ or ‘controller’ has the meaning given to it under section 8331(29)(A).”

Pub. L. 108-7 substituted “8336(e)” for “8336”.

2001—Subsec. (a). Pub. L. 107-67 inserted before period at end of first sentence “or completes the age and service requirements for an annuity under section 8336, whichever occurs later”.

Subsec. (b). Pub. L. 107-27 struck out first sentence which read “A firefighter who is otherwise eligible for immediate retirement under section 8336(c) shall be separated from the service on the last day of the month in which such firefighter becomes 55 years of age or completes 20 years of service if then over that age.” and, in second sentence, inserted “, firefighter,” after “law enforcement officer” and “that officer”.

2000—Subsec. (c). Pub. L. 106-554 redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: “An employee of the Alaska Railroad in Alaska and an employee who is a citizen of the United States employed on the Isthmus of Panama by the Panama Canal Commission, who becomes 62 years of age and completes 15 years of service in Alaska or on the Isthmus of Panama shall be automatically separated from the service. The separation is effective on the last day of the month in which the employee becomes age 62 or completes 15 years of service in Alaska or on the Isthmus of Panama if then over that age. The employing office shall notify the employee in writing of the date of separation at least 60 days in advance thereof. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.”

Subsec. (d). Pub. L. 106-554, § 1(a)(4) [div. B, title I, § 141(a)(2)], redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 106-554, § 1(a)(4) [div. B, title I, § 141(a)(2)], redesignated subsec. (e) as (d).

Pub. L. 106-553, § 1(a)(2) [title III, § 308(b)(2)(A)], added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 106-553 redesignated subsec. (e) as (f) and substituted “Police or the Supreme Court Police” for “Police”.

1998—Subsec. (b). Pub. L. 105-261, in second sentence, inserted “or nuclear materials courier” after “law en-

forcement officer” and “or courier, as the case may be,” after “that officer”.

1994—Subsec. (d). Pub. L. 103-283 substituted “57” for “55” in first sentence.

1992—Subsec. (b). Pub. L. 102-378 amended first sentence generally. Prior to amendment, first sentence read as follows: “A firefighter who is otherwise eligible for immediate retirement under section 8336(c) of this title shall be separated from the service on the last day of the month in which he becomes 55 years of age or completes 20 years of service if then over that age.”

1990—Subsec. (b). Pub. L. 101-509, § 529 [title IV, § 409(a)(1)], which directed that “law enforcement officer of a” be struck out before “firefighter who is”, was executed by striking out “law enforcement officer or a” as the probable intent of Congress.

Pub. L. 101-509, § 529 [title IV, § 409(a)(2)], inserted after first sentence “A law enforcement officer who is otherwise eligible for immediate retirement under section 8336(c) shall be separated from the service on the last day of the month in which that officer becomes 57 years of age or completes 20 years of service if then over that age.”

Subsec. (d). Pub. L. 101-428, § 2(b)(1)(A), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 101-428, § 2(b)(2), inserted “(other than a member of the Capitol Police)” after “employee”.

Pub. L. 101-428, § 2(b)(1)(A), redesignated subsec. (d) as (e).

1980—Subsec. (a). Pub. L. 96-347 substituted “Secretary” for “Secretary of Transportation” in two places.

1979—Subsec. (c). Pub. L. 96-70, which directed substitution of “Panama Canal Commission” for “Panama Canal Company or the Canal Zone Government” in subsec. (e), was executed to subsec. (c) to reflect the probable intent of Congress and Pub. L. 95-256 which struck out subsec. (e) and restated provisions thereof in subsec. (c).

1978—Subsec. (a). Pub. L. 95-256, § 5(c)(1), (2), redesignated subsec. (f) as (a). Former subsec. (a), relating to mandatory separation when an employee became 70 years of age and completed 15 years of service, was struck out.

Subsec. (b). Pub. L. 95-256, § 5(c)(1), (2), redesignated subsec. (g) as (b). Former subsec. (b), relating to notice by employing office of date of separation, was struck out.

Subsec. (c). Pub. L. 95-256, § 5(c)(1), (3), added subsec. (c) relating to provisions covered by former subsec. (e). Former subsec. (c), relating to exemption of an employee from automatic separation by President, was struck out. See subsec. (d).

Subsec. (d). Pub. L. 95-256, § 5(c)(1), (3), added subsec. (d). Former subsec. (d), relating to inapplicability of automatic separation provisions of this section, was struck out.

Subsec. (e). Pub. L. 95-256, § 5(c)(1), struck out subsec. (e) which related to applicability of provisions to employees of Alaskan Railroad, Panama Canal Company, and Canal Zone Government. See subsec. (c).

Subsecs. (f), (g). Pub. L. 95-256, § 5(c)(2), redesignated subsecs. (f) and (g) as (a) and (b), respectively.

1974—Subsec. (g). Pub. L. 93-350 added subsec. (g).

1972—Subsec. (f). Pub. L. 92-297 added subsec. (f).

#### Statutory Notes and Related Subsidiaries

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

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

##### EFFECTIVE DATE OF 2003 AMENDMENTS

Amendment by Pub. L. 108-176 effective on 60th day after Dec. 12, 2003, and applicable with respect to any

annuity entitlement based on an individual's separation from service occurring on or after such effective date, and any service performed by any such individual before, on, or after such effective date, subject to special rule relating to deposit requirement, see section 226(c) of Pub. L. 108-176, set out as a note under section 8401 of this title.

Pub. L. 108-7, div. J, title VI, § 648(b), Feb. 20, 2003, 117 Stat. 474, provided that: “The amendment made by subsection (a) [amending this section] shall be effective as of January 1, 2003.”

##### EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-67, title VI, § 640(b), Nov. 12, 2001, 115 Stat. 554, provided that: “The amendment made by subsection (a) [amending this section] takes effect on the date of enactment [Nov. 12, 2001] with regard to any individual subject to chapter 83 of title 5, United States Code, who is employed as an air traffic controller on that date.”

##### EFFECTIVE DATE OF 2000 AMENDMENT

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

##### EFFECTIVE DATE OF 1998 AMENDMENT

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

##### EFFECTIVE DATE OF 1992 AMENDMENT

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

##### EFFECTIVE DATE OF 1990 AMENDMENTS

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

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

##### EFFECTIVE DATE OF 1980 AMENDMENT

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

##### EFFECTIVE DATE OF 1979 AMENDMENT

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

##### EFFECTIVE DATE OF 1978 AMENDMENT

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

##### EFFECTIVE DATE OF 1974 AMENDMENT

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

##### EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92-297, set



out as an Effective Date note under section 3381 of this title.

EXEMPTION PROCESS TO DELAY MANDATORY  
RETIREMENT FOR AIR TRAFFIC CONTROLLERS

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

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

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

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

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

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

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

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

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

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

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

**§ 8336. Immediate retirement**

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

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

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

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

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

(B) is separated from the service before January 1, 2000, after becoming 48 years of age and completing 18 years of service as a law enforcement officer or firefighter, or any com-

bination of such service totaling at least 18 years.

(3)(A) In this paragraph—

(i) the term "affected individual" means an individual covered under this subchapter who—

(I) is performing service in a covered position;

(II) while on duty, becomes ill or is injured as a direct result of the performance of such duties before the date on which the individual becomes entitled to an annuity under paragraph (1) of this subsection or subsection (e), (m), or (n), as applicable;

(III) because of the illness or injury described in subclause (II), is permanently unable to render useful and efficient service in the employee's covered position, as determined by the agency in which the individual was serving when such individual incurred the illness or injury; and

(IV) is appointed to a position in the civil service that—

(aa) is not a covered position; and

(bb) is within an agency that regularly appoints individuals to supervisory or administrative positions related to the activities of the former covered position of the individual;

(ii) the term "covered position" means a position as a law enforcement officer, customs and border protection officer, firefighter, air traffic controller, nuclear materials courier, member of the Capitol Police, or member of the Supreme Court Police.

(B) Unless an affected individual files an election described in subparagraph (E), creditable service by the affected individual in a position described in subparagraph (A)(i)(IV) shall be treated as creditable service in a covered position for purposes of this chapter and determining the amount to be deducted and withheld from the pay of the affected individual under section 8334.

(C) Subparagraph (B) shall only apply if the affected employee transitions to a position described in subparagraph (A)(i)(IV) without a break in service exceeding 3 days.

(D) The service of an affected individual shall no longer be eligible for treatment under subparagraph (B) if such service occurs after the individual—

(i) is transferred to a supervisory or administrative position related to the activities of the former covered position of the individual; or

(ii) meets the age and service requirements that would subject the individual to mandatory separation under section 8335 if such individual had remained in the former covered position.

(E) In accordance with procedures established by the Director of the Office of Personnel Management, an affected individual may file an election to have any creditable service performed by the affected individual treated in accordance with this chapter without regard to subparagraph (B).

(F) Nothing in this paragraph shall be construed to apply to such affected individual any

other pay-related laws or regulations applicable to a covered position.

(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 completing 5 years of service is entitled to an annuity.

(g) A Member who is separated from the service after becoming 62 years of age and completing 5 years of civilian service or after becoming 60 years of age and completing 10 years of Member service is entitled to an annuity. A Member 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

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

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

provision of the Panama Canal Treaty of 1977 and related agreements; or

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

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

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

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

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

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

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

(4) For the purpose of this subsection—

(A) “Panama Canal service” means—

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

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

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

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

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

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

(B) was employed in the Bureau of Indian Affairs, the Indian Health Service, a tribal orga-

nization (to the extent provided in paragraph (2)), or any combination thereof, continuously from December 21, 1972, to the date of his separation, and

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

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

(A) the employee was employed by the tribal organization after January 4, 1975, and immediately before such employment he was an employee of the Bureau of Indian Affairs or the Indian Health Service, and

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

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

of service as a bankruptcy judge, United States magistrate judge, or Court of Federal Claims judge, is entitled to an annuity.

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

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

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

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

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

(A) has—

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

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

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

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

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

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

(A) The employee is separated from the service voluntarily during a period in which the organization within the Department of De-

fense 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; Pub. L. 117-225, § 3(a), Dec. 9, 2022, 136 Stat. 2293.)

#### APPLICABILITY OF AMENDMENT

*For provisions relating to delayed applicability of amendment by Pub. L. 117-225, see Effective Date of 2022 Amendment note below.*

#### HISTORICAL AND REVISION NOTES 1966 ACT

| Derivation | U.S. Code                                  | Revised Statutes and Statutes at Large   |
|------------|--|--|
| .....      | 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

| Section of title 5 | Source (U.S. Code) | Source (Statutes at Large)                          |
|--------------------|--------------------|---|
| 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.

#### Editorial Notes

##### 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

2022—Subsec. (c)(3). Pub. L. 117-225 added par. (3).

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.

## Statutory Notes and Related Subsidiaries

### 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 2022 AMENDMENT

Pub. L. 117-225, § 3(f), Dec. 9, 2022, 136 Stat. 2298, provided that: “The amendments made by this Act [amending this section, sections 8412, 8414, 8415, 8421, 8421a, 8425, and 8462 of this title, sections 4045, 4046, and 4052 of Title 22, Foreign Relations and Intercourse, and section 2152 of Title 50, War and National Defense]—

“(1) shall take effect on the date of enactment of this Act [Dec. 9, 2022]; and

“(2) shall apply to an individual who suffers an illness or injury described in section 8336(c)(3)(A)(i)(II) or section 8412(d)(2)(A)(i)(II) of title 5, United States Code, as amended by this section, section 302(d)(1)(A)(ii) of the Central Intelligence Agency Retirement Act [50 U.S.C. 2152(d)(1)(A)(ii)], as amended by this section, or section 806(a)(6)(D)(i)(I)(bb) of the Foreign Service Act of 1980 [22 U.S.C. 4046(a)(6)(D)(i)(I)(bb)], as amended by this section, on or after the date that is 2 years after the date of enactment of this Act.”

### EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

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

### EFFECTIVE DATE OF 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, accru-

ing 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. 117-225, §3(e), Dec. 9, 2022, 136 Stat. 2298, provided that:

"(1) OFFICE OF PERSONNEL MANAGEMENT.—Not later than 1 year after the date of enactment of this Act [Dec. 9, 2022], the Director of the Office of Personnel Management shall promulgate regulations to carry out the amendments made by subsections (a) and (b) [amending this section, sections 8412, 8414, 8415, 8421, 8421a, 8425, and 8462 of this title, and sections 4045 and 4052 of Title 22, Foreign Relations and Intercourse].

"(2) CIA EMPLOYEES.—The Director of the Central Intelligence Agency shall promulgate regulations to carry out the amendment made by subsection (c) [amending section 2152 of Title 50, War and National Defense].

"(3) FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM.—The Secretary of State shall promulgate regulations to carry out the amendment made by subsection (d) [amending section 4046 of Title 22].

"(4) AGENCY CERTIFICATION.—The regulations promulgated to carry out the amendments made by this Act [see amendments listed in pars. (1) to (3) above] shall include a requirement that the head of the agency at which an affected employee or special agent (as the case may be) incurred the applicable illness or injury certifies that such illness or injury—

"(A) was incurred in the course of the employee's or special agent's duties; and

"(B) permanently precludes the employee or special agent from rendering useful and efficient service in the covered position but would not preclude the employee or special agent from continuing to serve in the Federal service.

"(5) AGENCY REAPPOINTMENT.—The regulations promulgated to carry out the amendments made by this Act shall ensure that, to the greatest extent possible, the head of each agency appoints affected employees or special agents to supervisory or administrative positions related to the activities of the former covered position of the employee or special agent.

"(6) TREATMENT OF SERVICE.—The regulations promulgated to carry out the amendments made by this Act shall ensure that the creditable service of an affected employee or special agent (as the case may be) that is not in a covered position pursuant to an election made under such amendments shall be treated as the same type of service as the covered position in which the employee or agent suffered the qualifying illness or injury."

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.

SENSE OF CONGRESS

Pub. L. 117-225, § 2, Dec. 9, 2022, 136 Stat. 2293, provided that: “It is the sense of Congress that—

“(1) it is in the best national and homeland security interests of the United States for Federal agencies to retain the specialized knowledge and experience of individuals who suffer an injury or illness while serving in a covered position (as defined under the amendments made by this Act [see Effective Date of 2022 Amendment note set out above]); and

“(2) Federal agencies should ensure, to the greatest extent possible, that an individual who can no longer carry out the duties of a covered position, and is reappointed to a position in the civil service that is not a covered position, is reappointed within the same Federal agency, in the same geographic location, and at a level of pay commensurate to the position which the individual held immediately prior to such injury or illness.”

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 Ac-

countability 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 POSI-  
TIONS

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 from service and retired under section 8336(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 phased employment.

(3) A phased retirement annuity shall be adjusted in accordance with section 8340.

(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) Any reduction of a phased retirement annuity based on an election under section 8334(d)(2) shall be applied to the phased retirement annuity after computation under paragraph (1).

(6)(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.

(C) If a phased retiree makes an election for an actuarial annuity reduction under section 8334(d)(2) and dies in service as a phased retiree, the amount of any deposit upon which such actuarial reduction shall have been based shall be deemed to have been fully paid.

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

(8) 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 section 8334.

(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, before any reduction based on an election under section 8334(d)(2), and including any adjustments made under section 8340; and

(B) the product obtained by multiplying—

(i) the amount of an annuity computed under section 8339 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 reduction for survivor annuity or reduction based on an election under section 8334(d)(2); 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 and any previously elected actuarial reduction under section 8334(d)(2).

(3) A composite retirement annuity shall be adjusted in accordance with section 8340, 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 the 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 upon an election under paragraph (1), the phased retirement annuity of a phased retiree shall terminate.

(3) After the termination of a phased retirement annuity under this subsection, the individual's rights under this subchapter shall be determined based on the law in effect at the time of any subsequent separation from service. For purposes of this subchapter or chapter 84, at 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 section 8341—

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

(2) 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).

(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 apply for an annuity under section 8337.

(k) For purposes of section 8341(h)(4), retirement shall be deemed to occur on the date on which a phased retiree enters into full retirement status.

(l) For purposes of sections 8343 and 8351, and subchapter III of chapter 84, a phased retiree shall be deemed to be an employee.

(m) A phased retiree is not subject to section 8344.

(n) 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(a)(2), July 6, 2012, 126 Stat. 907.)

#### Statutory Notes and Related Subsidiaries

##### 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.

#### § 8337. Disability retirement

(a) An employee who completes 5 years of civilian service and has become disabled shall be retired on the employee's own application or on application by the employee's agency. Any employee shall be considered to be disabled only if the employee is found by the Office of Personnel Management to be unable, because of disease or injury, to render useful and efficient service in the employee's position and is not qualified for reassignment, under procedures prescribed by the Office, to a vacant position which is in the agency at the same grade or level and in which the employee would be able to render useful and efficient service. For the purpose of the preceding sentence, an employee of the United States Postal Service shall be considered not qualified for a reassignment described in that sentence if the reassignment is to a position in

a different craft or is inconsistent with the terms of a collective bargaining agreement covering the employee. A judge of the United States Court of Appeals for the Armed Forces who completes 5 years of civilian service and who is found by the Office to be disabled for useful and efficient service as a judge of such court or who is removed for mental or physical disability under section 942(c) of title 10 shall be retired on the judge's own application or upon such removal. A Member who completes 5 years of Member service and is found by the Office to be disabled for useful and efficient service as a Member because of disease or injury shall be retired on the Member's own application. An annuity authorized by this section is computed under section 8339(g) of this title, unless the employee or Member is eligible for a higher annuity computed under section 8339(a) through (e), (n), (q), (r), or (s).

(b) A claim may be allowed under this section only if the application is filed with the Office before the employee or Member is separated from the service or within 1 year thereafter. This time limitation may be waived by the Office for an employee or Member who at the date of separation from service or within 1 year thereafter is mentally incompetent, if the application is filed with the Office within 1 year from the date of restoration of the employee or Member to competency or the appointment of a fiduciary, whichever is earlier.

(c) An annuitant receiving disability retirement annuity from the Fund shall be examined under the direction of the Office—

- (1) at the end of 1 year from the date of the disability retirement; and
- (2) annually thereafter until he becomes 60 years of age;

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

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

(e) If an annuitant whose annuity is terminated under subsection (d) of this section is not reemployed in a position in which he is subject to this subchapter, he is deemed, except for service credit, to have been involuntarily separated from the service for the purpose of this sub-

chapter as of the date of termination of the disability annuity, and after that termination is entitled to annuity under the applicable provisions of this subchapter. If an annuitant whose annuity is heretofore or hereafter terminated because of an earning capacity provision of this subchapter or an earlier statute—

- (1) is not reemployed in a position in which he is subject to this subchapter; and
- (2) has not recovered from the disability for which he was retired;

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

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

- (A) an annuity under this subchapter, and
- (B) compensation for injury to, or disability of, such individual under subchapter I of chapter 81, other than compensation payable under section 8107,

covering the same period of time.

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

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

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

- (1) refund to the Department of Labor the amount representing the commuted compensation payments for the extended period; or
- (2) authorize the deduction of the amount from the annuity.

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

nulty may be prorated against and paid from accruing payments in such manner as the Department determines appropriate.

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

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

(i) is separated from employment as a technician under section 709(e)(1) of title 32 or section 10216 of title 10 by reason of a disability that disqualifies the individual from membership in the Selected Reserve;

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

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

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

(B) Payment of any annuity for an individual pursuant to this subsection terminates—

(i) on the date the individual is appointed to a position in the Government (whether pursuant to paragraph (3) of this subsection or otherwise);

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

(iii) as provided under subsection (d).

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

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

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

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

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 572; Pub. L. 90-83, §1(76), Sept. 11, 1967, 81 Stat. 214; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-499, title IV, §403(a), Dec. 5, 1980, 94 Stat. 2605; Pub. L. 97-253, title III, §302(a), Sept. 8, 1982, 96 Stat. 792; Pub. L. 98-94, title XII, §1256(c), Sept. 24, 1983, 97 Stat. 701; Pub. L. 100-238, title I, §124(a)(1)(A), Jan. 8, 1988, 101 Stat. 1755; Pub. L. 101-189, div. A, title XIII, §1304(b)(2), Nov. 29, 1989, 103 Stat. 1577; Pub. L. 101-428, §2(d)(1), Oct. 15, 1990, 104 Stat. 929; Pub. L. 102-378, §2(61), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 103-337, div. A, title IX, §924(d)(1)(A), Oct. 5, 1994, 108 Stat. 2832; Pub. L. 105-61, title V, §516(a)(2), Oct. 10, 1997, 111 Stat. 1306; Pub. L. 106-65, div. A, title V, §522(d), Oct. 5, 1999, 113 Stat. 597; Pub. L. 106-553, §1(a)(2) [title III, §308(h)(1)], Dec. 21, 2000, 114 Stat. 2762, 2762A-88.)

# HISTORICAL AND REVISION NOTES 1966 ACT

| Derivation | U.S. Code      | Revised Statutes and Statutes at Large   |
|------------|----------------|--|
| .....      | 5 U.S.C. 2257. | July 31, 1956, ch. 804, §401 “Sec. 7”, 70 Stat. 750.<br>Oct. 4, 1961, Pub. L. 87-350, §4(a), 75 Stat. 771. |

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

In subsection (g), the words “Notwithstanding any provision of law to the contrary” are omitted as unnecessary. The words “Employees’ Compensation Fund” are substituted for “Federal Employees’ Compensation Fund” to conform to the title of that Fund as set forth in section 8147.

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

## 1967 ACT

This section amends 5 U.S.C. 8337(e) for consistency within the subchapter and to reflect that it is the individual, rather than the position, that is subject to the subchapter.

## Editorial Notes

### AMENDMENTS

2000—Subsec. (a). Pub. L. 106-553 substituted “8339(a) through (e), (n), (q), (r), or (s)” for “8339(a)-(e), (n), (q), or (r)” in last sentence.

1999—Subsec. (h)(1). Pub. L. 106-65, §522(d)(1), inserted “or section 10216 of title 10” after “title 32” and substituted “title 32 or section 10216 of title 10, respectively, to be a member of the Selected Reserve.” for “such title to be a member of the National Guard and to hold a specified military grade.”

Subsec. (h)(2)(A)(i). Pub. L. 106-65, §522(d)(2), inserted “or section 10216 of title 10” after “title 32” and substituted “Selected Reserve” for “National Guard or from holding the military grade required for such employment”.

Subsec. (h)(3)(C). Pub. L. 106-65, §522(d)(3), inserted “or section 10216 of title 10” after “title 32”.

1997—Subsec. (a). Pub. L. 105-61 substituted “(q), or (r)” for “or (q)”.

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

1992—Subsec. (a). Pub. L. 102-378 substituted “if” for “is” after “employee” in second sentence.

1990—Subsec. (a). Pub. L. 101-428 substituted “8339(a)-(e), (n), or (q)” for “8339(a)-(e) or (n)”.

1989—Subsec. (a). Pub. L. 101-189 substituted “section 942(c) of title 10” for “section 867(a)(2) of title 10”.

1988—Subsec. (f). Pub. L. 100-238 added subsec. (f) and struck out former subsec. (f) which read as follows: “An individual is not entitled to receive an annuity under this subchapter and compensation for injury or disability to himself under subchapter I of chapter 81 of this title covering the same period of time. This provision does not bar the right of a claimant to the greater benefit conferred by either subchapter for any part of the same period of time. Neither this provision nor any provision of subchapter I of chapter 81 of this title denies to an individual an annuity accruing to him under this subchapter on account of service performed by him, or denies any concurrent benefit to him under subchapter I of chapter 81 of this title on account of the death of another individual.”

Subsec. (g). Pub. L. 100-238 added subsec. (g) and struck out former subsec. (g) which read as follows: “The right of an individual entitled to an annuity under this subchapter is not affected because he has re-

ceived a lump-sum payment for compensation under section 8135 of this title. However, if the annuity is payable on account of the same disability for which compensation under section 8135 of this title has been paid, so much of the compensation as has been paid for a period extended beyond the date the annuity becomes effective, as determined by the Department of Labor, shall be refunded to that Department to be covered into the Employees' Compensation Fund. Before the individual may receive the annuity he shall—

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

“(2) authorize the deduction of that amount from the annuity payable to him under this subchapter, which amount shall be transmitted to the Department of Labor for reimbursement to the Employees' Compensation Fund.

Deductions from the annuity may be made from accrued and accruing payments. When the Department of Labor finds that the financial circumstances of the annuitant warrant deferred refunding, deductions from the annuity may be prorated against and paid from accruing payments in such manner as that Department determines.”

1983—Subsec. (a). Pub. L. 98-94 inserted provision that a judge of the United States Court of Military Appeals who completes 5 years of civilian service and who is found by the Office to be disabled for useful and efficient service as a judge of such court or who is removed for mental or physical disability under section 867(a)(2) of title 10 shall be retired on the judge's own application or upon such removal.

1982—Subsec. (d). Pub. L. 97-253, §302(a)(1), (2), substituted “180 days” for “1 year” in provision relating to restoration of an annuitant to an earning capacity fairly comparable to the current rate of pay of the position occupied at the time of retirement, and “any calendar year” for “each of 2 succeeding calendar years”.

Subsec. (h). Pub. L. 97-253, §302(a)(3), added subsec. (h).

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

1978—Subsecs. (a) to (c). Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively, wherever appearing.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2000 AMENDMENT

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

##### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-61 applicable to any annuity commencing before, on, or after Oct. 10, 1997, and effective with regard to any payment made after the first month following Oct. 10, 1997, see section 516(b) of Pub. L. 105-61, set out as a note under section 8334 of this title.

##### EFFECTIVE DATE OF 1988 AMENDMENT

Section 124(c) of Pub. L. 100-238 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 8464a of this title, amending this section, renumbering section 8457 of this title as section 8456, and repealing former section 8456 of this title] shall be effective as of January 1, 1987, and shall apply with respect to benefits payable based on a death or disability occurring on or after that date.

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

##### EFFECTIVE DATE OF 1982 AMENDMENT

Section 302(c) of Pub. L. 97-253, as amended by Pub. L. 97-346, §3(i), Oct. 15, 1982, 96 Stat. 1649, provided that:

“(1) Except as provided in paragraphs (2) and (3), the amendments made by subsections (a) and (b) [amending this section and section 8347 of this title] shall take effective October 1, 1982.

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

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

##### EFFECTIVE DATE OF 1980 AMENDMENT

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

##### EFFECTIVE DATE OF 1978 AMENDMENT

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

#### § 8338. Deferred retirement

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

(b) A Member who, after December 31, 1955, is separated from the service as a Member after completing 5 years of civilian service is entitled to an annuity beginning at the age of 62 years. A Member who is separated from the service after completing 10 or more years of Member service is entitled to an annuity beginning at the age of 60 years. A Member who is separated from the service after completing 20 or more years of service, including 10 or more years of Member service, is entitled to a reduced annuity beginning at the age of 50 years.

(c) A judge of the United States Court of Appeals for the Armed Forces who is separated from the service after completing 5 years of civilian service is entitled to an annuity beginning at the age of 62 years. A judge of such court who is separated from the service after completing the term of service for which he was ap-

pointed is entitled to an annuity. If an annuity is elected before the judge becomes 60 years of age, it shall be a reduced annuity.

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

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 574; Pub. L. 90-83, §1(77), Sept. 11, 1967, 81 Stat. 214; Pub. L. 98-94, title XII, §1256(d), Sept. 24, 1983, 97 Stat. 702; Pub. L. 103-337, div. A, title IX, §924(d)(1)(A), Oct. 5, 1994, 108 Stat. 2832.)

#### HISTORICAL AND REVISION NOTES 1966 ACT

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and<br/>Statutes at Large</i>   |
|-------------------|------------------|---|
| .....             | 5 U.S.C. 2258.   | July 31, 1956, ch. 804, §401 "Sec. 8", 70 Stat. 751.<br>July 7, 1960, Pub. L. 86-604, §1(c), 74 Stat. 358.<br>July 12, 1960, Pub. L. 86-622, §2(a), 74 Stat. 410. |

In subsection (b), the words "after December 31, 1955" are substituted for "on or after January 1, 1956". The word "hereafter" is omitted as unnecessary.

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

#### 1967 ACT

This section amends 5 U.S.C. 8338(a) for consistency within the subchapter and to reflect that it is the individual, rather than the position, that is subject to the subchapter.

#### Editorial Notes

##### AMENDMENTS

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

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

#### Statutory Notes and Related Subsidiaries

##### SAVINGS PROVISIONS DEFERRED ANNUITIES UNDER LAWS REPEALED BY PUB. L. 90-83

Pub. L. 90-83, §10(a), Sept. 11, 1967, 81 Stat. 222, provided that: "The right to a deferred annuity on satisfaction of the conditions attached thereto is continued notwithstanding the repeal by this Act of the law conferring the right."

#### § 8339. Computation of annuity

(a) Except as otherwise provided by this section, the annuity of an employee retiring under this subchapter is—

(1)  $1\frac{1}{2}$  percent of his average pay multiplied by so much of his total service as does not exceed 5 years; plus

(2)  $1\frac{3}{4}$  percent of his average pay multiplied by so much of his total service as exceeds 5 years but does not exceed 10 years; plus

(3) 2 percent of his average pay multiplied by so much of his total service as exceeds 10 years.

However, when it results in a larger annuity, 1 percent of his average pay plus \$25 is substituted for the percentage specified by paragraph (1), (2), or (3) of this subsection, or any combination thereof.

(b) The annuity of a Congressional employee, or former Congressional employee, retiring under this subchapter is computed under subsection (a) of this section, except, if he has had—

(1) at least 5 years' service as a Congressional employee or Member or any combination thereof; and

(2) deductions withheld from his pay or has made deposit covering his last 5 years of civilian service;

his annuity is computed with respect to his service as a Congressional employee, his military service not exceeding 5 years, and any Member service, by multiplying  $2\frac{1}{2}$  percent of his average pay by the years of that service.

(c) The annuity of a Member, or former Member with title to Member annuity, retiring under this subchapter is computed under subsection (a) of this section, except, if he has had at least 5 years' service as a Member or Congressional employee or any combination thereof, his annuity is computed with respect to—

(1) his service as a Member and so much of his military service as is creditable for the purpose of this paragraph; and

(2) his Congressional employee service;

by multiplying  $2\frac{1}{2}$  percent of his average pay by the years of that service.

(d)(1) The annuity of an employee retiring under section 8335(b) or 8336(c) of this title is—

(A)  $2\frac{1}{2}$  percent of his average pay multiplied by so much of his total service as does not exceed 20 years; plus

(B) 2 percent of his average pay multiplied by so much of his total service as exceeds 20 years.

(2) The annuity of an employee retiring under this subchapter who was employed by the Panama Canal Company or Canal Zone Government on September 30, 1979, is computed with respect to the period of continuous Panama Canal service from that date, disregarding any break in service of not more than 3 days, by adding—

(A)  $2\frac{1}{2}$  percent of the employee's average pay multiplied by so much of that service as does not exceed 20 years; plus

(B) 2 percent of the employee's average pay multiplied by so much of that service as exceeds 20 years.

(3) The annuity of an employee retiring under this subchapter who is employed by the Panama Canal Commission at any time during the period beginning October 1, 1990, and ending December 31, 1999, is computed, with respect to any period of service with the Panama Canal Commission, by adding—

(A)  $2\frac{1}{2}$  percent of the employee's average pay multiplied by so much of that service as does not exceed 20 years; plus

(B) 2 percent of the employee's average pay multiplied by so much of that service as exceeds 20 years.

(4)(A) In the case of an employee who has service as a law enforcement officer or firefighter to which paragraph (2) of this subsection applies, the annuity of that employee is increased by \$8 for each full month of that service which is performed in the Republic of Panama.

(B) In the case of an employee retiring under this subchapter who—

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

(ii) does not meet the age and service requirements of section 8336(c) of this title;

the annuity of that employee is increased by \$12 for each full month of that service which occurred before October 1, 1979.

(C) An annuity increase under this paragraph does not apply with respect to service performed after completion of 20 years of service (or any combination of service) as a law enforcement officer or firefighter.

(5) For the purpose of this subsection—

(A) “Panama Canal service” means—

(i) service as an employee of the Panama Canal Commission; or

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

(B) “Executive agency” includes the Smithsonian Institution.

(6) The annuity of an employee retiring under section 8336(j) of this title is computed under subsection (a) of this section, except that with respect to service on or after December 21, 1972, the employee’s annuity is—

(A)  $2\frac{1}{2}$  percent of the employee’s average pay multiplied by so much of the employee’s service on or after that date as does not exceed 20 years; plus

(B) 2 percent of the employee’s average pay multiplied by so much of the employee’s service on or after that date as exceeds 20 years.

(7) The annuity of an employee who is a judge of the United States Court of Appeals for the Armed Forces, or a former judge of such court, retiring under this subchapter is computed under subsection (a) of this section, except, with respect to his service as a judge of such court, his service as a Member, his congressional employee service, and his military service (not exceeding 5 years) creditable under section 8332 of this title, his annuity is computed by multiplying  $2\frac{1}{2}$  percent of his average pay by the years of that service.

(e) The annuity of an employee retiring under section 8336(e) of this title is computed under subsection (a) of this section. That annuity may not be less than 50 percent of the average pay of the employee unless such employee has received, pursuant to section 8342 of this title, payment of the lump-sum credit attributable to deductions under section 8334(a) of this title during any period of employment as an air traffic controller and such employee has not deposited in the Fund the amount received, with interest, pursuant to section 8334(d)(1) of this title.

(f) The annuity computed under subsections (a) through (e), (n), (q), (r), and (s) may not exceed 80 percent of—

(1) the average pay of the employee; or

(2) the greatest of—

(A) the final basic pay of the Member;

(B) the average pay of the Member; or

(C) the final basic pay of the appointive position of a former Member who elects to have his annuity computed or recomputed under section 8344(d)(1) of this title.

(g) The annuity of an employee or Member retiring under section 8337 of this title is at least the smaller of—

(1) 40 percent of his average pay; or

(2) the sum obtained under subsections (a) through (c), (n), (q), (r), or (s) after increasing his service of the type last performed by the period elapsing between the date of separation and the date he becomes 60 years of age.

However, if an employee or Member retiring under section 8337 of this title is receiving retired pay or retainer pay for military service (except that specified in section 8332(c)(1) or (2) of this title) or pension or compensation from the Department of Veterans Affairs in lieu of such retired or retainer pay, the annuity of that employee or Member shall be computed under subsection (a), (b), (c), (n), (q), (r), or (s), as appropriate, excluding credit for military service from that computation. If the amount of the annuity so computed, plus the retired or retainer pay which is received, or which would be received but for the pension or compensation from the Department of Veterans Affairs in lieu of such retired or retainer pay, is less than the smaller of the annuity otherwise payable under paragraph (1) or (2) of this subsection, an amount equal to the difference shall be added to the annuity payable under subsection (a), (b), (c), (n), (q), (r), or (s), as appropriate.

(h) The annuity computed under subsections (a), (b), (d)(5), and (f) of this section for an employee retiring under section 8336(d), (h), (j), or (o) of this title is reduced by  $\frac{1}{2}$  of 1 percent for each full month the employee is under 55 years of age at the date of separation. The annuity computed under subsections (c) and (f) of this section for a Member retiring under the second or third sentence of section 8336(g) of this title or the third sentence of section 8338(b) of this title is reduced by  $\frac{1}{2}$  of 1 percent for each full month not in excess of 60 months, and  $\frac{1}{2}$  of 1 percent for each full month in excess of 60 months, the Member is under 60 years of age at the date of separation. The annuity computed under subsections (a), (d)(6), and (f) of this section for a judge of the United States Court of Appeals for the Armed Forces retiring under the second sentence of section 8336(k) of this title or the third sentence of section 8338(c) of this title is reduced by  $\frac{1}{2}$  of 1 percent for each full month not in excess of 60 months, and  $\frac{1}{2}$  of 1 percent for each full month in excess of 60 months, the judge is under 60 years of age at the date of separation.

(i) For the purposes of subsections (a)–(h), (n), (q), (r), or (s), the total service of any employee or Member shall not include any period of civilian service after July 31, 1920, for which retirement deductions or deposits have not been made under section 8334(a) of this title unless—

(1) the employee or Member makes a deposit for such period as provided in section 8334(c) or (d)(1) of this title; or

(2) no deposit is required for such service, as provided under section 8334(g) of this title or under any statute.

(j)(1) The annuity computed under subsections (a)–(i), (n), (q), (r), and (s) (or a portion of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management) for an employee or Member who is married at the time of retiring under this subchapter is reduced as provided in paragraph (4) of this subsection in order to provide a survivor annuity for the spouse under section 8341(b) of this title, unless the employee or Member and the spouse jointly waive the spouse's right to a survivor annuity in a written election filed with the Office at the time that the employee or Member retires. Each such election shall be made in accordance with such requirements as the Office shall, by regulation, prescribe, and shall be irrevocable. The Office shall provide, by regulation, that an employee or Member may waive the survivor annuity without the spouse's consent if the employee or Member establishes to the satisfaction of the Office—

(A) that the spouse's whereabouts cannot be determined, or

(B) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's consent would otherwise be inappropriate.

(2) If an employee or Member has a former spouse who is entitled to a survivor annuity as provided in section 8341(h) of this title, the annuity of the employee or Member computed under subsections (a)–(i), (n), (q), (r), and (s) (or any designated portion of the annuity, in the event that the former spouse is entitled to less than 55 percent of the employee or Member's annuity) is reduced as provided in paragraph (4) of this subsection.

(3) An employee or Member who has a former spouse may elect, under procedures prescribed by the Office, to have the annuity computed under subsections (a)–(i), (n), (q), (r), and (s) or a portion thereof reduced as provided in paragraph (4) of this subsection in order to provide a survivor annuity for such former spouse under section 8341(h) of this title, unless all rights to survivor benefits for such former spouse under this subchapter based on marriage to such employee or Member were waived under paragraph (1) of this subsection. An election under this paragraph shall be made at the time of retirement or, if later, within 2 years after the date on which the marriage of the former spouse to the employee or Member is dissolved, subject to a deposit in the Fund by the retired employee or Member of an amount determined by the Office, as nearly as may be administratively feasible, to reflect the amount by which the annuity of such employee or Member would have been reduced if the election had been continuously in effect since the date the annuity commenced, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which the annuity would have been reduced if the election had been in effect since the date the annuity commenced shall be 6 percent. The Office shall, by regulation, provide for payment of the deposit required under this paragraph by a reduction in the annuity of the employee or Member. The reduction shall, to the

extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under this paragraph, except that the total reductions in the annuity of an employee or Member to pay deposits required by the provisions of this paragraph, paragraph (5), or subsection (k)(2) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), (q), and (r), including adjustments under section 8340. The reduction, which shall be effective on the same date as the election under this paragraph, shall be permanent and unaffected by any future termination of the entitlement of the former spouse. Such reduction shall be independent of and in addition to the reduction required under the first sentence of this paragraph. An election under this paragraph—

(A) shall not be effective to the extent that it—

(i) conflicts with—

(I) any court order or decree referred to in subsection (h)(1) of section 8341 of this title, which was issued before the date of such election; or

(II) any agreement referred to in such subsection which was entered into before such date; or

(ii) would cause the total of survivor annuities payable under subsections (b), (d), (f), and (h) of section 8341 of this title based on the service of the employee or Member to exceed 55 percent of the annuity to which the employee or Member is entitled under subsections (a)–(i), (n), (q), (r), and (s); and

(B) shall not be effective, in the case of an employee or Member who is then married, unless it is made with the spouse's written consent.

The Office shall provide by regulation that subparagraph (B) of this paragraph may be waived for either of the reasons set forth in the last sentence of paragraph (1) of this subsection. In the case of a retired employee or Member whose annuity is being reduced in order to provide a survivor annuity for a former spouse, an election to provide or increase a survivor annuity for any other former spouse (and to continue an appropriate reduction) may be made within the same period that, and subject to the same conditions under which, an election could be made under paragraph (5)(B) of this subsection for a current spouse (subject to the provisions of this paragraph relating to consent of a current spouse, if the retired employee or Member is then married). The opportunity to make an election under the preceding sentence is in addition to any opportunity otherwise afforded under this paragraph.

(4) In order to provide a survivor annuity or combination of survivor annuities under subsections (b), (d), (f), and (h) of section 8341 of this title, the annuity of an employee or Member (or any designated portion or portions thereof) is reduced by 2½ percent of the first \$3,600 thereof plus 10 percent of so much thereof as exceeds \$3,600.

(5)(A) Any reduction in an annuity for the purpose of providing a survivor annuity for the current spouse of a retired employee or Member shall be terminated for each full month—



(i) after the death of the spouse, or  
(ii) after the dissolution of the spouse's marriage to the employee or Member, except that an appropriate reduction shall be made thereafter if the spouse is entitled, as a former spouse, to a survivor annuity under section 8341(h) of this title.

(B) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse of a retired employee or Member shall be terminated for each full month after the former spouse remarries before reaching age 55 or dies. This reduction shall be replaced by an appropriate reduction or reductions under paragraph (4) of this subsection if the retired employee or Member has (i) another former spouse who is entitled to a survivor annuity under section 8341(h) of this title, (ii) a current spouse to whom the employee or Member was married at the time of retirement and with respect to whom a survivor annuity was not jointly waived under paragraph (1) of this subsection, or (iii) a current spouse whom the employee or Member married after retirement and with respect to whom an election has been made under subparagraph (C) of this paragraph or subsection (k)(2) of this section.

(C)(i) Upon remarriage, a retired employee or Member who was married at the time of retirement (including an employee or Member whose annuity was not reduced to provide a survivor annuity for the employee or Member's spouse or former spouse as of the time of retirement) may irrevocably elect during such marriage, in a signed writing received by the Office within 2 years after such remarriage or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8341(h) of this title (or of the last such surviving former spouse, if there was more than one), a reduction in the employee or Member's annuity under paragraph (4) of this subsection for the purpose of providing an annuity for such employee or Member's spouse in the event such spouse survives the employee or Member.

(ii) Such election and reduction shall be effective the first day of the second month after the election is received by the Office, but not less than 9 months after the date of the remarriage, and the retired employee or Member shall deposit in the Fund an amount determined by the Office of Personnel Management, as nearly as may be administratively feasible, to reflect the amount by which the annuity of such retired employee or Member would have been reduced if the election had been in effect since the date of retirement or, if later, the date the previous reduction in such retired employee or Member's annuity was terminated under subparagraph (A) or (B) of this paragraph, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which an annuity would have been reduced if the election had been in effect on and after the applicable date referred to in such sentence shall be 6 percent.

(iii) The Office shall, by regulation, provide for payment of the deposit required under clause (ii) by a reduction in the annuity of the employee or Member. The reduction shall, to the extent prac-

ticable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under clause (ii), except that total reductions in the annuity of an employee or Member to pay deposits required by the provisions of this paragraph or paragraph (3) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), (q), and (r), including adjustments under section 8340. The reduction required by this clause, which shall be effective on the same date as the election under clause (i), shall be permanent and unaffected by any future termination of the marriage. Such reduction shall be independent of and in addition to the reduction required under clause (i).

(iv) Notwithstanding any other provision of this subparagraph, an election under this subparagraph may not be made for the purpose of providing an annuity in the case of a spouse by remarriage if such spouse was married to the employee or Member at the time of such employee or Member's retirement, and all rights to survivor benefits for such spouse under this subchapter based on marriage to such employee or Member were then waived under paragraph (1) of this subsection or a similar prior provision of law.

(v) An election to provide a survivor annuity to a person under this subparagraph—

(I) shall prospectively void any election made by the employee or Member under subsection (k)(1) of this section with respect to such person; or

(II) shall, if an election was made by the employee or Member under such subsection (k)(1) with respect to a different person, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subparagraph.

(vi) The deposit provisions of clauses (ii) and (iii) of this subparagraph shall not apply if—

(I) the employee or Member makes an election under this subparagraph after having made an election under subsection (k)(1) of this section; and

(II) the election under such subsection (k)(1) becomes void under clause (v) of this subparagraph.

(k)(1) At the time of retiring under section 8336 or 8338 of this title, an employee or Member who is found to be in good health by the Office may elect a reduced annuity instead of an annuity computed under subsections (a)–(i), (n), (q), (r), and (s) and name in writing an individual having an insurable interest in the employee or Member to receive an annuity under section 8341(c) of this title after the death of the retired employee or Member. The annuity of the employee or Member making the election is reduced by 10 percent, and by 5 percent for each full 5 years the individual named is younger than the retiring employee or Member. However, the total reduction may not exceed 40 percent. An annuity which is reduced under this paragraph or any similar prior provision of law shall, effective the first day of the month following the death of the individual named under this paragraph, be recomputed and paid as if the an-

nunity had not been so reduced. In the case of a married employee or Member, an election under this paragraph on behalf of the spouse may be made only if any right of such spouse to a survivor annuity based on the service of such employee or Member is waived in accordance with subsection (j)(1) of this section.

(2)(A) An employee or Member, who is unmarried at the time of retiring under a provision of law which permits election of a reduced annuity with a survivor annuity payable to such employee or Member's spouse and who later marries, may irrevocably elect, in a signed writing received in the Office within 2 years after such employee or Member marries or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8341(h) of this title (or of the last such surviving former spouse, if there was more than one), a reduction in the retired employee or Member's current annuity as provided in subsection (j) of this section.

(B)(i) The election and reduction shall take effect on the first day of the first month beginning after the expiration of the 9-month period beginning on the date of marriage. Any such election to provide a survivor annuity for a person—

(I) shall prospectively void any election made by the employee or Member under paragraph (1) of this subsection with respect to such person; or

(II) shall, if an election was made by the employee or Member under such paragraph with respect to a different person, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this paragraph.

(ii) The retired employee or Member shall deposit in the Fund an amount determined by the Office of Personnel Management, as nearly as may be administratively feasible, to reflect the amount by which the retired employee or Member's annuity would have been reduced under subsection (j)(4) of this section since the commencing date of the annuity, if the employee or Member had been married at the time of retirement and had elected to provide a survivor annuity at that time, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which the annuity would have been reduced if the election had been in effect since the date of the annuity commenced shall be 6 percent.

(C) The Office shall, by regulation, provide for payment of the deposit required under subparagraph (B)(ii) by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under subparagraph (B)(ii), except that total reductions in the annuity of an employee or Member to pay deposits required by this subsection or subsection (j)(3) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), (q), and (r), including adjustments under section 8340. The reduction required by this subparagraph, which shall be effective on the same date as the election under

subparagraph (A), shall be permanent and unaffected by any future termination of the marriage. Such reduction shall be independent of and in addition to the reduction required under subparagraph (A).

(D) Subparagraphs (B)(ii) and (C) of this paragraph shall not apply if—

(i) the employee or Member makes an election under this paragraph after having made an election under paragraph (1) of this subsection; and

(ii) the election under such paragraph (1) becomes void under subparagraph (B)(i) of this paragraph.

(l) The annuity computed under subsections (a)–(k), (n), (q), (r), and (s) for an employee who is a citizen of the United States is increased by \$36 for each year of service in the employ of—

(1) the Alaska Engineering Commission, or The Alaska Railroad, in Alaska between March 12, 1914, and July 1, 1923; or

(2) the Isthmian Canal Commission, or the Panama Railroad Company, on the Isthmus of Panama between May 4, 1904, and April 1, 1914.

(m) In computing any annuity under subsections (a) through (e), (n), (q), (r), and (s), the total service of an employee who retires on an immediate annuity or dies leaving a survivor or survivors entitled to annuity includes, without regard to the limitations imposed by subsection (f) of this section, the days of unused sick leave to his credit under a formal leave system, except that these days will not be counted in determining average pay or annuity eligibility under this subchapter. For the purpose of this subsection, in the case of any such employee who is excepted from subchapter I of chapter 63 of this title under section 6301(2)(x)–(xiii) of this title, the days of unused sick leave to his credit include any unused sick leave standing to his credit when he was excepted from such subchapter.

(n) The annuity of an employee who is a Court of Federal Claims judge, bankruptcy judge, or United States magistrate judge is computed, with respect to service as a Court of Federal Claims judge, as a commissioner of the Court of Claims, as a referee in bankruptcy, as a bankruptcy judge, as a United States magistrate judge, and as a United States commissioner, and with respect to the military service of any such individual (not exceeding 5 years) creditable under section 8332 of this title, by multiplying 2½ percent of the individual's average pay by the years of that service.

(o)(1)(A) An employee or Member—

(i) who, at the time of retirement, is married, and

(ii) who notifies the Office at such time (in accordance with subsection (j)) that a survivor annuity under section 8341(b) of this title is not desired,

may, during the 18-month period beginning on the date of the retirement of such employee or Member, elect to have a reduction under subsection (j) made in the annuity of the employee or Member (or in such portion thereof as the employee or Member may designate) in order to provide a survivor annuity for the spouse of such employee or Member.

(B) An employee or Member—

(i) who, at the time of retirement, is married, and

(ii) who at such time designates (in accordance with subsection (j)) that a limited portion of the annuity of such employee or Member is to be used as the base for a survivor annuity under section 8341(b) of this title,

may, during the 18-month period beginning on the date of the retirement of such employee or Member, elect to have a greater portion of the annuity of such employee or Member so used.

(2)(A) An election under subparagraph (A) or (B) of paragraph (1) of this subsection shall not be considered effective unless the amount specified in subparagraph (B) of this paragraph is deposited into the Fund before the expiration of the applicable 18-month period under paragraph (1).

(B) The amount to be deposited with respect to an election under this subsection is an amount equal to the sum of—

(i) the additional cost to the System which is associated with providing a survivor annuity under subsection (b)(2) of this section and results from such election taking into account (I) the difference (for the period between the date on which the annuity of the participant or former participant commences and the date of the election) between the amount paid to such participant or former participant under this subchapter and the amount which would have been paid if such election had been made at the time the participant or former participant applied for the annuity, and (II) the costs associated with providing for the later election; and

(ii) interest on the additional cost determined under clause (i) of this subparagraph computed using the interest rate specified or determined under section 8334(e) of this title for the calendar year in which the amount to be deposited is determined.

(3) An election by an employee or Member under this subsection voids prospectively any election previously made in the case of such employee or Member under subsection (j).

(4) An annuity which is reduced in connection with an election under this subsection shall be reduced by the same percentage reductions as were in effect at the time of the retirement of the employee or Member whose annuity is so reduced.

(5) Rights and obligations resulting from the election of a reduced annuity under this subsection shall be the same as the rights and obligations which would have resulted had the employee or Member involved elected such annuity at the time of retiring.

(6) The Office shall, on an annual basis, inform each employee or Member who is eligible to make an election under this subsection of the right to make such election and the procedures and deadlines applicable to such election.

(p)(1) In computing an annuity under this subchapter for an employee whose service includes service that was performed on a part-time basis—

(A) the average pay of the employee, to the extent that it includes pay for service per-

formed in any position on a part-time basis, shall be determined by using the annual rate of basic pay that would be payable for full-time service in the position; and

(B) the benefit so computed shall then be multiplied by a fraction equal to the ratio which the employee's actual service, as determined by prorating an employee's total service to reflect the service that was performed on a part-time basis, bears to the total service that would be creditable for the employee if all of the service had been performed on a full-time basis.

(2) For the purpose of this subsection, employment on a part-time basis shall not be considered to include employment on a temporary or intermittent basis.

(3) In the administration of paragraph (1)—

(A) subparagraph (A) of such paragraph shall apply with respect to service performed before, on, or after April 7, 1986; and

(B) subparagraph (B) of such paragraph—

(i) shall apply with respect to that portion of any annuity which is attributable to service performed on or after April 7, 1986; and

(ii) shall not apply with respect to that portion of any annuity which is attributable to service performed before April 7, 1986.

(q) The annuity of a member of the Capitol Police, or former member of the Capitol Police, retiring under this subchapter is computed in accordance with subsection (b), except that, in the case of a member who retires under section 8335(c) or 8336(m), and who meets the requirements of subsection (b)(2), the annuity of such member is—

(1) 2½ percent of the member's average pay multiplied by so much of such member's total service as does not exceed 20 years; plus

(2) 2 percent of the member's average pay multiplied by so much of such member's total service as exceeds 20 years.

(r) The annuity of a member of the Supreme Court Police, or former member of the Supreme Court Police, retiring under this subchapter is computed in accordance with subsection (d).

(s)<sup>1</sup> The annuity of a Member who has served in a position in the executive branch for which the rate of basic pay was reduced for the duration of the service of the Member in that position to remove the impediment to the appointment of the Member imposed by article I, section 6, clause 2 of the Constitution, shall, subject to a deposit in the Fund as provided under section 8334(m), be computed as though the rate of basic pay which would otherwise have been in effect during that period of service had been in effect.

(s)(1)<sup>1</sup> 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

<sup>1</sup> So in original. Two subsecs. (s) have been enacted.

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:

| <b>If the total amount of service performed, on or after the date of the enactment of this subsection, as a Government physician is:</b> | <b>Then, the percentage allowable is:</b> |
|--|---|
| Less than 2 years .....  | 0   |
| At least 2 but less than 4 years .....   | 25  |
| At least 4 but less than 6 years .....   | 50  |
| At least 6 but less than 8 years .....   | 75  |
| At least 8 years .....   | 100.                                      |

(4) Notwithstanding any other provision of this subsection, 100 percent of all amounts received as a physicians comparability allowance shall, to the extent attributable to service performed on or after the date of the enactment of this subsection, be treated as basic pay (without regard to any of the preceding provisions of this subsection) for purposes of computing—

(A) an annuity under subsection (g); and

(B) a survivor annuity under section 8341, if based on the service of an individual who dies before separating from service.

(u)<sup>2</sup> The annuity of an employee retiring under this subchapter with service credited under section 8332(b)(17) shall be reduced by the amount necessary to ensure that the present value of the annuity payable to the employee is actuarially equivalent to the present value of the annuity that would be payable to the employee under this subchapter if it were computed—

(1) on the basis of service that does not include service credited under section 8332(b)(17); and

(2) assuming the employee separated from service on the actual date of the separation of the employee.

The amount of the reduction shall be computed under regulations prescribed by the Office of Personnel Management for the administration of this subsection.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 574; Pub. L. 90-83, §1(78), Sept. 11, 1967, 81 Stat. 214; Pub. L. 90-206, title II, §224(b), Dec. 16, 1967, 81 Stat. 642; Pub. L. 90-486, §5(c), Aug. 13, 1968, 82 Stat. 757; Pub. L. 91-93, title II, §203, Oct. 20, 1969, 83 Stat. 139; Pub. L. 91-658, §2, Jan. 8, 1971, 84 Stat. 1961; Pub. L. 92-297, §§6, 7(3), May 16, 1972, 86 Stat. 144; Pub. L. 93-260, §2(a), Apr. 9, 1974, 88 Stat. 76; Pub. L. 93-350, §6, July 12, 1974, 88 Stat. 356; Pub. L. 93-474, §1, Oct. 26, 1974, 88 Stat. 1438; Pub. L. 94-126, §1(b), Nov. 12, 1975, 89 Stat. 679; Pub. L. 94-397, §1(d), Sept. 3, 1976, 90 Stat. 1203; Pub. L. 95-256, §5(d), Apr. 6, 1978, 92 Stat. 191; Pub. L. 95-317, §§1(a), (c), 2, July 10, 1978, 92 Stat. 382;

Pub. L. 95-454, title IV, §412(b), title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1175, 1224; Pub. L. 95-519, §3, Oct. 25, 1978, 92 Stat. 1819; Pub. L. 95-598, title III, §338(a), Nov. 6, 1978, 92 Stat. 2681; Pub. L. 96-54, §2(a)(49), Aug. 14, 1979, 93 Stat. 384; Pub. L. 96-70, title I, §1242(a), Sept. 27, 1979, 93 Stat. 472; Pub. L. 96-135, §1(b), (c), Dec. 5, 1979, 93 Stat. 1057; Pub. L. 96-391, §1, Oct. 7, 1980, 94 Stat. 1557; Pub. L. 96-499, title IV, §404(a), Dec. 5, 1980, 94 Stat. 2606; Pub. L. 97-253, title III, §303(b), Sept. 8, 1982, 96 Stat. 794; Pub. L. 97-276, §151(f), Oct. 2, 1982, 96 Stat. 1202; Pub. L. 98-94, title XII, §1256(e), Sept. 24, 1983, 97 Stat. 702; Pub. L. 98-249, §3(a), Mar. 31, 1984, 98 Stat. 117; Pub. L. 98-271, §3(a), Apr. 30, 1984, 98 Stat. 163; Pub. L. 98-299, §3(a), May 25, 1984, 98 Stat. 214; Pub. L. 98-325, §3(a), June 20, 1984, 98 Stat. 268; Pub. L. 98-353, title I, §§112, 116(d), 121(f), July 10, 1984, 98 Stat. 343, 344, 346; Pub. L. 98-531, §2(c), Oct. 19, 1984, 98 Stat. 2704; Pub. L. 98-615, §2(3), Nov. 8, 1984, 98 Stat. 3195; Pub. L. 99-251, title II, §203(a)-(c), title III, §307(a), Feb. 27, 1986, 100 Stat. 23, 24, 28; Pub. L. 99-272, title XV, §15204(a)(1), Apr. 7, 1986, 100 Stat. 334; Pub. L. 100-53, §2(d), June 18, 1987, 101 Stat. 368; Pub. L. 101-194, title V, §506(b)(8), Nov. 30, 1989, 103 Stat. 1759; Pub. L. 101-428, §2(c)(1), (d)(2)-(6), Oct. 15, 1990, 104 Stat. 928, 929; Pub. L. 101-508, title VII, §7001(b)(2)(B), (C), Nov. 5, 1990, 104 Stat. 1388-329; Pub. L. 101-510, div. C, title XXXV, §3506(b), Nov. 5, 1990, 104 Stat. 1847; Pub. L. 101-650, title III, §306(c)(4), 321, Dec. 1, 1990, 104 Stat. 5110, 5117; Pub. L. 102-54, §13(b)(4), June 13, 1991, 105 Stat. 274; Pub. L. 102-198, §7(b), Dec. 9, 1991, 105 Stat. 1624; Pub. L. 102-378, §2(62), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 102-572, title IX, §902(b)(2), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103-66, title XI, §11004(a)(1), (2), Aug. 10, 1993, 107 Stat. 410, 411; Pub. L. 103-337, div. A, title IX, §924(d)(1)(A), Oct. 5, 1994, 108 Stat. 2832; Pub. L. 104-106, div. A, title XV, §1505(b)(3), Feb. 10, 1996, 110 Stat. 514; Pub. L. 105-61, title V, §516(a)(3), Oct. 10, 1997, 111 Stat. 1306; Pub. L. 105-261, div. A, title XI, §1109(c)(1), Oct. 17, 1998, 112 Stat. 2145; Pub. L. 106-58, title VI, §651(b), Sept. 29, 1999, 113 Stat. 480; Pub. L. 106-398, §1 [[div. A], title X, §1087(f)(4), title XI, §1152(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-293, 1654A-322; Pub. L. 106-553, §1(a)(2) [title III, §308(b)(4), (h)(2)-(6)], Dec. 21, 2000, 114 Stat. 2762, 2762A-87 to 2762A-89; Pub. L. 106-554, §1(a)(4) [div. B, title I, §141(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-235; Pub. L. 106-571, §3(b)(1), Dec. 28, 2000, 114 Stat. 3055; Pub. L. 107-107, div. A, title XI, §1132(a)(3), Dec. 28, 2001, 115 Stat. 1243; Pub. L. 107-296, title XIII, §1321(a)(4)(B), Nov. 25, 2002, 116 Stat. 2297; Pub. L. 111-84, div. A, title XIX, §1903(a), Oct. 28, 2009, 123 Stat. 2616.)

#### HISTORICAL AND REVISION NOTES 1966 ACT

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i>   |
|-------------------|------------------|---|
| .....             | 5 U.S.C. 2259.   | July 31, 1956, ch. 804, §401 "Sec. 9", 70 Stat. 752.<br>July 7, 1960, Pub. L. 86-604, §1(d), (e), 74 Stat. 358.<br>July 12, 1960, Pub. L. 86-622, §2(b), 74 Stat. 410.<br>Oct. 4, 1961, Pub. L. 87-350, §6, 75 Stat. 772.<br>Oct. 11, 1962, Pub. L. 87-793, §1103(a), 76 Stat. 870. |

<sup>2</sup> So in original. No subsec. (t) has been enacted.

The section is reorganized to eliminate repetition.

In subsection (f)(2), the words “service of the type last performed” are substituted for “total service” in former section 2259(a), “service as a Congressional employee” in former section 2259(b), and “Member service” in former section 2259(c).

In subsection (i), the words “by the employee or Member at the time of retirement” are added on authority of former section 2260(a)(1), which is carried into section 8341(b).

In subsection (j), the words “an annuity computed as provided in section 2259 of this title” and “an annuity so computed” are omitted as unnecessary as former sections 2256 and 2258, which are carried into this title as sections 8336 and 8338, respectively, expressly require that the annuities authorized thereby must be computed under former section 2259, which is carried into this section.

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

#### 1967 ACT

| <i>Section of title 5</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>                   |
|---------------------------|---------------------------|---|
| 8339(g) .....             | 5 App.: 2259(d).          | July 18, 1966, Pub. L. 89-504, § 505, 80 Stat. 301. |

#### Editorial Notes

##### REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (s), is the date of enactment of Pub. L. 106-571, which was approved Dec. 28, 2000.

##### AMENDMENTS

2009—Subsec. (p)(3). Pub. L. 111-84 added par. (3).

2002—Subsec. (h). Pub. L. 107-296 struck out before period at end of first sentence “, except that such reduction shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive”.

2001—Subsec. (u). Pub. L. 107-107 added subsec. (u).

2000—Subsec. (f). Pub. L. 106-553, §1(a)(2) [title III, §308(h)(2)], substituted “subsections (a) through (e), (n), (q), (r), and (s)” for “subsections (a)–(e), (n), (q), and (r)” in introductory provisions.

Subsec. (g). Pub. L. 106-553, §1(a)(2) [title III, §308(h)(3)(B)], substituted “(q), (r), or (s)” for “(q), or (r)” in two places in concluding provisions.

Pub. L. 106-398, §1 [[div. A], title X, §1087(f)(4)], struck out “the application of the limitation in section 5532 of this title, or” after “received but for” in concluding provisions.

Subsec. (g)(2). Pub. L. 106-553, §1(a)(2) [title III, §308(h)(3)(A)], substituted “subsections (a) through (c), (n), (q), (r), or (s)” for “subsections (a)–(c), (n), (q), or (r)”.

Subsec. (h). Pub. L. 106-398, §1 [[div. A], title XI, §1152(c)(1)], substituted “(j), or (o)” for “or (j)” in first sentence.

Subsec. (i). Pub. L. 106-553, §1(a)(2) [title III, §308(h)(4)], substituted “(a)–(h), (n), (q), (r), or (s)” for “(a)–(h), (n), (q), and (r)” in introductory provisions.

Subsecs. (j), (k)(1). Pub. L. 106-553, §1(a)(2) [title III, §308(h)(5)], substituted “(a)–(i), (n), (q), (r), and (s)” for “(a)–(i), (n), (q), and (r)” wherever appearing.

Subsec. (l). Pub. L. 106-553, §1(a)(2) [title III, §308(h)(6)], substituted “(a)–(k), (n), (q), (r), and (s)” for “(a)–(k), (n), (q), and (r)” in introductory provisions.

Subsec. (m). Pub. L. 106-553, §1(a)(2) [title III, §308(h)(2)], substituted “subsections (a) through (e), (n), (q), (r), and (s)” for “subsections (a)–(e), (n), (q), and (r)”.

Subsec. (q). Pub. L. 106-554 substituted “8335(c)” for “8335(d)”.

Subsec. (r). Pub. L. 106-553, §1(a)(2) [title III, §308(b)(4)], added subsec. (r). Former subsec. (r), relat-

ing to the annuity of a Member who has served in a position in the executive branch, redesignated (s).

Subsec. (s). Pub. L. 106-571 added subsec. (s), relating to physicians comparability allowance.

Pub. L. 106-553, §1(a)(2) [title III, §308(b)(4)], redesignated subsec. (r), relating to computation of annuity of a Member who has served in a position in the executive branch, as (s).

1999—Subsec. (h). Pub. L. 106-58 repealed Pub. L. 105-261, §1109(c)(1). See 1998 Amendment note below.

1998—Subsec. (h). Pub. L. 105-261, §1109(c)(1), which directed substitution of “(j), or (o)” for “or (j)” in the first sentence, was repealed by Pub. L. 106-58.

1997—Subsec. (f). Pub. L. 105-61, §516(a)(3)(A), substituted “(q), and (r)” for “and (q) of this section”.

Subsec. (g). Pub. L. 105-61, §516(a)(3)(B), substituted “(q), or (r)” for “or (q) of this section” in par. (2) and in two places in concluding provisions.

Subsecs. (i) to (m). Pub. L. 105-61, §516(a)(3)(A), substituted “(q), and (r)” for “and (q)” and “and (q) of this section” wherever appearing.

Subsec. (r). Pub. L. 105-61, §516(a)(3)(C), added subsec. (r).

1996—Subsec. (d)(7). Pub. L. 104-106 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

1994—Subsec. (d)(6). Pub. L. 103-337, which directed amendment of par. (6) by substituting “Court of Appeals for the Armed Forces” for “Court of Military Appeals”, could not be executed because the words “Court of Military Appeals” did not appear in par. (6).

Subsec. (h). Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

1993—Subsec. (j)(3). Pub. L. 103-66, §11004(a)(1)(A)(i), struck out “, within such 2-year period,” after “retired employee or Member” in second sentence.

Pub. L. 103-66, §11004(a)(1)(A)(ii), substituted fourth through seventh sentences for former fourth sentence which read as follows: “If the employee or Member does not make such a deposit, the Office shall collect the amount of the deposit by offset against the employee or Member’s annuity, up to a maximum of 25 percent of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset.”

Subsec. (j)(5)(C)(ii). Pub. L. 103-66, §11004(a)(1)(B)(i), struck out “, within 2 years after the date of the remarriage or, if later, the death or remarriage of the former spouse (or of the last such surviving former spouse),” after “employee or Member shall”.

Subsec. (j)(5)(C)(iii). Pub. L. 103-66, §11004(a)(1)(B)(ii), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “If the employee or Member does not make such deposit, the Office shall collect such amount by offset against the employee or Member’s annuity, up to a maximum of 25 percent of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset.”

Subsec. (k)(2)(B)(ii). Pub. L. 103-66, §11004(a)(2)(A), which directed amendment of cl. (ii) by substituting in first sentence “The retired employee” for “Within 2 years after the date of the marriage, the retired employee”, was executed by making the substitution for “Within 2 years after the date of marriage, the retired employee” to reflect the probable intent of Congress.

Subsec. (k)(2)(C). Pub. L. 103-66, §11004(a)(2)(B), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “If the employee or Member does not make such deposit, the Office shall collect such amount by offset against the employee or Member’s annuity, up to a maximum of 25 percent of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset.”

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

Subsecs. (o), (p). Pub. L. 102-378, §2(62), redesignated subsec. (o), relating to employee whose service includes service performed on part-time basis, as (p).

1991—Subsec. (g). Pub. L. 102-54 substituted “pension or compensation from the Department of Veterans Affairs” for “Veterans’ Administration pension or compensation” in second and third sentences.

Subsec. (n). Pub. L. 102-198 inserted a comma after “United States commissioner”.

1990—Subsec. (d)(3) to (7). Pub. L. 101-510 added par. (3) and redesignated former pars. (3) to (6) as (4) to (7), respectively.

Subsec. (e). Pub. L. 101-508, § 7001(b)(2)(C), substituted “8334(d)(1)” for “8334(d)”.

Subsec. (f). Pub. L. 101-428, § 2(d)(2), substituted “(a)–(e), (n), and (q)” for “(a)–(e) and (n)”.

Subsec. (g). Pub. L. 101-428, § 2(d)(3)(B), substituted “(c), (n), or (q)” for “(c), or (n)” wherever appearing in closing provisions.

Subsec. (g)(2). Pub. L. 101-428, § 2(d)(3)(A), substituted “(a)–(c), (n), or (q)” for “(a)–(c) or (n)”.

Subsec. (i). Pub. L. 101-428, § 2(d)(4), substituted “(a)–(h), (n), and (q)” for “(a)–(h) and (n)”.

Subsec. (i)(1). Pub. L. 101-508, § 7001(b)(2)(B), substituted “(d)(1)” for “(d)”.

Subsec. (j). Pub. L. 101-428, § 2(d)(5), substituted “(a)–(i), (n), and (q)” for “(a)–(i) and (n)” in pars. (1) and (2), and in introductory provisions and subpar. (A)(ii) of par. (3).

Subsec. (k)(1). Pub. L. 101-428, § 2(d)(5), substituted “(a)–(i), (n), and (q)” for “(a)–(i) and (n)”.

Subsec. (l). Pub. L. 101-428, § 2(d)(6), substituted “(a)–(k), (n), and (q)” for “(a)–(k) and (n)”.

Subsec. (m). Pub. L. 101-428, § 2(d)(2), substituted “(a)–(e), (n), and (q)” for “(a)–(e) and (n)”.

Subsec. (n). Pub. L. 101-650 amended subsec. (n) generally. Prior to amendment, subsec. (n) read as follows: “The annuity of an employee who is a bankruptcy judge or United States magistrate is computed, with respect to service as a referee in bankruptcy, as a bankruptcy judge, as a United States magistrate, and as a United States commissioner and with respect to the military service of any such individual (not exceeding 5 years) creditable under section 8332 of this title, by multiplying 2½ percent of the individual’s average pay by the years of that service.”

Subsec. (q). Pub. L. 101-428, § 2(c)(1), added subsec. (q).

1989—Subsec. (h). Pub. L. 101-194 inserted “, except that such reduction shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive” before period at end of first sentence.

1987—Subsec. (n). Pub. L. 100-53 amended subsec. (n) generally. Prior to amendment, subsec. (n) read as follows: “The annuity of an employee who is a bankruptcy judge is computed with respect to service after as a referee in bankruptcy and as a bankruptcy judge and his military service (not exceeding five years) creditable under section 8332 of this title by multiplying 2½ percent of his average annual pay by the years of that service.”

1986—Subsec. (j)(3). Pub. L. 99-251, § 203(a), inserted “, unless all rights to survivor benefits for such former spouse under this subchapter based on marriage to such employee or Member were waived under paragraph (1) of this subsection” at end of first sentence.

Subsec. (j)(5)(B). Pub. L. 99-251, § 203(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

“(B)(i) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse of a retired employee or Member shall be terminated for each full month after the former spouse remarries before reaching age 55 or dies, unless the employee or Member elects, within 2 years after the former spouse’s death or remarriage, to continue the reduction in order to provide a survivor annuity or increase the survivor annuity for the current spouse of the retired employee or Member.

“(ii) Notwithstanding clause (i) of this subparagraph—

“(I) a reduction in an annuity shall not be terminated under such clause, and

“(II) an election made under such clause with respect to a current spouse after a remarriage before age 55 or the death of a former spouse shall not be effective,

if, and to the extent that, continuation of the reduction is necessary in order to provide for any survivor annuity, or any increase in a survivor annuity, which becomes payable under section 8341(h)(2) of this title to any other former spouse as a result of such remarriage or death.”

Subsec. (j)(5)(C)(v), (vi). Pub. L. 99-251, § 203(c)(1), added cls. (v) and (vi).

Subsec. (k)(1). Pub. L. 99-251, § 203(c)(2), inserted at end “In the case of a married employee or Member, an election under this paragraph on behalf of the spouse may be made only if any right of such spouse to a survivor annuity based on the service of such employee or Member is waived in accordance with subsection (j)(1) of this section.”

Subsec. (k)(2)(B)(i). Pub. L. 99-251, § 203(c)(3)(A), substituted provisions directing that the election and reduction shall take effect on the first day of the first month beginning after the expiration of the 9-month period beginning on the date of marriage and that any such election to provide a survivor annuity for a person shall prospectively void any election made by the employee or Member under paragraph (1) of this subsection with respect to such person, or shall, if an election was made by the employee or Member under such paragraph with respect to a different person, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this paragraph, for provisions which directed that the election and reduction had to take effect the first day of the first month beginning 9 months after the date of marriage and would prospectively void any election previously made under paragraph (1) of this subsection.

Subsec. (k)(2)(B)(ii). Pub. L. 99-251, § 203(c)(3)(B), struck out “(other than an employee or Member who made a previous election under paragraph (1) of this subsection)” after “retired employee or Member”.

Subsec. (k)(2)(D). Pub. L. 99-251, § 203(c)(3)(C), added subpar. (D).

Subsec. (o). Pub. L. 99-272 added subsec. (o), set out second, relating to computation of annuities for part-time service.

Pub. L. 99-251, § 307(a), added subsec. (o), set out first, relating to 18-month period for election of survivor annuities.

1984—Subsec. (f). Pub. L. 98-353, § 112, substituted “and (n)” for “and (o)”.

Subsec. (g). Pub. L. 98-353, § 116(d)(1), (2), inserted “or (n)” after “(c)” in par. (2), and substituted “(c), or (n)” for “or (c)” in two places in provisions following par. (2).

Subsec. (j)(1). Pub. L. 98-615, § 2(3)(A), substituted provisions that at the time of retirement an employee’s pension will be reduced to provide survivor benefits to the spouse unless the employee or Member and the spouse jointly waive the spouse’s right to the survivor annuity in a written statement filed with the Office of Personnel Management which shall be made in accordance with such requirements as prescribed by the Office by regulation and which shall be irrevocable and that the Office, by regulation, must provide that an employee may waive the survivor annuity without the spouse’s consent only when the spouse’s whereabouts are unknown to the employee or, due to exceptional circumstances it would be inappropriate to require the employee to seek the spouse’s consent for provisions that at the time of retirement an employee’s pension would be reduced by 2½ percent of so much thereof as did not exceed \$3,600 and by 10 percent of so much thereof as exceeded that amount, unless the employee or member notified the Office of Personnel Management in writing at the time of retirement that he did not desire any surviving spouse to receive an annuity under section 8341(b) of this title, and struck out provisions for the restoration to the employee or Member of

his full pension, as if such reduction had not taken place, for each full month in which such employee or Member was not married, and providing the employee or Member a right of irrevocable election of reduction for the benefit of a subsequent spouse, in the event of remarriage, in an amount equal to the prior reduction, to take effect 1 year after remarriage.

Pub. L. 98-353, §112, substituted “and (n)” for “and (o)”.

Subsec. (j)(2). Pub. L. 98-615, §2(3)(A), substituted provision that if an employee or Member has a former spouse who is entitled to a survivor annuity as provided in section 8341(h) of this title, the annuity of the employee or Member computed under subsecs. (a)-(i) and (n) (or any designated portion of the annuity, in the event that the former spouse is entitled to less than 55 percent of the employee or Member's annuity) is reduced as provided in par. (4) for provision that any written notification (or designation) by any employee or Member under the first sentence of par. (1) would not be considered valid unless the employee or Member established to the satisfaction of the Office that the spouse had been notified of the loss of or reduction in survivor benefits or that the employee or Member had complied with such notification requirements as the Office would, by regulation, prescribe.

Subsec. (j)(3) to (5). Pub. L. 98-615, §2(3)(A), added pars. (3) to (5).

Subsec. (k)(1). Pub. L. 98-615, §2(3)(B), substituted “an employee or Member” for “an unmarried employee or Member”.

Pub. L. 98-353, §112, substituted “and (n)” for “and (o)”.

Subsec. (k)(2). Pub. L. 98-615, §2(3)(C), designated existing provisions as subpar. (A), substituted “such employee or Member's spouse” for “his spouse” and “within 2 years after such employee or Member marries or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8341(h) of this title (or of the last such surviving former spouse, if there was more than one), a reduction in the retired employee or Member's current annuity as provided in subsection (j) of this section” for “within 1 year after he marries, a reduction in his current annuity as provided in subsection (j) of this section. The reduced annuity shall be effective the first day of the first month beginning 1 year after the date of marriage. The election voids prospectively any election previously made under paragraph (1) of this subsection”, and added subpars. (B) and (C).

Subsec. (l). Pub. L. 98-353, §112, substituted “and (n)” for “and (o)” in provisions preceding par. (1).

Subsec. (m). Pub. L. 98-353, §112, substituted “and (n)” for “and (o)”.

Subsec. (n). Pub. L. 98-531 substituted “as a referee in bankruptcy and” for “March 31, 1979, and before the date of the enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984”.

Pub. L. 98-353, §121(f), substituted “the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984” for “June 28, 1984”.

Pub. L. 98-353, §116(d)(3), substituted “as a referee in bankruptcy and” for “March 31, 1979, and before June 27, 1984”.

Pub. L. 98-325 substituted “June 28, 1984” for “June 21, 1984”.

Pub. L. 98-299 substituted “June 21, 1984” for “May 26, 1984”.

Pub. L. 98-271 substituted “May 26, 1984” for “April 1, 1984”.

Pub. L. 98-249 which purported to amend subsec. (o) by substituting “May 1, 1984” for “April 1, 1984” was probably intended as an amendment of subsec. (n). See amendment of subsec. (n) by Pub. L. 98-271.

1983—Subsec. (d)(6). Pub. L. 98-94, §125(e)(1), added par. (6).

Subsec. (h). Pub. L. 98-94, §125(e)(2), inserted provision that the annuity computed under subsections (a), (d)(6), and (f) of this section for a judge of the United

States Court of Military Appeals retiring under the second sentence of section 8336(k) of this title or the third sentence of section 8338(c) of this title is reduced by  $\frac{1}{2}$  of 1 percent for each full month not in excess of 60 months, and  $\frac{1}{6}$  of 1 percent for each full month in excess of 60 months, the judge is under 60 years of age at the date of separation.

1982—Subsec. (e). Pub. L. 97-276 inserted “unless such employee has received, pursuant to section 8342 of this title, payment of the lump-sum credit attributable to deductions under section 8334(a) of this title during any period of employment as an air traffic controller and such employee has not deposited in the Fund the amount received, with interest, pursuant to section 8334(d) of this title”.

Subsec. (i). Pub. L. 97-253 redesignated former unnumbered subsection into provisions preceding par. (1) and par. (1) and (2) and completely revised such provisions as so redesignated. Prior to amendment subsec. (i) read as follows: “The annuity computed under subsections (a)-(h) and (o) of this section is reduced by 10 percent of a deposit described by section 8334(c) of this title remaining unpaid, unless the employee or Member elects to eliminate the service involved for the purpose of annuity computation.”

1980—Subsec. (g). Pub. L. 96-499 provided for a minimum disability retirement annuity where an employee or Member retiring under section 8337 of this title was receiving retired or retainer pay for military service or a Veterans' Administration pension or compensation.

Subsec. (j). Pub. L. 96-391 redesignated existing provisions as par. (1) and added par. (2).

1979—Subsec. (d). Pub. L. 96-70 designated existing provisions as par. (1) and added pars. (2) to (4).

Subsec. (d)(5). Pub. L. 96-135, §1(b), added par. (5).

Subsec. (h). Pub. L. 96-135, §1(c), inserted references to subsections (d)(5) and (j) of this section.

Subsecs. (n), (o). Pub. L. 96-54 redesignated subsec. (o) as (n). Former subsec. (n) redesignated (m) by Pub. L. 94-126.

1978—Subsec. (d). Pub. L. 95-256 substituted “(b)” for “(g)”.

Subsec. (f). Pub. L. 95-598, §338(a)(1), inserted reference to subsec. (o) of this section.

Subsec. (h). Pub. L. 95-454, §412(b), substituted “section 8336(d) or (h)” for “section 8336(d)”.

Subsec. (i). Pub. L. 95-598, §338(a)(2), inserted reference to subsec. (o) of this section.

Subsec. (j). Pub. L. 95-598, §338(a)(3), inserted reference to subsec. (o) of this section.

Pub. L. 95-454, §906(a)(2), (3), substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively.

Pub. L. 95-317, §1(a), inserted “(or is remarried if there is no election in effect under the following sentence)” after “or Member is not married”, and substituted provisions authorizing, upon remarriage, an irrevocable election in a signed writing received by the Commission within 1 year after remarriage for a reduction and computation of such reduction, for provisions authorizing the annuity, upon remarriage, to be reduced by the same percentage reductions in effect at the time of retirement.

Subsec. (k). Pub. L. 95-454, §906(a)(3), substituted “Office” for “Commission” wherever appearing.

Subsec. (k)(1). Pub. L. 95-598, §338(a)(3), inserted reference to subsec. (o) of this section.

Pub. L. 95-317, §2, inserted provisions relating to recomputation and payment of an annuity reduced under this par. or any similar prior provision of law.

Subsec. (k)(2). Pub. L. 95-317, §1(c), substituted “The reduced annuity shall be effective the first day of the first month beginning 1 year after the date of marriage” for “His reduced annuity is effective the first day of the month after his election is received in the Commission”.

Subsec. (l). Pub. L. 95-598, §338(a)(4), inserted reference to subsec. (o) of this section.

Subsec. (m). Pub. L. 95-598, §338(a)(5), inserted reference to subsec. (o) of this section.

Pub. L. 95-519 inserted provision relating to computation of days of unused sick leave for employees excepted from subchapter I of chapter 63 of this title.

Subsec. (o). Pub. L. 95-598, § 338(a)(6), added subsec. (o).

1976—Subsec. (f)(2)(C). Pub. L. 94-397 substituted “8344(d)(1)” for “8344(b)(1)”.

1975—Subsecs. (m), (n). Pub. L. 94-126 struck out subsec. (m) which required that 45 per centum of each year, or fraction thereof, of service referred to in section 8332(b)(6) which was performed prior to the effective date of the National Guard Technicians Act of 1968, be disregarded in determining service for the purpose of computing an annuity under each paragraph of this section, and redesignated subsec. (n) as (m).

1974—Subsec. (d). Pub. L. 93-350 inserted reference to employees retiring under section 8335(g) of this title and substituted a schedule of 2½ percent of his average pay multiplied by so much of his total service as does not exceed 20 years plus 2 percent of his average pay multiplied by so much of his total service as exceeds 20 years for a schedule of 2 percent of his average pay multiplied by his total service.

Subsec. (f)(2). Pub. L. 93-260 substituted “greatest” for “greater”, redesignated cl. (B) as cl. (C), and added cl. (B).

Subsec. (j). Pub. L. 93-474 inserted provision that an annuity reduced under this subsection or any similar provision of law shall be recomputed and paid as if the annuity had not been so reduced for each full month during which a retired employee or member is not married and that upon marriage the annuity shall be reduced by the same percentage reductions which were in effect at the time of retirement.

1972—Subsec. (e). Pub. L. 92-297, § 6(1), (2), added subsec. (e) and redesignated former subsec. (e) as (f).

Subsec. (f). Pub. L. 92-297, §§ 6(1), 7(3)(A), redesignated former subsec. (e) as (f) and substituted references to subsecs. (a) to (e) for references to subsecs. (a) to (d). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 92-297, § 6(1), redesignated former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 92-297, §§ 6(1), 7(3)(B), redesignated former subsec. (g) as (h) and substituted “subsections (a), (b), and (f)”, “subsections (c) and (f)”, and “section 8336(g)” for “subsections (a), (b), and (e)”, “subsections (c) and (e)”, and “section 8336(f)” respectively. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 92-297, §§ 6(1), 7(3)(C), redesignated former subsec. (h) as (i) and substituted reference to subsections (a)–(h) for reference to subsections (a)–(g). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 92-297, §§ 6(1), 7(3)(D), redesignated former subsec. (i) as (j) and substituted reference to subsections (a) to (i) for reference to subsections (a) to (h). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 92-297, §§ 6(1), 7(3)(E), redesignated former subsec. (j) as (k) and substituted “subsections (a)–(i)” and “subsection (j)” for “subsections (a)–(h)” and “subsection (i)”, respectively. Former subsec. (k) redesignated (l).

Subsec. (l). Pub. L. 92-297, §§ 6(1), 7(3)(F), redesignated former subsec. (k) as (l) and substituted “subsections (a)–(e)” for “subsections (a)–(j)”. Former subsec. (l) redesignated (m).

Subsec. (m). Pub. L. 92-297, § 6(1) redesignated former subsec. (l) as (m). Former subsec. (m) redesignated (n).

Subsec. (n). Pub. L. 92-297, §§ 6(1), 7(3)(G), redesignated former subsec. (m) as (n) and substituted “subsections (a)–(e)” and “subsection (f)” for “subsections (a)–(d)” and “subsection (e)”, respectively.

1971—Subsec. (i). Pub. L. 91-658, § 2(a), substituted “any spouse surviving him” for “his spouse”.

Subsec. (j). Pub. L. 91-658, § 2(b), designated existing provisions as par. (1) and added par. (2).

1969—Subsec. (b). Pub. L. 91-93, § 203(1), substituted “his service as a Congressional employee, his military service not exceeding 5 years,” for “so much of his service as a Congressional employee and his military service as does not exceed a total of 15 years”.

Subsec. (c)(2). Pub. L. 91-93, § 203(2), struck out “so much of” and “as does not exceed 15 years” before and after “his Congressional employee service”.

Subsec. (f). Pub. L. 91-93, § 203(3), struck out last sentence providing “However, this subsection does not increase the annuity of a survivor.”

Subsec. (i). Pub. L. 91-93, § 203(4), struck out “(excluding any increase because of retirement under section 8337 of this title)” after “subsections (a)–(h) of this section”.

Subsec. (m). Pub. L. 91-93, § 203(5), added subsec. (m).

1968—Subsec. (l). Pub. L. 90-486 added subsec. (l).

1967—Subsec. (e)(2). Pub. L. 90-206 inserted provision for the use of the final basic pay of the appointive position of a former Member who elects to have his annuity computed or recomputed under section 8344(b)(1) of this title inmaking the determination of the maximum allowable annuity.

## Statutory Notes and Related Subsidiaries

### CHANGE OF NAME

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

### EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-84, div. A, title XIX, § 1903(b), Oct. 28, 2009, 123 Stat. 2616, provided that: “The amendment made by subsection (a) [amending this section] shall be effective with respect to any annuity, entitlement to which is based on a separation from service occurring on or after the date of enactment of this Act [Oct. 28, 2009].”

### EFFECTIVE DATE OF 2002 AMENDMENT

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

### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-107 applicable only to separations from service as an employee of the United States on or after Dec. 28, 2001, see section 1132(c) of Pub. L. 107-107, set out as a note under section 8332 of this title.

### EFFECTIVE DATE OF 2000 AMENDMENT

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

### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-61 applicable to any annuity commencing before, on, or after Oct. 10, 1997, and effective with regard to any payment made after the first month following Oct. 10, 1997, see section 516(b) of Pub. L. 105-61, set out as a note under section 8334 of this title.

### EFFECTIVE DATE OF 1993 AMENDMENT

Section 11004(c) of Pub. L. 103-66 provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 8334 and 8418 of this title] shall take effect on the first day of the first month beginning at least 30 days after the date of the enactment of this Act [Aug. 10, 1993] and shall apply to all deposits required under section 8339(j)(3) or (5), 8339(k)(2), or 8418 of title 5, United States Code, on which no payment has been made prior to such effective date.

“(2) PARTIAL DEPOSIT.—For any deposit required under section 8339(j)(3) or (5), 8339(k)(2), or 8418 of title



5, United States Code, or section 4(b) or (c) of the Civil Service Retirement Spouse Equity Act of 1984 [Pub. L. 98-615] (5 U.S.C. 8341 note) that has been partially, but not fully, paid before the effective date of this Act [probably should be “the effective date of the amendments made by this section”], the Office shall by regulation provide for determining the remaining portion of the deposit and for payment of the remaining portion of the deposit by a prospective reduction in the annuity of the employee or Member. The reduction shall be similar to the reductions provided pursuant to the amendments made under this section.”

#### EFFECTIVE DATE OF 1992 AMENDMENT

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

#### EFFECTIVE DATE OF 1990 AMENDMENTS

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

Amendment by Pub. L. 101-508 effective with respect to any annuity having a commencement date later than Dec. 1, 1990, see section 7001(b)(3) of Pub. L. 101-508, set out as a note under section 8334 of this title.

Section 2(c)(2) of Pub. L. 101-428 provided that:

“(A) The amendment made by paragraph (1) [amending this section] shall take effect 4 years after the date of enactment of this Act [Oct. 15, 1990], and shall apply with respect to any annuity, entitlement to which is based on a separation occurring on or after that effective date, subject to subparagraph (B).

“(B) Nothing in this subsection or in the amendment made by this subsection [amending this section] shall, with respect to any service performed before the effective date of such amendment, have the effect of reducing the percentage applicable in computing any portion of an annuity based on such service below the percentage which would otherwise apply if this Act had not been enacted.”

#### EFFECTIVE DATE OF 1989 AMENDMENT

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

#### EFFECTIVE DATE OF 1987 AMENDMENT

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

#### EFFECTIVE DATE OF 1986 AMENDMENTS

Section 15204(b), formerly 15204(c), of Pub. L. 99-272, as redesignated by Pub. L. 99-509, title VII, § 7003(b), Oct. 21, 1986, 100 Stat. 1949, provided that: “The amendments made by this section [amending this section, section 8341 of this title, and former section 4109 of Title 38, Veterans’ Benefits] shall be effective with respect to service performed on or after the date of the enactment of this Act [Apr. 7, 1986].”

Section 203(d) of Pub. L. 99-251 provided that: “The amendments made by this section [amending this section] shall take effect May 7, 1985.”

Section 307(b) of Pub. L. 99-251 provided that:

“(1) The amendment made by subsection (a) [amending this section] shall take effect 3 months after the date of the enactment of this Act [Feb. 27, 1986].

“(2)(A) Subject to subparagraph (B), the amendment made by subsection (a) shall apply with respect to employees and Members who retire before, on, or after such amendment first takes effect.

“(B) For the purpose of applying the provisions of paragraph (1) of section 8339(o) of title 5, United States Code (as added by subsection (a) of this section) to employees and Members who retire before the date on which the amendment made by subsection (a) first takes effect—

“(i) the period referred to in subparagraph (A) or (B) of such paragraph (as the case may be) shall be considered to begin on the date on which such amendment first becomes effective; and

“(ii) the amount referred to in paragraph (2) of such section 8339(o) shall be computed without regard to the provisions of subparagraph (B)(ii) of such paragraph (relating to interest).

“(3) For purposes of this subsection, the terms ‘employee’ and ‘Member’ each has the meaning given that term in sections 8331(1) and 8331(2) of title 5, United States Code, respectively.”

#### EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions and specific applicability provisions, see section 4(a)(1), (4) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

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

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

#### EFFECTIVE DATE OF 1982 AMENDMENTS

Section 151(h)(3) of Pub. L. 97-276 provided that: “The amendment made by subsection 152(f) [151(f)] of this joint resolution [amending this section] shall take effect on the date of the enactment of this joint resolution [Oct. 2, 1982].”

Amendment by Pub. L. 97-253 effective with respect to deposits for service performed, on or after Oct. 1, 1982, and with respect to refunds for which application is received by Office of Personnel Management on or after Oct. 1, 1982, and provisions of section 8339(i) of title 5, as in effect the day before Sept. 7, 1982, to continue to apply with respect to periods of service and refunds occurring on or before Sept. 30, 1982, see section 303(d)(1) of Pub. L. 97-253, as amended by Pub. L. 97-346, § 3(j)(1), Oct. 15, 1982, 96 Stat. 1649, set out as a note under section 8334 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENTS

Section 404(c) of Pub. L. 96-499 provided that: “The amendments made by this section [amending this section and section 8347 of this title] shall take effect on the date of the enactment of this Act [Dec. 5, 1980].”

Section 3 of Pub. L. 96-391 provided that: “The amendments made by the first section of this Act [amending this section] shall take effect with respect to notifications and designations made under the first sentence of section 8339(j) of title 5, United States Code, on or after the ninetieth day after the date of the enactment of this Act [Oct. 7, 1980].”

#### EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96-135 effective Dec. 5, 1979, see section 1(d) of Pub. L. 96-135, set out as a note under section 8336 of this title.

Section 1242(b)(1) of Pub. L. 96-70 provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Sept. 27, 1979], but no amount of annuity under chapter 83 of title 5, United States Code, accruing by reason of those amendments shall be payable for any period before October 1, 1979.”

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

## EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Amendment by Pub. L. 95-519 applicable only with respect to employees who retire or die on or after Oct. 25, 1978, see section 4(b) of Pub. L. 95-519, set out as a note under section 5551 of this title.

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

Amendment by section 906(a)(2), (3) of Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

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

## EFFECTIVE DATE OF 1978 AMENDMENTS; SURVIVOR ANNUITIES SUBJECT TO REDUCTION, ETC.

Section 4 of Pub. L. 95-317 provided that:

“(a) This act [amending this section and section 8341 of this title and enacting provisions set out as notes under this section] shall take effect—

“(1) the first day of the first month which begins on or after the date of the enactment of this Act [July 10, 1978], or

“(2) October 1, 1978, whichever is later.

“(b) Except as provided under subsection (c) of this section, the amendments made by the first section and section 2 of this Act [amending this section and section 8341 of this title] shall apply with respect to annuities which commence before, on, or after the effective date of this Act, but no monetary benefit by reason of such amendments shall accrue for any period before such effective date.

“(c) The amendments made by the first section of this Act [amending this section and section 8341 of this title] shall not affect the eligibility of any individual to a survivor annuity under section 8341(b) of title 5, United States Code, or the reduction therefor under section 8339(j) of such title, in the case of an annuitant who remarried before the effective date of this Act, unless the annuitant notifies the Civil Service Commission in a signed writing received in the Commission within one year after the effective date of this Act that such annuitant does not desire the spouse of the annuitant to receive a survivor annuity in the event of the annuitant's death. Such notification shall take effect the first day of the first month after it is received in the Commission.”

## EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-397 effective Oct. 1, 1976, and applicable to annuitants serving in appointive or elective positions on and after such date, see section 2 of Pub. L. 94-397, set out as a note under section 8344 of this title.

## EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-126 effective Jan. 1, 1969, applicable to a person who, on Nov. 12, 1975, is receiving or is entitled to receive benefits under any Federal retirement system and requests in writing the application of the amendment to him by the office administering his retirement system, and additional benefits to commence Dec. 1, 1975, see section 3 of Pub. L. 94-126, set out as a note under section 8334 of this title.

## EFFECTIVE DATE OF 1974 AMENDMENTS

Section 2 of Pub. L. 93-474 provided that: “The amendment made by this Act [amending this section] shall apply to annuities which commence before, on, or

after the date of enactment of this Act [Oct. 26, 1974], but no increase in annuity shall be paid for any period prior to the first day of the first month which begins on or after the date of enactment of this Act.”

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

Section 2(b) of Pub. L. 93-260 provided that: “The amendments made by subsection (a) of this section [amending this section] shall apply to annuities paid for months beginning after the date of enactment of this Act [Apr. 9, 1974].”

## EFFECTIVE DATE OF 1972 AMENDMENT

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

## EFFECTIVE DATE OF 1971 AMENDMENT

Section 5(b) of Pub. L. 91-658 provided that: “The amendments made by section 2(a) and 3 of this Act [amending this section and section 8341 of this title] shall not apply in the cases of employees, Members, or annuitants who died before the date of enactment of this Act [Jan. 8, 1971]. The rights of such persons and their survivors shall continue in the same manner and to the same extent as if such amendments had not been enacted.”

Section 5(c) of Pub. L. 91-658 provided that: “The amendments made by section 2(b) of this Act [amending this section] shall apply to an annuitant who was unmarried at the time of retiring, but who later married, only if the election is made within 1 year after the date of enactment of this Act [Jan. 8, 1971].”

## EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-93 inapplicable in cases of persons retired or otherwise separated prior to Oct. 20, 1969, their rights and of their survivors continued as if such amendment had not been enacted, see section 207(a) of Pub. L. 91-93, set out as a note under section 8331 of this title.

## EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-486 effective Jan. 1, 1969, except that no deductions or withholding from salary which result therefrom shall commence before first day of first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90-486, set out as a note under section 709 of Title 32, National Guard.

## EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-206 effective Dec. 16, 1967, see section 220(a)(1) of Pub. L. 90-206, set out as an Effective Date note under section 3110 of this title.

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

Section 1242(b)(2) of Pub. L. 96-70 provided that: “Effective October 1, 1979, any individual who, but for paragraph (1) of this subsection [set out as an Effective Date of 1979 Amendment note above], would have been entitled to one or more annuity payments pursuant to the amendments made by this section [amending this section] for periods before October 1, 1979, shall be entitled, to such extent or in such amounts as are provided in advance in appropriation Acts, to a lump sum payment equal to the total amount of all such annuity payments.”

## ANNUAL NOTICE TO ANNUITANT OF RIGHTS OF ELECTION UNDER SUBSECS. (j) AND (k)(2) OF THIS SECTION

Section 3 of Pub. L. 95-317, as amended by 1978 Reorg. Plan No. 2, §102, 43 F.R. 36037, 92 Stat. 3783, provided that: “The Director of the Office of Personnel Management shall, on an annual basis, inform each annuitant

of such annuitant's rights of election under sections 8339(j) and 8339(k)(2) of title 5, United States Code."

#### INCREASE IN ANNUITY FOR EMPLOYEES OR MEMBERS SEPARATED FROM CIVIL SERVICE PRIOR TO OCT. 20, 1969

Section 2(a) of Pub. L. 93-273, Apr. 26, 1974, 88 Stat. 93, provided that: "An annuity payable from the Civil Service Retirement and Disability Fund to a former employee or Member, which is based on a separation occurring prior to October 20, 1969, is increased by \$240."

Section 3 of Pub. L. 93-273 provided in part that annuity increases under this provision shall apply to annuities which commence before, on, or after Apr. 26, 1974, but that no increase in annuity shall be paid for any period prior to the first day of the first month which begins on or after the ninetieth day after Apr. 26, 1974, or the date on which the annuity commences, whichever is later. See section 3 of Pub. L. 93-273, set out as a note under section 8345 of this title.

#### 1970 INCREASE IN PAY RATES OF CERTAIN EMPLOYEES OF THE LEGISLATIVE BRANCH

Adjustment by the President pro tempore of the Senate with respect to the United States Senate, by the Finance Clerk of the House of Representatives with respect to the United States House of Representatives, and by the Architect of the Capitol with respect to the Office of the Architect of the Capitol, effective on the first day of the first pay period which begins on or after Dec. 27, 1969, of the rates of pay of employees of the legislative branch subject to section 214 of Pub. L. 90-206 with certain exceptions, by the amounts of the adjustment for corresponding rates for employees subject to the General Schedule, set out in section 5332 of this title, which had been made by section 2 of Pub. L. 91-231 raising such rates by 6 percent, see Pub. L. 91-231, formerly set out as a note under section 5332 of this title.

#### 1967 INCREASE IN COMPENSATION AS PART OF BASIC PAY RATE

Section 214(d) of Pub. L. 90-206, title II, Dec. 16, 1967, 81 Stat. 636, providing for the inclusion of the additional compensation pursuant to section 214 of Pub. L. 90-206 as part of basic pay for purposes of civil service retirement, was repealed by section 7(a)(4) of Pub. L. 90-623, Oct. 22, 1968, 82 Stat. 1315, except with respect to rights and duties which matured, penalties that were incurred, and proceedings that were begun before Oct. 22, 1968.

#### 1962 INCREASE IN ANNUITIES

Section 1101 of Pub. L. 87-793, Oct. 11, 1962, 76 Stat. 868, provided that:

"(a) The annuity of each person who, on the effective date of this section [Jan. 1, 1963], is receiving or entitled to receive an annuity from the civil service retirement and disability fund shall be increased by 5 per centum of the amount of such annuity.

"(b) The annuity of each person who receives or is entitled to receive an annuity from the civil service retirement and disability fund commencing during the period which begins on the day following the effective date of this section [Jan. 1, 1963] and ends five years after such date, shall be increased in accordance with the following table:

| <i>"If the annuity commences between—</i>     | <i>The annuity shall be increased by—</i> |
|---|---|
| "January 2, 1963, and December 31, 1963 ..... | 4 per centum                              |
| "January 1, 1964, and December 31, 1964 ..... | 3 per centum                              |
| "January 1, 1965, and December 31, 1965 ..... | 2 per centum                              |
| "January 1, 1966, and December 31, 1966 ..... | 1 per centum                              |

"(c) In lieu of any other increase provided by this section, the annuity of a survivor of a retired employee or

Member of Congress who received an increase under this section shall be increased by a percentage equal to the percentage by which the annuity of such employee or Member was so increased.

"(d) No increase provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

"(e) The limitation reading 'or (3) the sum necessary to increase such annuity, exclusive of annuity purchased by voluntary contributions under the second paragraph of section 10 of this Act, to \$2,160' contained in section 8(c)(1) of the Civil Service Retirement Act of May 29, 1930, as amended by the Acts of July 16, 1952 (66 Stat. 722; Public Law 555, Eighty-second Congress), and August 31, 1954 (68 Stat. 1043; Public Law 747, Eighty-third Congress), shall not be effective on or after the effective date of this section [Jan. 1, 1963].

"(f) The limitation contained in the next to the last sentence of section 8(d)(1) of the Civil Service Retirement Act of May 29, 1930, as amended, as enacted by the Act of August 11, 1955 (69 Stat. 692; Public Law 369, Eighty-fourth Congress) shall not be effective on and after the effective date of this section [Jan. 1, 1963].

"(g) The increases provided by this section shall take effect on the effective date of this section [Jan. 1, 1963], except that any increase under subsection (b) or (c) shall take effect on the beginning date of the annuity.

"(h) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar."

Section 1104 of Pub. L. 87-793 provided in part that section 1101 of Pub. L. 87-793 shall take effect on January 1, 1963.

#### 1958 INCREASE IN ANNUITIES

Pub. L. 85-465, June 25, 1958, 72 Stat. 218, as amended by Pub. L. 86-604, §3(a), July 7, 1960, 74 Stat. 359; Pub. L. 87-114, July 31, 1961, 75 Stat. 241, provided:

"That (a) the annuity of each retired employee or Member of Congress who, on August 1, 1958, is receiving or entitled to receive an annuity from the civil service retirement and disability fund based on service which terminated prior to October 1, 1956, shall be increased by 10 per centum, but no such increase shall exceed \$500 per annum.

"(b) The annuity otherwise payable from the civil service retirement and disability fund to—

"(1) each survivor who on August 1, 1958, is receiving or entitled to receive an annuity based on service which terminated prior to October 1, 1956, and

"(2) each survivor of a retired employee or Member of Congress described in subsection (a) of this section, shall be increased by 10 per centum. No increase provided by this subsection shall exceed \$250 per annum.

"(c) No increase provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

"SEC. 2. The unmarried widow or widower of an employee—

"(1) who had completed at least ten years of service creditable for civil service retirement purposes.

"(2) who (A) died February 29, 1948, or (B), if retired under the Alaska Railroad Retirement Act of June 29, 1936, as amended, or under sections 91 to 107, inclusive, of title 2 of the Canal Zone Code, approved June 19, 1934, as amended, died before April 1, 1948; and

"(3) who was at the time of his death (A) subject to an Act under which annuities granted before February 20, 1948, were or are now payable from the civil service retirement and disability fund or (B) retired under such an Act,

shall be entitled to receive an annuity. In order to qualify for such annuity, the widow or widower shall have been married to the employee for at least five years immediately prior to his death and must be not entitled to any other annuity from the civil service retirement and disability fund based on the service of such employee. Such annuity shall be equal to one-half of the annuity which the employee was receiving on the date of his death if retired, or would have been receiv-

ing if he had been retired for disability on the date of his death, but shall not exceed \$750 per annum and shall not be increased by the provisions of this or any other prior law. Any annuity granted under this section shall cease upon the death or remarriage of the widow or widower.

“SEC. 3. (a) An increase in annuity provided by subsection (a), or clause (1) of subsection (b), of the first section of this Act shall take effect on August 1, 1958. An increase in annuity provided by clause (2) of such subsection (b) shall take effect on the commencing date of the survivor annuity.

“(b) An annuity provided by section 2 of this Act shall commence on August 1, 1958, or on the first day of the month in which application for such annuity is received in the Civil Service Commission, whichever occurs later.

“(c) The monthly installment of each annuity increased or provided by this Act shall be fixed at the nearest dollar.

“SEC. 4. Notwithstanding any other provision of law, the annuities and increases in annuities provided by the preceding sections of this Act shall be paid from the civil service retirement and disability fund.

“SEC. 5. (a) The amendments made by section 401 of the Civil Service Retirement Act Amendments of 1956 (70 Stat. 743-760; 5 U.S.C. 2251-2267) [amending provisions covered by this subchapter] may apply at the option of any employee who, prior to July 31, 1956, was separated from the service under the automatic separation provisions of the Civil Service Retirement Act [this subchapter] but whose separation would not have taken effect until after July 30, 1965, if he had been permitted to remain in the service until the expiration of any accumulated or current accrued annual leave to his credit at the time of his separation from the service. Such option shall be exercised by a writing received in the Civil Service Commission before January 1, 1959.

“(b) No increase in annuity provided by this Act or any prior provision of law shall apply in the case of any retired employee who exercises the option permitted by subsection (a) of this section.”

#### 1962 AND 1958 INCREASES IN ANNUITIES; CLARIFICATION

Pub. L. 89-17, May 1, 1965, 79 Stat. 109, provided: “That for the purposes of section 1(a) of the Act of June 25, 1958 (Public Law 85-465) [1958 Increase in Annuities note set out above], and section 1101(a) of the Act of October 11, 1962 (Public Law 87-793) [1962 Increase in Annuities note set out under this section], the words ‘entitled to receive an annuity’ shall, from and after the respective effective dates (August 1, 1958, and January 1, 1963) of the annuity increases provided by such Acts, not include any person whose annuity commencing date occurs after the effective date of the annuity increase involved.”

#### PAYMENT OF ANNUITIES TO CERTAIN UNREMARIED WIDOWS OR WIDOWERS OF EMPLOYEES RETIRED UNDER RAILROAD RETIREMENT ACT OR CANAL ZONE CODE

Section 3(b), (c) of Pub. L. 86-604, July 7, 1960, 74 Stat. 359, made section 4 of act June 25, 1958, set out in the 1958 Increase in Annuities note under this section, applicable to annuities authorized by section 2(2)(B) of act June 25, 1958, and provided that such annuities should commence Aug. 1, 1958, or on the first day of the month in which application therefor was received in the Civil Service Commission, whichever occurred later.

#### ESTIMATES OF APPROPRIATIONS FOR REIMBURSING FUND FOR AMOUNTS PAID UNDER 1958 INCREASE IN ANNUITIES

Pub. L. 91-93, title I, §105, Oct. 20, 1969, 83 Stat. 138, repealed part of Pub. L. 87-141, title I, §101, Aug. 17, 1961, 75 Stat. 345, which required the Civil Service Commission to include annually in its estimates to the Bureau of the Budget, estimates of appropriations necessary to reimburse the civil service retirement and

disability fund for amounts paid out of the fund by reason of enactment of Pub. L. 85-465, set out in the 1958 Increase in Annuities note under this section, and the Bureau of the Budget to submit such estimates annually to the Congress.

#### ANNUITY OF DIRECTOR OF FBI

Pub. L. 86-734, §5, Sept. 8, 1960, 74 Stat. 868, provided that: “Any person who shall retire for age after serving at least thirty years as Director of the Federal Bureau of Investigation shall receive an annuity during the remainder of his life equal to the salary payable to him at the time of his retirement.”

#### NATIONAL GUARD TECHNICIANS

Amendment by Pub. L. 90-486 not applicable to persons employed prior to Jan. 1, 1969, whose employment was covered by the civil service retirement provisions of section 8331 et seq. of this title, see section 5(d) of Pub. L. 90-486, set out as a note under section 709 of Title 32, National Guard.

### § 8340. Cost-of-living adjustment of annuities

(a) For the purpose of this section—

(1) the term “base quarter”, as used with respect to a year, means the calendar quarter ending on September 30, of such year; and

(2) the price index for a base quarter is the arithmetical mean of such index for the 3 months comprising such quarter.

(b) Except as provided in subsection (c) of this section, effective December 1 of each year, each annuity payable from the Fund having a commencing date not later than such December 1 shall be increased by the percent change in the price index for the base quarter of such year over the price index for the base quarter of the preceding year in which an adjustment under this subsection was made, adjusted to the nearest  $\frac{1}{10}$  of 1 percent.

(c) Eligibility for an annuity increase under this section is governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase, except as follows:

(1) The first increase (if any) made under subsection (b) of this section to an annuity which is payable from the Fund to an employee or Member who retires, to the widow, widower, or former spouse,<sup>1</sup> of a deceased employee or Member, or to the widow, widower, former spouse, or insurable interest designee of a deceased annuitant whose annuity has not been increased under this subsection or subsection (b) of this section, shall be equal to the product (adjusted to the nearest  $\frac{1}{10}$  of 1 percent) of—

(A)  $\frac{1}{12}$  of the applicable percent change computed under subsection (b) of this section, multiplied by

(B) the number of months (not to exceed 12 months, counting any portion of a month as a month)—

(i) for which the annuity was payable from the Fund before the effective date of the increase, or

(ii) in the case of a widow, widower, former spouse, or insurable interest designee of a deceased annuitant whose annuity has not been so increased, since the annuity was first payable to the deceased annuitant.

<sup>1</sup> So in original. The comma probably should not appear.

(2) Effective from its commencing date, an annuity payable from the Fund to an annuitant's survivor (except a child entitled under section 8341(e) of this title), which annuity commences the day after the death of the annuitant and after the effective date of the first increase under this section, shall be increased by the total percent increase the annuitant was receiving under this section at death. However, the increase in a survivor annuity authorized by section 8 of the Act of May 29, 1930, as amended to July 6, 1950, shall be computed as if the annuity commencing date had been the effective date of the first increase under this section.

(3) For the purpose of computing the annuity of a child under section 8341(e) of this title that commences after October 31, 1969, the items \$900, \$1,080, \$2,700, and \$3,240 appearing in section 8341(e) of this title shall be increased by the total percent increases allowed and in force under this section on or after such day and, in case of a deceased annuitant, the items 60 percent and 75 percent appearing in section 8341(e) of this title shall be increased by the total percent allowed and in force to the annuitant under this section on or after such day.

(d) This section does not authorize an increase in an additional annuity purchased at retirement by voluntary contributions.

(e) The monthly installment of annuity after adjustment under this section shall be rounded to the next lowest dollar. However, the monthly installment shall after adjustment reflect an increase of at least \$1.

(f) Effective September 1, 1966, or on the commencing date of annuity, whichever is later, the annuity of each surviving spouse whose entitlement to annuity payable from the Fund resulted from the death of—

(1) an employee or Member before October 11, 1962; or

(2) a retired employee or Member whose retirement was based on a separation from service before October 11, 1962;

is increased by 10 percent.

(g)(1) An annuity shall not be increased by reason of any adjustment under this section to an amount which exceeds the greater of—

(A) the maximum pay payable for GS-15 30 days before the effective date of the adjustment under this section; or

(B) the final pay (or average pay, if higher) of the employee or Member with respect to whom the annuity is paid, increased by the overall annual average percentage adjustments (compounded) in rates of pay of the General Schedule under subchapter I of chapter 53 of this title during the period—

(i) beginning on the date the annuity commenced (or, in the case of a survivor of the retired employee or Member, the date the employee's or Member's annuity commenced), and

(ii) ending on the effective date of the adjustment under this section.

(2) For the purposes of paragraph (1) of this subsection, "pay" means the rate of salary or basic pay as payable under any provision of law,

including any provision of law limiting the expenditure of appropriated funds.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 576; Pub. L. 90-83, §1(79), Sept. 11, 1967, 81 Stat. 215; Pub. L. 91-93, title II, §204, Oct. 20, 1969, 83 Stat. 139; Pub. L. 93-136, §1, Oct. 24, 1973, 87 Stat. 490; Pub. L. 94-126, §2(b), Nov. 12, 1975, 89 Stat. 679; Pub. L. 94-183, §2(35), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 94-440, title XIII, §1306(a), (c)(1), Oct. 1, 1976, 90 Stat. 1462; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-499, title IV, §401(a), Dec. 5, 1980, 94 Stat. 2605; Pub. L. 97-35, title XVII, §1702(a), (b), Aug. 13, 1981, 95 Stat. 754; Pub. L. 97-253, title III, §§304(a), 309(a), Sept. 8, 1982, 96 Stat. 795, 798; Pub. L. 98-270, title II, §201(a), Apr. 18, 1984, 98 Stat. 157; Pub. L. 98-369, div. B, title II, §2201(b), July 18, 1984, 98 Stat. 1058; Pub. L. 99-251, title II, §204, Feb. 27, 1986, 100 Stat. 25.)

#### HISTORICAL AND REVISION NOTES 1966 ACT

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i>   |
|-------------------|------------------|---|
| .....             | 5 U.S.C. 2268.   | July 31, 1956, ch. 804, §401 "Sec. 18"; added Oct. 11, 1962, Pub. L. 87-793, §1102(b) (less so much as redesignated §18 as 19), 76 Stat. 869. |

In subsection (a), the words "After January 1, 1964" and "other than 1964" and subsection (a)(1) of former section 2268, are omitted as executed.

In subsection (b), the words "subsection (a) of this section" are substituted for "subsection (a)(1) or (a)(2) of this section" since subsection (a)(1) has been omitted as executed.

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

#### 1967 ACT

| <i>Section of title 5</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>                    |
|---------------------------|---------------------------|--|
| 8340(a) .....             | 5 App.: 2268(a), (f).     | Sept. 27, 1965, Pub. L. 89-205, §1(c), 79 Stat. 840. |
| 8340(b) .....             | 5 App.: 2268(b).          | Nov. 1, 1965, Pub. L. 89-314, §1, 79 Stat. 1162.     |
| 8340(c) .....             | 5 App.: 2268(c).          | July 18, 1966, Pub. L. 89-504, §507, 80 Stat. 302.   |
| 8340(d) .....             | 5 App.: 2268(d).          |  |
| 8340(e) .....             | 5 App.: 2268(e).          |  |
| 8340(f) .....             | 5 App.: 2268(f).          |  |

In subsection (a), the words "Effective December 1, 1965 \* \* \* before December 2, 1965," are substituted for "Effective the first day of the third month which begins after the date of enactment of this amendment \* \* \* not later than such effective date." In clause (1), the words "month of July 1965" are substituted for "month latest published on date of enactment of this amendment" for clarity and since the July 1965 price index was the price index for the month latest published on September 27, 1965, the date of enactment of the amendment. The word "base" is inserted before "month of July 1965" for clarity and on authority of the second sentence of 5 U.S.C. App. 2268(a) which provided: "The month used in determining the increase based on the per centum rise in the price index under this subsection shall be the base month for determining the per centum change in the price index until the next succeeding increase occurs." In view of the foregoing and of the definition of "base month" in 5 U.S.C. 8331(16), the quoted sentence is omitted as executed and unnecessary. In clause (2), the words "before October 2, 1956," are substituted for "on or before October 1, 1956." In the second sentence, which is based on 5 App. U.S.C. 2268(f), the words "before January 1, 1966," are sub-

stituted for "not later than December 31, 1965." In clause (B), the words "Act of June 25, 1958 (72 Stat. 219)" are substituted for "Public Law 85-465" to conform to the style of title 5, United States Code.

In the first sentence of subsection (b), the words "after the first increase under this section," following "Each month," are omitted as executed and unnecessary.

In subsection (f), the words "September 1, 1966," are substituted for "the first day of the second month after the enactment of this subsection."

### Editorial Notes

#### REFERENCES IN TEXT

Section 8 of the Act of May 29, 1930, as amended to July 6, 1950, referred to in subsec. (c)(2), is the predecessor of section 8338 of this title.

The General Schedule, referred to in subsec. (g)(1)(B), is set out under section 5332 of this title.

#### AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 99-251 substituted "widower, or former spouse," for first reference to "or widower", and "widower, former spouse, or insurable interest designee" for second and third references to "or widower".

1984—Subsec. (a). Pub. L. 98-270 substituted provisions defining term "base quarter" as meaning the calendar quarter ending Sept. 30 of a year and providing that the price index for a base quarter is the arithmetical mean of such index for the three months comprising such quarter for former provisions which had directed that, effective Dec. 1, 1965, each annuity payable from the Fund having a commencing date before Dec. 2, 1965, was increased by (1) the percent rise in the price index, adjusted to the nearest  $\frac{1}{10}$  of 1 percent, determined by the Office of Personnel Management on the basis of the annual average price index for calendar year 1962 and the price index for the base month of July 1965; plus (2)  $6\frac{1}{2}$  percent if the commencing date (or in the case of the survivor of a deceased annuitant the commencing date of the annuity of the retired employee) occurred before Oct. 2, 1956, or  $1\frac{1}{2}$  percent if the commencing date (or in the case of the survivor of a deceased annuitant the commencing date of the annuity of the retired employee) occurred after Oct. 1, 1956, that each annuity payable from the Fund (other than the immediate annuity of an annuitant's survivor or of a child entitled under section 8341(e) of this title) having a commencing date after Dec. 1, 1965, but before Jan. 1, 1966, was increased from its commencing date as if the annuity commencing date were Dec. 1, 1965, and that each survivor annuity authorized by (A) section 8 of the Act of May 29, 1930, as amended to July 6, 1950, or (B) section 2 of the Act of June 25, 1958 (72 Stat. 219), was increased by any additional amount required to make the total increase under this subsection equal to the smaller of 15 percent or \$10 a month.

Subsec. (b). Pub. L. 98-270 substituted "Except as provided in subsection (c) of this section, effective December 1 of each year, each annuity payable from the Fund having a commencing date not later than such December 1 shall be increased by the percent change in the price index for the base quarter of such year over the price index for the base quarter of the preceding year in which an adjustment under this subsection was made, adjusted to the nearest  $\frac{1}{10}$  of 1 percent" for "Except as provided in subsection (c) of this section, effective March 1 of each year each annuity payable from the Fund having a commencing date not later than such March 1 shall be increased by the percent change in the price index published for December of the preceding year over the price index published for December of the year prior to the preceding year, adjusted to the nearest  $\frac{1}{10}$  of 1 percent".

Subsec. (c)(1)(A). Pub. L. 98-369, §2201(b)(1), substituted "computed" for "computer".

Subsec. (c)(2)(B). Pub. L. 98-369, §2201(b)(2), substituted "not to exceed 12 months, counting" for "counting".

1982—Subsec. (e). Pub. L. 97-253, §304(a), substituted "rounded to the next lowest" for "fixed at the nearest".

Subsec. (g). Pub. L. 97-253, §309(a), added subsec. (g). 1981—Subsec. (b). Pub. L. 97-35, §1702(a), substituted provisions that except as provided in subsec. (c), the annuities payable from the Fund having a commencing date not later than March 1 of each year shall be increased by the percent change in the price index published for December of the preceding year over the price index published for December of the year prior to the preceding year, adjusted to the nearest  $\frac{1}{10}$  of 1 percent, for provisions requiring the Office to determine on Jan. 1 and July 1 of each year the percent change in the price index based on the data for a six month period and to adjust the annuities in March and September of each year according to specified formula when there is a rise in the price index.

Subsec. (c)(1). Pub. L. 97-35, §1702(b), in opening provision inserted reference to the widow or widower of a deceased annuitant whose annuity has not been increased under this subsection or subsection (b) of this section, in par. (A) substituted " $\frac{1}{12}$ " for " $\frac{1}{6}$ ", and in subpar. (B) designated existing provisions as item (i) and added item (ii).

1980—Subsec. (c)(1). Pub. L. 96-499, substituted formula for computing the first increase to be made under subsec. (b) of this section to an annuity which is payable from the Fund to an employee or Member who retires, to the widow or widower of a deceased employee or Member for provisions that an annuity, except a deferred annuity under section 8338 of this title or any other provision of law, payable from the Fund to an employee or Member who retires, or to the widow or widower of a deceased employee or Member and having a commencing date after the effective date of the then last preceding annuity increase under subsec. (b) of this section shall not be less than the annuity which would have been payable if the commencing date of such annuity had been the effective date of the then last preceding annuity increase under subsec. (b) of this section and that employees or deceased employees were to be deemed, for purposes of section 8339(m) of this title to have to their credit, on the effective date of the last preceding increase under subsec. (b), unused sick leave equal to that unused sick leave to his credit on the date of separation from service.

1978—Subsecs. (a)(1), (b)(1). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission" and "Office" for "Commission".

1976—Subsec. (b). Pub. L. 94-440, §1306(a), struck out "1 percent plus" after "shall be increased by".

Pub. L. 94-440, §1306(c)(1), substituted provisions requiring that Commission shall determine percent change in price index on Jan. 1 and July 1 of each year and effective Mar. 1 or Sept. 1, each annuity payable from Fund shall be increased by the computed percent change in the price index adjusted to the nearest  $\frac{1}{10}$  of 1 percent, for provisions requiring that Commission shall determine percent change in price index on a monthly basis and effective the first day of the third month that begins after the price index change equals a rise of 3 percent for 3 consecutive months over the prior price index, each annuity payable from Fund shall be increased by the highest rise in the price index over those months adjusted to the nearest  $\frac{1}{10}$  of 1 percent.

1975—Subsec. (c)(1). Pub. L. 94-126 substituted reference to "section 8339(m) of this title" for "section 8339(n) of this title".

Subsec. (c)(3). Pub. L. 94-183 substituted "after October 31, 1969" for "on or after the first day of the first month that begins on or after the date of enactment of the Civil Service Retirement Amendments of 1969".

1973—Subsec. (c). Pub. L. 93-136 redesignated existing pars. (1) and (2) as pars. (2) and (3) and added par. (1).

1969—Subsec. (b). Pub. L. 91-93, §204(a), increased the annuity payable from the Fund by 1 percent.

Subsec. (c)(2). Pub. L. 91-93, §204(b), increased the minimum survivor annuity for children of a deceased Federal employee, substituting dollar and percentage

references to \$900, \$1,080, \$2,700, \$3,240, and 60 and 75 percent for prior references to \$600, \$720, \$1,800, \$2,160 and 40 and 50 percent respectively, such new increases to commence on or after the first day of the first month that begins on or after Oct. 20, 1969, the date of enactment of the Civil Service Retirement Amendments of 1969, whereas prior provisions were for computation of a child's annuity commencing after effective date of first increase under this section based on employee annuity that commenced after Oct. 1, 1956, or was payable at death.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-270, title II, §201(b), Apr. 18, 1984, 98 Stat. 157, provided that:

“(1) The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 18, 1984], except that no adjustment under section 8340(b) of title 5, United States Code (as amended by such subsection), shall be made during the period beginning on the date of the enactment of this Act and ending November 30, 1984.

“(2)(A) For purposes of the first adjustment under section 8340(b) of title 5, United States Code (as amended by subsection (a)), the base quarter ending September 30, 1983, shall be considered to have been a base quarter in which an adjustment under such section (as so amended) was made.

“(B) As used in subparagraph (A), the term ‘base quarter’ has the meaning given such term by section 8340(a)(1) of title 5, United States Code (as amended by subsection (a)).”

##### EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-253, title III, §304(c), Sept. 8, 1982, 96 Stat. 795, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 8345 of this title] shall apply with respect to any annuity commencing on or after October 1, 1982, and with respect to any adjustment or redetermination of any annuity made on or after such date”.

Pub. L. 97-253, title III, §309(b), Sept. 8, 1982, 96 Stat. 799, provided that: “The amendment made by subsection (a) of this section [amending this section] shall not cause any annuity to be reduced below the rate that is payable on the date of the enactment of this Act [Sept. 8, 1982], but shall apply to any adjustment occurring on or after such date of enactment under section 8340 of title 5, United States Code, to any annuity payable from the Civil Service Retirement and Disability Fund, whether such annuity has a commencing date before, on, or after the date of enactment of this Act.”

##### EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-35, title XVII, §1702(c), Aug. 13, 1981, 95 Stat. 754, provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 13, 1981] and shall apply to annuities which commence before, on, or after such date.”

##### EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-499, title IV, §401(b), Dec. 5, 1980, 94 Stat. 2605, provided that:

“(1) The amendment made by subsection (a)(1) [amending this section] shall apply with respect to annuities commencing after the 45th day after the date of the enactment of this Act [Dec. 5, 1980].

“(2) The amendment made by subsection (a)(2) [amending this section] shall take effect with respect to any annuity increase which takes effect after the date of the enactment of this Act [Dec. 5, 1980].”

##### EFFECTIVE DATE OF 1978 AMENDMENT

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

##### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-440, title XIII, §1306(b), Oct. 1, 1976, 90 Stat. 1462, provided that: “The amendment made by subsection (a) [amending this section] shall apply to any increase in annuities after the date of enactment of this Act [Oct. 1, 1976].”

Pub. L. 94-440, §1306(c)(2), Oct. 1, 1976, 90 Stat. 1462, provided that: “The amendment made by subsection (1) [amending this section] shall apply to any increase in annuities after the date of enactment of this Act [Oct. 1, 1976], except that with respect to the first date after the date of enactment of this Act on which the Commission is to determine a percent change, such percent change shall be determined by computing the change in the price index published for the month immediately preceding such first date over the price index for the last month prior to the date of enactment of this Act for which the price index showed a percent rise forming the basis for a cost-of-living annuity increase under section 8340(b) of title 5, United States Code [subsec. (b) of this section], as in effect immediately prior to the date of the enactment of this Act [Oct. 1, 1976].”

##### EFFECTIVE DATE OF 1973 AMENDMENT

Pub. L. 93-136, §2, Oct. 24, 1973, 87 Stat. 490, provided that: “The amendments made by this Act [amending this section] shall apply only with respect to annuities which commence on or after July 2, 1973.”

##### EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-93, title II, §207(b), Oct. 20, 1969, 83 Stat. 140, provided that: “The amendments made by section 204(a) of this Act to section 8340 of title 5, United States Code, shall apply only to annuity increases which become effective under such section 8340 after the date of enactment of this Act [Oct. 20, 1969].”

##### DELAY IN COST-OF-LIVING ADJUSTMENTS DURING FISCAL YEARS 1994, 1995, AND 1996

Pub. L. 103-66, title XI, §11001, Aug. 10, 1993, 107 Stat. 408, provided that:

“(a) APPLICABILITY.—This section shall apply with respect to any cost-of-living increase scheduled to take effect, during fiscal year 1994, 1995, or 1996, under—

“(1) section 8340(b) or 8462(b) of title 5, United States Code;

“(2) section 826 or 858 of the Foreign Service Act of 1980 [22 U.S.C. 4066, 4071g]; or

“(3) section 291 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2131), as set forth in section 802 of the CIARDS Technical Corrections Act of 1992 (Public Law 102-496; 106 Stat. 3196).

“(b) DELAY IN EFFECTIVE DATE OF ADJUSTMENTS.—A cost-of-living increase described in subsection (a) shall not take effect until the first day of the third calendar month after the date such increase would otherwise take effect.

“(c) RULE OF CONSTRUCTION.—Nothing in this section shall be considered to affect any determination relating to eligibility for an annuity increase or the amount of the first increase in an annuity under section 8340(b) or (c) or section 8462(b) or (c) of title 5, United States Code, or comparable provisions of law.”

##### TIME OF PAYMENT OF ANNUITY OR RETIRED OR RETIREMENT PAY WHICH PRESIDENT ADJUSTS

Pub. L. 98-369, div. B, title II, §2201(a), July 18, 1984, 98 Stat. 1058, provided that: “Notwithstanding any other provision of law, beginning with the monthly rate payable for December 1984, any annuity or retired or retirement pay payable under any retirement system for Government officers or employees which the President adjusts pursuant to section 8340(b) of title 5, United States Code, shall be paid no earlier than the first business day of the succeeding month.”

##### COST-OF-LIVING ADJUSTMENTS DURING FISCAL YEARS 1983, 1984, AND 1985

Pub. L. 97-253, title III, §301(a)-(c), Sept. 8, 1982, 96 Stat. 790, 791, as amended by Pub. L. 98-270, title I,

§ 201(c), Apr. 18, 1984, 98 Stat. 158; Pub. L. 98-396, title I, Aug. 22, 1984, 98 Stat. 1403, provided that:

“(a)(1) Except as provided in paragraph (3), the cost-of-living increase under any Government retirement system in annuity or retired or retainer pay of any early retiree taking effect in each of fiscal years 1983, 1984, and 1985, shall be equal to one-half of the assumed increase in the price index for that year.

“(2) For purposes of this subsection, an individual shall be considered to be an early retiree if—

“(A) the individual is under the age of 62 years as of the effective date of the cost-of-living increase involved (determined without regard to subsection (b));

“(B) the annuity or retired or retainer pay of the individual is not computed in whole or in part based on any disability of the individual; and

“(C) the annuity or retired or retainer pay of the individual is based upon the Government service of the individual.

“(3) If the percentage increase in the price index for fiscal year 1983, 1984, or 1985 (as determined by the Office of Personnel Management under section 8340(b) of title 5, United States Code) exceeds the assumed increase in the price index for that year, then the increase in the annuity or retired or retainer pay of an early retiree under paragraph (1) taking effect in that fiscal year shall be equal to—

“(A) one-half of the assumed increase in the price index for that year, plus

“(B) the amount by which the percentage increase in the price index exceeds the assumed price index increase.

If the percentage increase in the price index for fiscal year 1985 (as determined by the Office of Personnel Management under section 8340(b) of title 5, United States Code) is less than the assumed increase in the price index for that year, then the increase in the annuity or retired or retainer pay of an early retiree under paragraph (1) taking effect in that fiscal year shall be equal to the percentage increase in the price index for that year (as so determined).

“(4) As used in this subsection—

“(A) the term ‘price index’ has the meaning given such term in section 8331(15) of title 5, United States Code; and

“(B) the term ‘assumed increase in the price index’ means—

“(i) 6.6 percent, in the case of fiscal year 1983,

“(ii) 7.2 percent, in the case of fiscal year 1984, and

“(iii) 6.6 percent, in the case of fiscal year 1985.

“(5) The amount of any survivor annuity which is based on the service of any early retiree subject to this subsection shall be computed as if this subsection had not been enacted.

“(b) [Repealed. Pub. L. 98-270, title II, § 201(c)(2), Apr. 18, 1984, 98 Stat. 158.]

“(c) For purposes of this section, the term ‘cost-of-living increase under a Government retirement system’ means any increase under—

“(1) section 8340(b) of title 5, United States Code;

“(2) section 826 of the Foreign Service Act of 1980 [22 U.S.C. 4066];

“(3) the Central Intelligence Agency Act of 1964 for Certain Employees ([former] 50 U.S.C. 403 note);

“(4) section 1401a(b) of title 10, United States Code; or

“(5) any other adjustment of any annuity under a retirement system for Government officers or employees which the President determines, by Executive order, is based on adjustments under any of the provisions referred to in the preceding paragraph.”

**COST-OF-LIVING ADJUSTMENT OF RETIRED PAY OR RETAINER PAY OF MEMBERS AND FORMER MEMBERS OF ARMED FORCES AND COMMISSIONED OFFICERS OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AND PUBLIC HEALTH SERVICE; EFFECTIVE DATE OF AMENDMENT**

See provisions of section 801(c) of Pub. L. 94-361, title VIII, July 14, 1976, 90 Stat. 929, set out as a note under section 1401a of Title 10, Armed Forces.

## § 8341. Survivor annuities

(a) For the purpose of this section—

(1) “widow” means the surviving wife of an employee or Member who—

(A) was married to him for at least 9 months immediately before his death; or

(B) is the mother of issue by that marriage;

(2) “widower” means the surviving husband of an employee or Member who—

(A) was married to her for at least 9 months immediately before her death; or

(B) is the father of issue by that marriage;

(3) “dependent”, in the case of any child, means that the employee or Member involved was, at the time of the employee or Member’s death, either living with or contributing to the support of such child, as determined in accordance with such regulations as the Office of Personnel Management shall prescribe; and

(4) “child” means—

(A) an unmarried dependent child under 18 years of age, including (i) an adopted child, and (ii) a stepchild but only if the stepchild lived with the employee or Member in a regular parent-child relationship, and (iii) a recognized natural child, and (iv) a child who lived with and for whom a petition of adoption was filed by an employee or Member, and who is adopted by the surviving spouse of the employee or Member after his death;

(B) such unmarried dependent child regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18; or

(C) such unmarried dependent child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

For the purpose of this paragraph and subsection (e) of this section, a child whose 22nd birthday occurs before July 1 or after August 31 of a calendar year, and while he is regularly pursuing such a course of study or training, is deemed to have become 22 years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if he shows to the satisfaction of the Office of Personnel Management that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(b)(1) Except as provided in paragraph (2) of this subsection, if an employee or Member dies after having retired under this subchapter and is survived by a widow or widower, the widow or widower is entitled to an annuity equal to 55 percent (or 50 percent if retired before October 11, 1962) of an annuity computed under section 8339(a)–(i), (n), (p), (q), (r), and (s) as may apply



with respect to the annuitant, or of such portion thereof as may have been designated for this purpose under section 8339(j)(1) of this title, unless the right to a survivor annuity was waived under such section 8339(j)(1) or, in the case of remarriage, the employee or Member did not file an election under section 8339(j)(5)(C) or section 8339(k)(2) of this title, as the case may be.

(2) If an annuitant—

(A) who retired before April 1, 1948; or

(B) who elected a reduced annuity provided in paragraph (2) of section 8339(k) of this title;

dies and is survived by a widow or widower, the widow or widower is entitled to an annuity in an amount which would have been paid had the annuitant been married to the widow or widower at the time of retirement.

(3) A spouse acquired after retirement is entitled to a survivor annuity under this subsection only upon electing this annuity instead of any other survivor benefit to which he may be entitled under this subchapter or another retirement system for Government employees. The annuity of the widow or widower under this subsection commences on the day after the annuitant dies. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(A) dies; or

(B) except as provided in subsection (k), remarries before becoming 55 years of age.

(4) Notwithstanding the preceding provisions of this subsection, the annuity payable under this subsection to the widow or widower of a retired employee or Member may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under this subsection (determined without regard to any waiver or designation under section 8339(j)(1) of this title or a prior similar provision of law), and

(B) the amount of the survivor annuity payable to any former spouse of such employee or Member under subsection (h) of this section.

(c) The annuity of a survivor named under section 8339(k)(1) of this title is 55 percent of the reduced annuity of the retired employee or Member. The annuity of the survivor commences on the day after the retired employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the survivor dies.

(d) If an employee or Member dies after completing at least 18 months of civilian service, his widow or widower is entitled to an annuity equal to 55 percent of an annuity computed under section 8339(a)–(f), (i), (n), (p), (q), (r), and (s) as may apply with respect to the employee or Member, except that, in the computation of the annuity under such section, the annuity of the employee or Member shall be at least the smaller of—

(1) 40 percent of his average pay; or

(2) the sum obtained under such section after increasing his service of the type last performed by the period elapsing between the date of death and the date he would have become 60 years of age.

Notwithstanding the preceding sentence, the annuity payable under this subsection to the

widow or widower of an employee or Member may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under this subsection, and

(B) the amount of the survivor annuity payable to any former spouse of such employee or Member under subsection (h) of this section.

The annuity of the widow or widower commences on the day after the employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(i) dies; or

(ii) except as provided in subsection (k), remarries before becoming 55 years of age.

(e)(1) For the purposes of this subsection, “former spouse” includes a former spouse who was married to an employee or Member for less than 9 months and a former spouse of an employee or Member who completed less than 18 months of service covered by this subchapter.

(2) If an employee or Member dies after completing at least 18 months of civilian service, or an employee or Member dies after retiring under this subchapter, and is survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the employee or Member, that surviving child is entitled to an annuity equal to the smallest of—

(A) 60 percent of the average pay of the employee or Member divided by the number of children;

(B) \$900; or

(C) \$2,700 divided by the number of children;

subject to section 8340 of this title. If the employee or Member is not survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the employee or Member, that surviving child is entitled to an annuity equal to the smallest of—

(i) 75 percent of the average pay of the employee or Member divided by the number of children;

(ii) \$1,080; or

(iii) \$3,240 divided by the number of children;

subject to section 8340 of this title.

(3) The annuity of a child under this subchapter or under the Act of May 29, 1930, as amended from and after February 28, 1948, commences on the day after the employee or Member dies, or commences or resumes on the first day of the month in which the child later becomes or again becomes a student as described by subsection (a)(3) of this section, if any lump sum paid is returned to the Fund. This annuity and the right thereto terminate on the last day of the month before the child—

(A) becomes 18 years of age unless he is then a student as described or incapable of self-support;

(B) becomes capable of self-support after becoming 18 years of age unless he is then such a student;

(C) becomes 22 years of age if he is then such a student and capable of self-support;

(D) ceases to be such a student after becoming 18 years of age unless he is then incapable of self-support; or

(E) dies or marries;

whichever first occurs. On the death of the surviving spouse or former spouse or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though the spouse, former spouse, or child had not survived the employee or Member.

(4) If the annuity of a child under this subchapter terminates under paragraph (3)(E) because of marriage, then, if such marriage ends, such annuity shall resume on the first day of the month in which it ends, but only if—

(A) any lump sum paid is returned to the Fund; and

(B) that individual is not otherwise ineligible for such annuity.

(f) If a Member heretofore or hereafter separated from the service with title to deferred annuity from the Fund hereafter dies before having established a valid claim for annuity and is survived by a spouse to whom married at the date of separation, the surviving spouse—

(1) is entitled to an annuity equal to 55 percent of the deferred annuity of the Member commencing on the day after the Member dies and terminating on the last day of the month before the surviving spouse dies or remarries; or

(2) may elect to receive the lump-sum credit instead of annuity if the spouse is the individual who would be entitled to the lump-sum credit and files application therefor with the Office before the award of the annuity.

Notwithstanding the preceding sentence, an annuity payable under this subsection to the surviving spouse of a Member may not exceed the difference between—

(A) the annuity which would otherwise be payable to such surviving spouse under this subsection, and

(B) the amount of the survivor annuity payable to any former spouse of such Member under subsection (h) of this section.

(g) In the case of a surviving spouse whose annuity under this section is terminated because of remarriage before becoming 55 years of age, annuity at the same rate shall be restored commencing on the day the remarriage is dissolved by death, annulment, or divorce, if—

(1) the surviving spouse elects to receive this annuity instead of a survivor benefit to which he may be entitled, under this subchapter or another retirement system for Government employees, by reason of the remarriage; and

(2) any lump sum paid on termination of the annuity is returned to the Fund.

(h)(1) Subject to paragraphs (2) through (5) of this subsection, a former spouse of a deceased employee, Member, annuitant, or former Member who was separated from the service with title to a deferred annuity under section 8338(b) of this title is entitled to a survivor annuity under this subsection, if and to the extent expressly provided for in an election under section 8339(j)(3) of this title, or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(2)(A) The annuity payable to a former spouse under this subsection may not exceed the difference between—

(i) the amount applicable in the case of such former spouse, as determined under subparagraph (B) of this paragraph, and

(ii) the amount of any annuity payable under this subsection to any other former spouse of the employee, Member, or annuitant, based on an election previously made under section 8339(j)(3) of this title, or a court order previously issued.

(B) The applicable amount, for purposes of subparagraph (A)(i) of this paragraph in the case of a former spouse, is the amount which would be applicable—

(i) under subsection (b)(4)(A) of this section in the case of a widow or widower, if the deceased was an employee or Member who died after retirement;

(ii) under subparagraph (A) of subsection (d) of this section in the case of a widow or widower, if the deceased was an employee or Member described in the first sentence of such subsection; or

(iii) under subparagraph (A) of subsection (f) of this section in the case of a surviving spouse, if the deceased was a Member described in the first sentence of such subsection.

(3) The commencement and termination of an annuity payable under this subsection shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—

(A) shall not commence before—

(i) the day after the employee, Member, or annuitant dies, or

(ii) the first day of the second month beginning after the date on which the Office receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Office may prescribe,

whichever is later, and

(B) shall terminate—

(i) except as provided in subsection (k), in the case of an annuity computed by reference to clause (i) or (ii) of paragraph (2)(B) of this subsection, no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies; or

(ii) in the case of an annuity computed by reference to clause (iii) of such paragraph, no later than the last day of the month before the former spouse remarries or dies.

(4) For purposes of this subchapter, a modification in a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective—

(A) if such modification is made after the retirement or death of the employee or Member concerned, and

(B) to the extent that such modification involves an annuity under this subsection.

(5) For purposes of this subchapter, a decree, order, agreement, or election referred to in para-

graph (1) of this subsection shall not be effective, in the case of a former spouse, to the extent that it is inconsistent with any joint designation or waiver previously executed with respect to such former spouse under section 8339(j)(1) of this title or a similar prior provision of law.

(6) Any payment under this subsection to a person bars recovery by any other person.

(7) As used in this subsection, “court” means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.

(i) The requirement in subsections (a)(1)(A) and (a)(2)(A) of this section that the surviving spouse of an employee or Member have been married to such employee or Member for at least 9 months immediately before the employee or Member’s death in order to qualify as the widow or widower of such employee or Member shall be deemed satisfied in any case in which the employee or Member dies within the applicable 9-month period, if—

(1) the death of the employee or Member was accidental; or

(2) the surviving spouse of such individual had been previously married to the individual and subsequently divorced, and the aggregate time married is at least 9 months.

(k)(1)<sup>1</sup> Subsections (b)(3)(B), (d)(ii), and (h)(3)(B)(i) (to the extent that they provide for termination of a survivor annuity because of a remarriage before age 55) shall not apply if the widow, widower, or former spouse was married for at least 30 years to the individual on whose service the survivor annuity is based.

(2) A remarriage described in paragraph (1) shall not be taken into account for purposes of section 8339(j)(5)(B) or (C) or any other provision of this chapter which the Office may by regulation identify in order to carry out the purposes of this subsection.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 577; Pub. L. 90–83, §1(80), Sept. 11, 1967, 81 Stat. 216; Pub. L. 91–93, title II, §206, Oct. 20, 1969, 83 Stat. 140; Pub. L. 91–658, §3, Jan. 8, 1971, 84 Stat. 1961; Pub. L. 92–243, §1, Mar. 9, 1972, 86 Stat. 56; Pub. L. 92–297, §7(4), May 16, 1972, 86 Stat. 145; Pub. L. 93–260, §1(a), Apr. 9, 1974, 88 Stat. 76; Pub. L. 94–183, §2(36), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95–317, §1(b), July 10, 1978, 92 Stat. 382; Pub. L. 95–318, §2, July 10, 1978, 92 Stat. 384; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95–598, title III, §338(c), Nov. 6, 1978, 92 Stat. 2681; Pub. L. 96–179, §1, Jan. 2, 1980, 93 Stat. 1299; Pub. L. 98–353, title I, §112, July 10, 1984, 98 Stat. 343; Pub. L. 98–615, §2(4), Nov. 8, 1984, 98 Stat. 3199; Pub. L. 99–251, title II, §§205–207, Feb. 27, 1986, 100 Stat. 25; Pub. L. 99–272, title XV, §15204(a)(2), Apr. 7, 1986, 100 Stat. 335; Pub. L. 101–428, §2(d)(7), Oct. 15, 1990, 104 Stat. 929; Pub. L. 102–378, §2(63), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 104–208, div. A, title I, §101(f) [title VI, §633(a)(1)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–362; Pub. L. 105–61, title V, §§516(a)(4), 518(a), Oct. 10, 1997, 111 Stat. 1306, 1307; Pub. L. 106–553, §1(a)(2) [title III, §308(h)(7)], Dec. 21, 2000, 114 Stat. 2762, 2762A–89.)

<sup>1</sup> So in original. No subsec. (j) has been enacted.

#### HISTORICAL AND REVISION NOTES 1966 ACT

| <i>Derivation</i> | <i>U.S. Code</i>      | <i>Revised Statutes and Statutes at Large</i>  |
|-------------------|-----------------------|--|
| (a) .....         | 5 U.S.C. 2251(h)–(j). | July 31, 1956, ch. 804, §401 “Sec. 1(h)–(j)”, 70 Stat. 744.<br>Oct. 11, 1962, Pub. L. 87–793, §1103(f)(A), 76 Stat. 871.   |
| (b)–(f) .....     | 5 U.S.C. 2260.        | July 31, 1956, ch. 804, §401 “Sec. 10”, 70 Stat. 754.<br>Aug. 27, 1958, Pub. L. 85–772, §1(b), (c), 72 Stat. 930.<br>Sept. 6, 1960, Pub. L. 86–713, §1(a), 74 Stat. 813.<br>Oct. 11, 1962, Pub. L. 87–793, §1103 (less (a) and (f)(A)), 76 Stat. 870, 871. |

In subsection (b), the words “designated for this purpose under section 8339(i) of this title” are substituted for “designated in writing for such purpose by the employee or Member at the time of retirement” in view of the provisions of section 8339(i).

In subsection (f), the words “heretofore or hereafter” are substituted “either prior to, on, or after the effective date of the Civil Service Retirement Act Amendments of 1956”.

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

#### 1967 ACT

| <i>Section of title 5</i> | <i>Source (U.S. Code)</i>             | <i>Source (Statutes at Large)</i>   |
|---------------------------|---------------------------------------|---|
| 8341(a)(4) ...            | 5 App.: 2251(j) (less last sentence). | Apr. 25, 1966, Pub. L. 89–407, §1 (words before 1st comma), 80 Stat. 131.<br>July 18, 1966, Pub. L. 89–504, §502, 80 Stat. 300. |
| 8341(b) (last sentence).  | 5 App.: 2260(a)(2).                   | July 18, 1966, Pub. L. 89–504, §506(a), 80 Stat. 301.   |
| 8341(d) (last sentence).  | 5 App.: 2260(c) (last sentence).      | July 18, 1966, Pub. L. 89–504, §506(b), 80 Stat. 301.   |
| 8341(e) .....             | 5 App.: 2260(d).                      | July 18, 1966, Pub. L. 89–504, §506(c), 80 Stat. 301.   |
| 8341(g) .....             | 5 App.: 2260(f).                      | July 18, 1966, Pub. L. 89–504, §506(d), 80 Stat. 302.   |

In subsection (a)(4), the words “for the purposes of section 10(d)” are omitted as covered by the words “For the purpose of this section.”

In clause (2) of the last sentence of subsection (b), the word “retired” is inserted before “Member” for clarity and to conform to the penultimate sentence and clause (1) of the last sentence.

In subsection (e), the words “any lump sum paid” are substituted for “the lump-sum credit, if paid” for clarity and consistency with subsection (g)(2).

In subsection (e)(2)(C), the words “capable of self-support” are substituted for “not incapable of self-support.”

In subsection (g), the words “after July 18, 1966” are substituted for “hereafter.” In clause (1), the word “he” is substituted for “he or she” on authority of 1 U.S.C. 1. The words “another retirement system for Government employees” are substituted for “any other retirement system established for employees of the Government” for consistency with section 8101(1)(ii).

#### Editorial Notes

##### REFERENCES IN TEXT

The Act of May 29, 1930, as amended from and after February 28, 1948, referred to in subsec. (e)(3), is the predecessor of section 8338 of this title.

##### AMENDMENTS

2000—Subsecs. (b)(1), (d). Pub. L. 106–553 substituted “(q), (r), and (s)” for “(q), and (r)”.

1997—Subsec. (b)(1). Pub. L. 105-61, §516(a)(4), substituted “(q), and (r)” for “and (q) of this title”.

Subsec. (b)(3)(B). Pub. L. 105-61, §518(a)(2)(A), substituted “except as provided in subsection (k), remarries” for “remarries”.

Subsec. (d). Pub. L. 105-61, §§516(a)(4), 518(a)(2)(A), substituted “(q), and (r)” for “and (q) of this title” in introductory provisions and “except as provided in subsection (k), remarries” for “remarries” in cl. (ii).

Subsec. (h)(3)(B)(i). Pub. L. 105-61, §518(a)(2)(B), substituted “except as provided in subsection (k), in” for “in”.

Subsec. (k). Pub. L. 105-61, §518(a)(1), added subsec. (k).

1996—Subsec. (e)(4). Pub. L. 104-208 added par. (4).

1992—Subsecs. (b)(1), (d). Pub. L. 102-378 substituted “(p),” for “(o),”.

1990—Subsecs. (b)(1), (d). Pub. L. 101-428 substituted “(n), (o), and (q)” for “(n), and (o)”.

1986—Subsecs. (b)(1), (d). Pub. L. 99-272 substituted “, (n) and (o)” for “and (n)” in subsec. (b)(1), and “(n), and (o)” for “and (n)” in subsec. (d).

Subsec. (e). Pub. L. 99-251, §205, added par. (1), redesignated existing pars. (1) and (2) as (2) and (3), respectively, and in par. (2) as redesignated substituted “that surviving child” for “each surviving child” in two places.

Subsec. (h)(1). Pub. L. 99-251, §206, substituted “annuitant, or former Member who was separated from the service with title to a deferred annuity under section 8338(b) of this title” for “or annuitant”.

Subsec. (h)(4)(A). Pub. L. 99-251, §207, inserted “or death” after “retirement”.

1984—Subsec. (a)(1)(A), (2)(A). Pub. L. 98-615, §2(4)(A), substituted “9 months” for “1 year”.

Subsec. (b)(1). Pub. L. 98-615, §2(4)(B)(i), substituted “by a widow or widower, the widow or widower is entitled to an annuity equal to 55 percent (or 50 percent if retired before October 11, 1962)” for “by a spouse to whom he was married at the time of retirement, or by a widow or widower whom he married after retirement, the spouse, widow, or widower is entitled to an annuity equal to 55 percent, or 50 percent if retired before October 11, 1962” and “section 8339(j)(1) of this title, unless the right to a survivor annuity was waived under such section 8339(j)(1) or, in the case of remarriage, the employee or Member did not file an election under section 8339(j)(5)(C) or section 8339(k)(2) of this title, as the case may be” for “section 8339(j) of this title, unless the employee or Member has notified the Office in writing at the time of retirement that he does not desire any spouse surviving him to receive his annuity, or in the case of remarriage, he did not file an election under the third sentence of section 8339(j) of this title”.

Pub. L. 98-353 substituted “and (n)” for “and (o)”.

Subsec. (b)(3). Pub. L. 98-615, §2(4)(B)(ii), substituted “widow or widower” for “spouse, widow, or widower” wherever appearing in provisions preceding subpar. (A).

Subsec. (b)(3)(B). Pub. L. 98-615, §2(4)(B)(iii), substituted “55 years of age” for “60 years of age”.

Subsec. (b)(4). Pub. L. 98-615, §2(4)(B)(iv), added par. (4).

Subsec. (d). Pub. L. 98-615, §2(4)(C)(i), inserted provision that the annuity payable under this subsection to the widow or widower of an employee or Member may not exceed the difference between the amount which would otherwise be payable to such widow or widower under this subsection and the amount of the survivor annuity payable to any former spouse of such employee or Member under subsec. (h).

Pub. L. 98-353 substituted “and (n)” for “and (o)”.

Subsec. (d)(i). Pub. L. 98-615, §2(4)(C)(ii), redesignated subpar. (A) as cl. (i).

Subsec. (d)(ii). Pub. L. 98-615, §2(4)(C)(ii), redesignated subpar. (B) as cl. (ii) and substituted “55 years of age” for “60 years of age”.

Subsec. (e)(1). Pub. L. 98-615, §2(4)(D)(i), inserted “or a former spouse who is the natural or adoptive parent of a surviving child of the employee or Member” in provisions preceding subpar. (A) and following subpar. (C).

Subsec. (e)(2). Pub. L. 98-615, §2(4)(D)(ii), substituted “surviving spouse or former spouse” for “surviving spouse” and “spouse, former spouse, or child” for “spouse or child” in provisions following subpar. (E).

Subsec. (f). Pub. L. 98-615, §2(4)(E), inserted provision that an annuity payable under this subsection to the surviving spouse of a Member may not exceed the difference between the annuity which would otherwise be payable to such surviving spouse under this subsection and the amount of the survivor annuity payable to any former spouse of such Member under subsec. (h) of this section in provisions following par. (2).

Subsec. (g). Pub. L. 98-615, §2(4)(F), substituted “55 years of age” for “60 years of age” in provisions preceding par. (1).

Subsecs. (h), (i). Pub. L. 98-615, §2(4)(G), added subsecs. (h) and (i).

1980—Subsec. (a)(2)(B). Pub. L. 96-179, §1(1), struck out “and” after “marriage”.

Subsec. (a)(3). Pub. L. 96-179, §1(2), added par. (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 96-179, §1(3), redesignated former par. (3) as (4), substituted “unmarried dependent child” for “unmarried child” wherever appearing in subpars. (A), (B), and (C), substituted “but only if the stepchild” for “or recognized natural child who” in subpar. (A)(ii), and inserted “a recognized natural child, and (iv)” after “(iii)”.

1978—Subsec. (a)(3). Pub. L. 95-454, §906(a)(2), substituted “Office of Personnel Management” for “Civil Service Commission”.

Subsec. (b)(1). Pub. L. 95-598, §338(c)(1), inserted reference to subsec. (o) of section 8339 of this title.

Pub. L. 95-454, §906(a)(3), substituted “Office” for “Commission”.

Pub. L. 95-317 inserted provisions relating to failure to file an election under section 8339(j) of this title in the case of remarriage.

Subsec. (d). Pub. L. 95-598, §338(c)(2), inserted reference to subsec. (o) of section 8339 of this title.

Subsec. (f)(2). Pub. L. 95-454, §906(a)(3), substituted “Office” for “Commission”.

Subsec. (g). Pub. L. 95-318 struck out “after July 18, 1966,” after “terminated”.

1975—Subsec. (c). Pub. L. 94-183 substituted “8339(k)(1)” for “8339(k)”.

1974—Subsec. (a)(1)(A), (2)(A). Pub. L. 93-260 substituted “1 year” for “2 years”.

1972—Subsec. (a)(3)(A). Pub. L. 92-243 added cl. (iii).

Subsec. (c). Pub. L. 92-297, §7(4)(i), substituted “section 8339(a)-(i)”, “section 8339(j)”, and “section 8339(k)” for “section 8339(a)-(h)”, “section 8339(i)”, and “section 8339(j)”, respectively.

Pub. L. 92-297, §7(4)(ii), substituted “section 8339(k)” for “section 8339(j)”.

Subsec. (d). Pub. L. 92-297, §7(4)(iii), substituted “section 8339(a)-(f) and (i)” for “section 8339(a)-(e) and (h)”.

1971—Subsec. (a)(3), (4). Pub. L. 91-658, §3(a), struck out par. (3) which defined “dependent widower”, and redesignated par. (4) as (3).

Subsec. (b). Pub. L. 91-658, §3(b), designated existing first sentence as par. (1), and inserted exception phrase, provision for survival by widow or widower whom employee or Member marries after retirement, entitlement of widow or widower to 55 percent annuity (limited to 50 percent where retirement before Oct. 11, 1962), and substituted “any spouse surviving him” for “his spouse”; added par. (2); and added par. (3), first sentence, respecting entitlement to survivor annuity by a spouse acquired after retirement upon election from available survivor benefits, and designated as second and third sentences former second and third sentences, providing for widows and widowers and substituting “annuitant” for “retired employee or member”.

Subsec. (d). Pub. L. 91-658, §3(c), substituted “his widow or widower” for “the widow or dependent widower of the employee or Member” in first sentence, struck out “or dependent” before “widower” in second sentence, and substituted in third sentence provision for termination of annuity where widow or widower

dies or remarries before becoming 60 years of age for prior termination of annuity before widow or dependent widower dies, the dependent widower becomes capable of self-support, the widow or dependent widower of an employee remarries before becoming 60 years of age, or the widow or dependent widower of a member remarries.

Subsec. (e)(2). Pub. L. 91-658, §3(d), substituted reference to “subsection (a)(3)” for “subsection (a)(4)”.

1969—Subsec. (d). Pub. L. 91-93, §206(a), provided for entitlement to a survivor annuity after an 18 month rather than a 5 year period of civilian service and prescribed as the annuity the smaller of two computations when computing the annuity under section 8399 (a) to (e) and (h) of this title.

Subsec. (e)(1). Pub. L. 91-93, §206(b), increased annuity of a surviving child, substituting “eighteen months” for “five years” of civilian service in par. (1), “60 percent”, “\$900”, and “\$2,700” for “40 percent”, “\$600”, and “\$1,800” in cls. (A), (B), and (C), respectively, and “75 percent”, “\$1,080”, and “\$3,240”, for “50 percent”, “\$720”, and “\$2,160” in cls. (i), (ii), and (iii), respectively.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2000 AMENDMENT

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

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 516(a) of Pub. L. 105-61 applicable to any annuity commencing before, on, or after Oct. 10, 1997, and effective with regard to any payment made after the first month following Oct. 10, 1997, see section 516(b) of Pub. L. 105-61, set out as a note under section 8334 of this title.

Section 518(c) of Pub. L. 105-61 provided that: “The amendments made by this section [amending this section and sections 8442 and 8445 of this title] shall apply with respect to remarriages occurring on or after January 1, 1995.”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(f) [title VI, §633(b)] of Pub. L. 104-208 provided that: “The amendments made by subsection (a) [amending this section and sections 8443 and 8908 of this title] shall apply with respect to any termination of marriage taking effect before, on, or after the date of enactment of this Act [Sept. 30, 1996], except that benefits shall be payable only with respect to amounts accruing for periods beginning on the first day of the month beginning after the later of such termination of marriage or such date of enactment.”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective with respect to service performed on or after Apr. 7, 1986, see section 15204(b) of Pub. L. 99-272, as amended, set out as a note under section 8339 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENTS

Pub. L. 98-615, §4, Nov. 8, 1984, 98 Stat. 3204, as amended by Pub. L. 99-251, title II, §201(a)-(c), Feb. 27, 1986, 100 Stat. 20, 22; Pub. L. 99-549, §9(a), Oct. 27, 1986, 100 Stat. 3065; Pub. L. 99-556, title V, §501(a), Oct. 27, 1986, 100 Stat. 3139; Pub. L. 100-238, title I, §127, Jan. 8, 1988, 101 Stat. 1758, provided that:

“(a)(1) Except as provided in paragraphs (3), (4), (5), and (6) and subsections (b) and (c), the amendments made by section 2 of this Act [amending this section and sections 8331, 8334, 8339, 8342, 8345, and 8348 of this title] shall take effect May 7, 1985, and shall apply—

“(A) to any individual who, on or after such date, is married to an employee or Member who, on or after such date, retires, dies, or applies for a refund of contributions under subchapter III of chapter 83 of title 5, United States Code, and

“(B) to any individual who, as of such date, is married to a retired employee or Member, unless (i) such employee or Member has waived, under the first sentence of section 8339(j)(1) of such title (or a similar prior provision of law), the right of that individual’s spouse to receive a survivor annuity, or (ii) in the case of a post-retirement marriage or remarriage, an election has not been made before such date by such employee or Member with respect to such individual under the applicable provisions of section 8339(j)(1) or 8339(k)(2) of such title, as the case may be (or a similar prior provision of law).

“(2) Except as provided in subsection (f), the amendments made by section 3 of this Act [amending sections 8901 to 8903, 8905, 8907, 8909, and 8913 of this title] shall take effect May 7, 1985, and shall apply to any individual who, on or after such date, is married to an employee or annuitant.

“(3) The amendments made by subparagraphs (B)(iii) and (C)(ii) of section 2(4) of this Act [amending section 8341 of this title] (relating to the termination of survivor benefits for a widow or widower who remarries before age 55) and the amendments made by subparagraph (F) of such section 2(4) [amending section 8341 of this title] (relating to the restoration of a survivor annuity upon the dissolution of such a remarriage) shall apply—

“(A) in the case of a remarriage occurring on or after the date of the enactment of this Act [Nov. 8, 1984]; and

“(B) with respect to periods beginning on or after such date.

“(4)(A) Except as provided in subparagraph (B), the amendment made by section 2(3)(A) of this Act [amending section 8339 of this title] (but only to the extent that it amends title 5, United States Code, by adding a new section 8339(j)(5)(C)) and the amendment made by section 2(3)(C) of this Act [amending section 8339 of this title] (which relate to the election of a survivor annuity for a spouse in the case of a post-retirement marriage or remarriage) shall apply—

“(i) to an employee or Member who retires before, on, or after May 7, 1985; and

“(ii) in the case of a marriage occurring on or after May 7, 1985.

“(B) The amendments referred to in subparagraph (A) shall not apply in the case of a marriage of an employee or Member retiring before May 7, 1985, if the marriage occurred after May 6, 1985, and before the date of the enactment of the Federal Employees Benefits Improvement Act of 1986 [Feb. 27, 1986].

“(C) Any election by an employee or Member described in subparagraph (B) to provide a survivor annuity for that individual’s spouse by a marriage described in such subparagraph shall be effective if made in accordance with the applicable provisions of section 8339(j)(1) or 8339(k)(2) of title 5, United States Code, as the case may be, as in effect on May 6, 1985.

“(5)(A) Paragraphs (3), (4), and (5)(B) of section 8339(j) of title 5, United States Code (as added by section 2(3)(A) of this Act), shall apply in the case of a former spouse of an employee or Member whose marriage to such employee or Member terminated before May 7, 1985, if such employee or Member retires on or after such date. The paragraphs referred to in the preceding sentence shall so apply only insofar as they relate to an election to provide a survivor annuity for a former spouse.

“(B)(i) The requirement described in clause (ii) shall not apply to an election made by an employee or Member under section 8339(j)(3) of title 5, United States Code (as amended by section 2(3)(A) of this Act), in order to provide a survivor annuity under section 8341(h) of such title (as amended by section 2(4)(G) of this Act) in the case of a former spouse referred to in

subparagraph (A) if the election meets the requirements of clause (iii).

“(ii) The requirement referred to in clause (i) is the requirement prescribed in section 8339(j)(3) of title 5, United States Code, for an employee or Member to make an election in the case of a former spouse under such section 8339(j)(3) at the time of retirement or, if later, within 2 years after the date on which the marriage of the former spouse to the employee or Member is dissolved.

“(iii) Clause (i) applies to an election which is made by an employee or Member who retires on or after May 7, 1985, and before the date of the enactment of the Federal Employees Benefits Improvement Act of 1986 [Feb. 27, 1986], and is received by the Office of Personnel Management within the 2-year period beginning on the date of the enactment of such Act.

“(C) A survivor annuity shall be paid a former spouse as provided in section 8341(h) of title 5, United States Code (as amended by section 2(4)(G) of this Act), pursuant to an election made in the case of such former spouse under this paragraph.

“(D) The amendments made by paragraphs (6) and (7) of section 2 of this Act [amending sections 8345 and 8348 of this title] shall apply in the case of survivor annuities and elections authorized by this paragraph.

“(6) The amendment made by section 2(4)(A) of this Act [amending section 8341 of this title] (relating to the definition of a widow or widower) and the amendment made by section 2(4)(G) of this Act (but only to the extent that it amends title 5, United States Code, by adding a new section 8341(i)) shall apply with respect to any marriage occurring on or after the date of the enactment of this Act [Nov. 8, 1984].

“(b)(1) Notwithstanding subsection (a)(1) of this section, a former spouse of an employee or Member who retired before May 7, 1985, or who died after becoming eligible to retire and before such date, is entitled to a survivor annuity under section 8341(b) of title 5, United States Code, as amended by this Act, if—

“(A) the retired employee or Member elects, in writing, within eighteen months after the date of enactment of this Act, according to procedures prescribed by the Office of Personnel Management, to have the annuity of such employee or Member reduced under section 8339(j) of title 5, United States Code, as amended by this Act, and, except as provided in paragraph (3) of this subsection, to deposit in the Civil Service Retirement and Disability Fund an amount determined by the Office, as nearly as may be administratively feasible, to reflect the amount by which such employee or Member's annuity would have been reduced had the reduction been in effect since such employee or Member's annuity commenced, plus interest computed at the annual rate of six percent for each year during which the annuity would have been reduced if the election had been in effect on and after the date the annuity commenced; or

“(B) where the employee or Member dies or died on or before the one hundred and eightieth day after the date of enactment of this Act or does not make the election described in subparagraph (A)—

“(i) the former spouse's marriage to the employee or Member was dissolved after September 14, 1978, and before May 8, 1987;

“(ii) the former spouse was married to the employee or Member for at least ten years during periods of creditable service under section 8332 of title 5, United States Code;

“(iii) the former spouse has not remarried before age fifty-five after September 14, 1978;

“(iv) the former spouse files an application for the survivor annuity with the Office on or before May 7, 1989; and

“(v) the former spouse is at least fifty years of age on May 7, 1987.

A survivor annuity under subparagraph (B) shall commence on the day after the employee or Member dies or the first day of the second month after the former

spouse's application is received by the Office, whichever occurs later.

“(2) Except as provided in paragraph (3), if a retired employee or Member who makes an election under subparagraph (A) of paragraph (1) does not make the deposit required by such subparagraph, the Office shall collect the amount of the deposit by offset against the employee or Member's annuity, up to a maximum of 25 per centum of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset.

“(3) An election made by an individual under subparagraph (A) of paragraph (1) of this subsection to provide a survivor annuity for any person prospectively voids any election previously made by such individual with respect to such person under section 8339(k)(1) of title 5, United States Code, as amended by this Act, or any similar prior provision of law. Notwithstanding the provisions of such subparagraph (A), an individual who made such an election under such section 8339(k)(1) (or prior provision) shall not be required to make the deposit described in such subparagraph.

“(4)(A) A former spouse of an employee or Member referred to in the matter before subparagraph (A) in paragraph (1) of this section shall be entitled to a survivor annuity under subparagraph (B) of such paragraph if—

“(i) the former spouse satisfies the requirements of clauses (ii) through (v) of such subparagraph (B); and

“(ii) there is no surviving spouse of the employee or Member and no other former spouse of such employee or Member who is entitled to receive a survivor annuity under subchapter III of chapter 83 of title 5, United States Code, based on the service of such employee or Member which is creditable under such subchapter and there is no other person who has been designated to receive a survivor annuity under such subchapter by reason of an insurable interest in such employee or Member.

“(B) For the purposes of this paragraph, the term ‘surviving spouse’ means a widow or a widower as defined in paragraphs (1) and (2), respectively, of section 8341(a) of title 5, United States Code.

“(5) A survivor annuity provided under this subsection shall be 55 per centum of the annuity of the retired employee or Member (or of that portion of the annuity which such employee or Member may have designated for this purpose under paragraph (1)(A) of this subsection), as determined under section 8339(a)-(i) and (n) of title 5, United States Code, increased by—

“(A) the total percent increase the retired employee or Member was receiving under section 8340 of such title at death, or

“(B) in the case of a retired employee or Member whose date of death precedes the one hundred and eightieth day after the date of enactment of this Act [Nov. 8, 1984], the total percent increase the retired employee or Member would have received under such section 8340 had such individual died on the one hundred and eightieth day after such date of enactment, and shall not be subject to reduction under section 8341(h)(2) of such title, as amended by this Act.

“(c) Notwithstanding subsection (a)(1) of this section, an employee or Member who retired before the one hundred and eightieth day after the date of enactment of this Act [Nov. 8, 1984] and who is married to a spouse acquired after retirement for whom such employee or Member was unable to provide a survivor annuity because—

“(1) the employee or Member was married at the time of retirement and elected not to provide a survivor annuity for the employee or Member's spouse at the time of retirement, or

“(2) the employee or Member failed to notify the Office of the employee or Member's post-retirement marriage within one year after the marriage, may elect in writing, within one year after the date of enactment of this Act, in accordance with procedures prescribed by the Office, to provide for a survivor annuity for such spouse under section 8341(b) of title 5, United States Code, as amended by this Act, to have

the retired employee or Member's annuity reduced under section 8339(j) of such title, as so amended, and to deposit in the Civil Service Retirement and Disability Fund an amount determined by the Office, as nearly as may be administratively feasible, to reflect the amount by which such employee or Member's annuity would have been reduced had the election been continuously in effect since the annuity commenced, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which the annuity would have been reduced if the election had been in effect on and after the date the annuity commenced shall be 6 percent. If the retired employee or Member does not make such deposit, the Office shall collect such amount by offset against such employee or Member's annuity, up to a maximum of 25 percent of the net annuity otherwise payable to such employee or Member, and such employee or Member is deemed to consent to such offset. The Office shall provide for general public notice of the right to make an election under this subsection. In cases to which paragraph (2) of this subsection applies, the retired employee or Member shall provide the Office with such documentation as the Office shall decide is appropriate, that such employee or Member attempted to elect a reduced annuity with survivor benefit for such employee or Member's current spouse and that such employee or Member's election was rejected by the Office because it was untimely filed.

“(d) A deposit required by subsection (b)(1)(A) or (c) of this section may be made by the surviving former spouse or spouse, as applicable, of the retired employee or Member.

“(e) The Office shall determine at the end of each fiscal year—

“(1) the cost of survivor annuities provided under subsections (b) and (c) of this section, less an amount determined appropriate by the Office to reflect the value of any deposits made under subsection (b)(1)(A), (c), or (d), and

“(2) the cost of administering subsections (b) and (c).

The Office shall notify the Secretary of the Treasury of the amounts so determined. The Secretary of the Treasury, before closing the account for the fiscal year in question, shall credit to the Civil Service Retirement and Disability Fund, out of any money in the Treasury not otherwise appropriated, such amounts, which shall be available in the same manner as provided under subparagraphs (A) and (B) of section 8348(a)(1) of title 5, United States Code, as amended by this Act.

“(f) Any individual—

“(1) who is entitled to a survivor annuity under subsection (b) of this section or pursuant to an election authorized by reason of the application of subsection (a)(5) of this section,

“(2) as to whom a court order or decree referred to in section 8345(j) of title 5, United States Code (or similar provision of law under a retirement system for Government employees other than the Civil Service Retirement System) has been issued before May 7, 1985, or

“(3) who is entitled (other than as described in paragraph (2)) to an annuity or any portion of an annuity as a former spouse under a retirement system for Government employees as of May 7, 1985, shall be considered to have satisfied section 8901(10)(C) of title 5, United States Code, as amended by this Act. Notwithstanding subsection (a)(2) of this section, any such individual who otherwise meets the definition of a former spouse under section 8901 of title 5, United States Code, as so amended, may, within 12 months after the date of the enactment of the Federal Employees Benefits Improvement Act of 1986 [Feb. 27, 1986], enroll in an approved health benefits plan described by section 8903 of such title, under the conditions set forth in section 8905(c) of such title, as so amended (other than the conditions prescribed in subparagraphs (A) and (B) of paragraph (1) of such section 8905(c)).

“(g)(1) For purposes of subsections (a)(1), (b), (c), (d), and (e), ‘employee’, ‘Member’, and ‘former spouse’ each has the meaning given that term under section 8331 of title 5, United States Code, as amended by this Act.

“(2) For purposes of subsection (a)(2), ‘employee’ and ‘annuitant’ each has the meaning given that term under section 8901 of title 5, United States Code.

“(h) Section 827 of the Foreign Service Act of 1980 [22 U.S.C. 4067] and section 292 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees [former 50 U.S.C. 403 note] shall not apply with respect to either the amendments made by section 2 [amending sections 8331, 8334, 8339, 8341, 8342, 8345, and 8348 of this title] or the preceding provisions of this section.”

[Section 501(b) of Pub. L. 99-556 provided that: “The amendments made by this section [amending note above] shall be effective as of May 7, 1985.”]

[Section 9(b) of Pub. L. 99-549 provided that: “The amendments made by this section [amending note above] shall be effective as of May 7, 1985.”]

[The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in Pub. L. 98-615, set out above, is Pub. L. 88-643, Oct. 13, 1964, 78 Stat. 1043, which was revised generally by Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196, is known as the Central Intelligence Agency Retirement Act and is classified generally to chapter 38 (§2001 et seq.) of Title 50, War and National Defense.]

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Section 5(a) of Pub. L. 96-179 provided that: “The amendments made by the first section [amending this section] and section 2 of this Act [amending section 8901 of this title] shall take effect on the date of the enactment of this Act [Jan. 2, 1980], except that no benefits under chapter 89 of title 5, United States Code, made available by reason of such amendments shall be payable for any period before October 1, 1979.”

#### EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

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

Section 3 of Pub. L. 95-318 provided that: “The foregoing provisions of this Act [amending this section and enacting provisions set out as notes under this section] shall take effect on—

“(1) the first day of the month following the date of the enactment of this Act [July 10, 1978], or

“(2) October 1, 1978, whichever date is later.”

#### EFFECTIVE DATE OF 1978 AMENDMENT; SURVIVOR ANNUITIES SUBJECT TO REDUCTION, ETC.

For effective date of amendment by Pub. L. 95-317 as first day of first month which begins on or after date of enactment of Pub. L. 95-317, which was approved July 10, 1978, or Oct. 1, 1978, whichever is later, and provisions respecting eligibility of an individual to a survivor annuity, or the reduction therefor, see section 4 of Pub. L. 95-317, set out as a note under section 8339 of this title.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Section 1(b) of Pub. L. 93-260 provided that: “The amendments made by subsection (a) of this section [amending this section] shall not apply in the cases of employees, Members, or annuitants who died before the date of enactment of this Act [Apr. 9, 1974]. The rights of such individuals and their survivors shall continue in the same manner and to the same extent as if such amendments had not been enacted.”

## EFFECTIVE DATE OF 1972 AMENDMENTS

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

Section 2 of Pub. L. 92-243 provided that: "The amendment made by the first section of this Act [amending this section] is effective upon enactment [Mar. 9, 1972]. Upon application to the Civil Service Commission, it also applies to a child of an employee or Member who died or retired before such date of enactment [Mar. 9, 1972] but no annuity shall be paid by reason of the amendment for any period prior to the date of enactment."

## EFFECTIVE DATE OF 1969 AMENDMENTS

Section 2 of Pub. L. 91-189 provided that: "The provisions of section 8341(e) of title 5, United States Code, as amended by section 206(b) of Public Law 91-93 (83 Stat. 140), shall be effective as of October 20, 1969."

Amendment by Pub. L. 91-93 inapplicable in cases of persons retired or otherwise separated prior to Oct. 20, 1969, their rights and of their survivors continued as if such amendment had not been enacted, see section 207(a) of Pub. L. 91-93 set out as a note under section 8331 of this title.

## EFFECTIVE DATE OF 1969 AMENDMENT; RECOMPUTATION AND REDUCTION OF SURVIVOR ANNUITIES

Section 207(c) of Pub. L. 91-93 provided that:

"(1) The amendment made by section 206(b) of this Act [amending this section] shall become effective on the first day of the first month which begins on or after the date of enactment of this Act [Oct. 20, 1969].

"(2) The annuity of each surviving child who, immediately prior to the effective date of such amendment [amending this section] is receiving an annuity under section 8341(e) of title 5, United States Code, or under a comparable provision of any prior law, or who hereafter becomes entitled to receive annuity under the Act of May 29, 1930, as amended from and after February 28, 1948, shall be recomputed effective on such date, or computed from commencing date if later, in accordance with such amendment. No increase allowed and in force prior to such date shall be included in the computation or recomputation of any such annuity. This paragraph shall not operate to reduce any annuity."

## ADDITIONAL ELECTIONS UNDER CIVIL SERVICE RETIREMENT SPOUSE EQUITY ACT OF 1984

Section 201(d) of Pub. L. 99-251 provided that:

"(1) Notwithstanding the time limitation prescribed in subparagraph (A) of section 4(b)(1) of the Civil Service Retirement Spouse Equity Act of 1984 [Pub. L. 98-615, §4(b)(1)(A), set out as a note above], an election may be made under such subparagraph before the expiration of the 12-month period beginning on the date on which the regulations under paragraph (3) of this subsection first take effect.

"(2) Any retired employee or Member who has made an election under section 4(b)(1)(A) of the Civil Service Retirement Spouse Equity Act of 1984 [set out as a note above] (as in effect at the time of such election) before the regulations under paragraph (3) of this subsection become effective may modify such election by designating, in writing, that only a portion of such employee or Member's annuity is to be used as the base for the survivor annuity for the former spouse for whom the election was made. A modification under this subparagraph shall be subject to the deadline under paragraph (1) of this subsection.

"(3) The Office of Personnel Management shall prescribe regulations to carry out this subsection, including regulations under which an appropriate refund shall

be made in the case of a modification under paragraph (2) of this subsection."

## RESTORATION OF SURVIVOR ANNUITIES FOR CERTAIN WIDOWS AND WIDOWERS REMARRYING BEFORE JULY 18, 1966, AND WHERE MEMBER DIED BEFORE JANUARY 8, 1971

Section 1 of Pub. L. 95-318, eff. Oct. 1, 1978, provided that:

"(a) Upon application to the Civil Service Commission, the annuity of—

"(1) a surviving spouse of an employee which was terminated under the provisions of section 8341 (b) or (d) of title 5, United States Code, or of any prior applicable law, because of the remarriage of such spouse before July 18, 1966, and

"(2) a surviving spouse of a Member who died before January 8, 1971, which was terminated under any such provision, because of the remarriage of such spouse, shall be restored in accordance with the provisions of subsection (b) of this section.

"(b)(1) In the case of a remarriage occurring after the surviving spouse became sixty years of age, the annuity shall be restored to such spouse under subsection (a) of this section only if any lump sum paid on termination of the annuity is returned to the Civil Service Retirement and Disability Fund. If such amount is paid, the annuity shall be so restored commencing on the effective date of this section at the rate which would have been in effect if the annuity had not been terminated.

"(2) In the case of a remarriage occurring before the surviving spouse became sixty years of age, the annuity shall be restored to such spouse under subsection (a) of this section only if—

"(A) such spouse elects to receive this annuity instead of a survivor benefit to which the spouse may be entitled under subchapter III of chapter 83 of such title 5 or under another retirement system for Government employees by reason of the marriage; and

"(B) any lump sum paid on termination of the annuity is returned to such fund.

If the requirements of the preceding sentence are satisfied, such annuity shall be so restored commencing on the effective date of this section or on the first day of the month following the date the remarriage is dissolved by death, annulment, or divorce, whichever date is later, at the rate which was in effect when the annuity was terminated."

## INCREASE IN ANNUITY PAYABLE TO SURVIVING SPOUSES OF MEMBERS, EMPLOYEES, OF ANNUITIES BASED ON SEPARATION OCCURRING PRIOR TO OCT. 20, 1969

Section 2(b) of Pub. L. 93-273, Apr. 26, 1974, 88 Stat. 93, provided that: "In lieu of any increase based on an increase under subsection (a) of this section, an annuity payable from the Civil Service Retirement and Disability Fund to the surviving spouse of an employee, Member, or annuitant, which is based on a separation occurring prior to October 20, 1969 shall be increased by \$132."

Section 3 of Pub. L. 93-273, Apr. 26, 1974, 88 Stat. 93 provided in part that annuity increases under this pension shall apply to annuities which commence before, on, or after Apr. 26, 1974, but that no increase in annuity shall be paid for any period prior to the first day of the first month which begins on or after the ninetieth day after Apr. 26, 1974, or the date on which the annuity commences, whichever is later. See section 3 of Pub. L. 93-273, set out as a note under section 8345 of this title.

## REMARRIAGE PROVISIONS

Section 205 of Pub. L. 91-93 provided that: "The provisions of subsection (b)(1), (d)(3), and (g) of section 8341 of title 5, United States Code, also shall apply in the case of any widow or widower—

"(1) of an employee who died, retired, or was otherwise finally separated before July 18, 1966;

"(2) who shall have remarried on or after such date; and



“(3) who, immediately before such remarriage, was receiving annuity from the Civil Service Retirement and Disability Fund; except that no annuity shall be paid by reason of this section for any period prior to the enactment of this section. No annuity shall be terminated solely by reason of the enactment of this section. Notwithstanding the prohibition contained in the first sentence of this section on the payment of annuity for any period prior to the enactment of this section, in any case in which the Civil Service Commission determines that—

“(1) the remarriage of any widow or widower described in such sentence was entered into by the widow or widower in good faith and in reliance on erroneous information provided by Government authority prior to that remarriage that the then existing survivor annuity of the widow or widower would not be terminated because of the remarriage; and

“(2) such annuity was terminated by law because of that remarriage; then payment of annuity may be made by reason of this section in such case, beginning as of the effective date of the termination because of the remarriage.”

**§ 8342. Lump-sum benefits; designation of beneficiary; order of precedence**

(a) Subject to subsection (j) of this section, an employee or Member who—

(1)(A) is separated from the service for at least thirty-one consecutive days; or

(B) is transferred to a position in which he is not subject to this subchapter, or chapter 84 of this title, and remains in such a position for at least thirty-one consecutive days;

(2) files an application with the Office of Personnel Management for payment of the lump-sum credit;

(3) is not reemployed in a position in which he is subject to this subchapter, or chapter 84 of this title, at the time he files the application; and

(4) will not become eligible to receive an annuity within thirty-one days after filing the application,

is entitled to be paid the lump-sum credit. Except as provided in section 8343a or 8334(d)(2) of this title, the receipt of the payment of the lump-sum credit by the employee or Member voids all annuity rights under this subchapter based on the service on which the lump-sum credit is based, until the employee or Member is reemployed in the service subject to this subchapter. In applying this subsection to an employee or Member who becomes subject to chapter 84 (other than by an election under title III of the Federal Employees' Retirement System Act of 1986) and who, while subject to such chapter, files an application with the Office for a payment under this subsection—

(i) entitlement to payment of the lump-sum credit shall be determined without regard to paragraph (1) or (3) if, or to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees' Retirement System Act of 1986; and

(ii) if, or to the extent that, the lump-sum credit so relates to service of a type referred to in clause (i), it shall (notwithstanding section 8331(8)) consist of—

(I) the amount by which any unrefunded amount described in section 8331(8)(A) or (B) relating to such service, exceeds 1.3 percent of basic pay for such service; and

(II) interest on the amount payable under subclause (I), computed in a manner consistent with applicable provisions of section 8331(8).

(b) Under regulations prescribed by the Office, a present or former employee or Member may designate a beneficiary or beneficiaries for the purpose of this subchapter.

(c) Lump-sum benefits authorized by subsections (d)–(f) of this section shall be paid to the person or persons surviving the employee or Member and alive at the date title to the payment arises in the following order of precedence, and the payment bars recovery by any other person:

First, to the beneficiary or beneficiaries designated by the employee or Member in a signed and witnessed writing received in the Office before his death. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee or Member.

Third, if none of the above, to the child or children of the employee or Member and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or Member or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee or Member.

Sixth, if none of the above, to such other next of kin of the employee or Member as the Office determines to be entitled under the laws of the domicile of the employee or Member at the date of his death.

For the purpose of this subsection, “child” includes a natural child and an adopted child, but does not include a stepchild.

(d) If an employee or Member dies—

(1) without a survivor; or

(2) with a survivor or survivors and the right of all survivors terminates before a claim for survivor annuity is filed;

or if a former employee or Member not retired dies, the lump-sum credit shall be paid.

(e) If all annuity rights under this subchapter based on the service of a deceased employee or Member terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

(f) If an annuitant dies, annuity accrued and unpaid shall be paid.

(g) Annuity accrued and unpaid on the termination, except by death, of the annuity of an annuitant or survivor annuitant shall be paid to that individual. Annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other person:

First, to the duly appointed executor or administrator of the estate of the survivor annuitant.

Second, if there is no executor or administrator, payment may be made, after 30 days from the date of death of the survivor annu-

itant, to such next of kin of the survivor annuitant as the Office determines to be entitled under the laws of the domicile of the survivor annuitant at the date of his death.

(h) Amounts deducted and withheld from the basic pay of an employee or Member from the first day of the first month which begins after he has performed sufficient service (excluding service which the employee or Member elects to eliminate for the purpose of annuity computation under section 8339 of this title) to entitle him to the maximum annuity provided by section 8339 of this title, together with interest on the amounts at the rate of 3 percent a year compounded annually from the date of the deductions to the date of retirement or death, shall be applied toward any deposit due under section 8334 of this title, and any balance not so required is deemed a voluntary contribution for the purpose of section 8343 of this title.

(i) An employee who—

(1) is separated from the service before July 12, 1960; and

(2) continues in the service after July 12, 1960, without break in service of 1 workday or more;

is entitled to the benefits of subsection (h) of this section.

(j)(1)(A) Payment of the lump-sum credit under subsection (a) may be made only if the spouse, if any, and any former spouse of the employee or Member are notified of the employee or Member's application.

(B) The Office shall prescribe regulations under which the lump-sum credit shall not be paid without the consent of a spouse or former spouse of the employee or Member where the Office has received such additional information and documentation as the Office may require that—

(i) a court order bars payment of the lump-sum credit in order to preserve the court's ability to award an annuity under section 8341(h) or section 8345(j); or

(ii) payment of the lump-sum credit would extinguish the entitlement of the spouse or former spouse, under a court order on file with the Office, to a survivor annuity under section 8341(h) or to any portion of an annuity under section 8345(j).

(2)(A) Notification of a spouse or former spouse under this subsection shall be made in accordance with such requirements as the Office shall by regulation prescribe.

(B) Under the regulations, the Office may provide that paragraph (1)(A) of this subsection may be waived with respect to a spouse or former spouse if the employee or Member establishes to the satisfaction of the Office that the whereabouts of such spouse or former spouse cannot be determined.

(3) The Office shall prescribe regulations under which this subsection shall be applied in any case in which the Office receives two or more such orders or decrees.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 579; Pub. L. 90-83, §1(81), Sept. 11, 1967, 81 Stat. 217; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 97-253, title III, §303(c), Sept.

8, 1982, 96 Stat. 794; Pub. L. 97-346, §3(f), Oct. 15, 1982, 96 Stat. 1648; Pub. L. 98-615, §2(5), Nov. 8, 1984, 98 Stat. 3201; Pub. L. 99-251, title II, §208, Feb. 27, 1986, 100 Stat. 25; Pub. L. 99-335, title II, §204(b)(2), 207(h), June 6, 1986, 100 Stat. 592, 596; Pub. L. 100-238, title I, §105(b), Jan. 8, 1988, 101 Stat. 1746; Pub. L. 101-508, title VII, §7001(b)(2)(D), Nov. 5, 1990, 104 Stat. 1388-329; Pub. L. 106-361, §3(a), Oct. 27, 2000, 114 Stat. 1402.)

#### HISTORICAL AND REVISION NOTES 1966 ACT

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i>  |
|-------------------|------------------|--|
| .....             | 5 U.S.C. 2261.   | July 31, 1956, ch. 804, §401 "Sec. 11" 70 Stat. 755.<br>July 12, 1960, Pub. L. 86-622, §1(a), 74 Stat. 409.<br>Oct. 4, 1961, Pub. L. 87-350, §3, 75 Stat. 771. |

In subsection (a), the words "before October 1, 1956" are substituted for "prior to the effective date of the Civil Service Retirement Act Amendments of 1956" on authority of §406 of the Act of July 31, 1956, ch. 804, 70 Stat. 761.

In subsection (g), the words "the expiration of" are omitted as surplusage.

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

#### 1967 ACT

| <i>Section of title 5</i> | <i>Source (U.S. Code)</i>        | <i>Source (Statutes at Large)</i>  |
|---------------------------|----------------------------------|--|
| 8342(a) .....             | [No source].                     | [No source].   |
| 8342(c) .....             | 5 App.: 2261(c).                 | Mar. 23, 1966, Pub. L. 89-373, §2, 80 Stat. 78.                                |
|                           | 5 App.: 2251(j) (last sentence). | Apr. 25, 1966, Pub. L. 89-407, §1 (less words before 1st comma), 80 Stat. 131. |

In subsection (a), the amendment is made for consistency within the subchapter and to reflect that it is the individual, rather than the position, that is subject to the subchapter.

In the last sentence of subsection (c), the words "this subsection" are substituted for "section 11" to reflect the codification of title 5, United States Code.

#### Editorial Notes

##### REFERENCES IN TEXT

The Federal Employees' Retirement System Act of 1986, referred to in subsec. (a), is Pub. L. 99-335, June 6, 1986, 100 Stat. 514. Title III of the Federal Employees' Retirement System Act of 1986 amended sections 3121 and 6103 of Title 26, Internal Revenue Code, section 1005 of Title 39, Postal Service, and section 410 of Title 42, The Public Health and Welfare, enacted provisions set out as notes under sections 8331, 8401, 8432, and 8472 of this title and section 6103 of Title 26, and amended provisions set out as a note under section 8331 of this title. Section 302 of that Act is set out as a note under section 8331 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8401 of this title and Tables.

##### AMENDMENTS

2000—Subsec. (j)(1). Pub. L. 106-361 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Payment of the lump-sum credit under subsection (a) of this section—

"(A) may be made only if any current spouse and any former spouse of the employee or Member are notified of the employee or Member's application; and

“(B) shall be subject to the terms of a court decree of divorce, annulment, or legal separation or any court order or court approved property settlement agreement incident to such decree if—

“(i) the decree, order, or agreement expressly relates to any portion of the lump-sum credit involved; and

“(ii) payment of the lump-sum credit would extinguish entitlement of the employee’s or Member’s spouse or former spouse to a survivor annuity under section 8341(h) of this title or to any portion of an annuity under section 8345(j) of this title.”

1990—Subsec. (a). Pub. L. 101-508 inserted “or 8334(d)(2)” after “8343a” in second sentence.

1988—Subsec. (a). Pub. L. 100-238 amended last sentence of subsec. (a) generally. Prior to amendment, last sentence read as follows: “In applying this subsection with respect to an employee or Member who becomes subject to chapter 84 of this title, entitlement to payment of the lump-sum credit shall be determined without regard to paragraph (1) or (3) if, and to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees’ Retirement System Act of 1986.”

1986—Subsec. (a). Pub. L. 99-335 inserted “, or chapter 84 of this title,” in pars. (1)(B) and (3), substituted “Except as provided in section 8343a of this title, the” for “The” in second sentence, and inserted provisions regarding entitlement by an employee or Member who becomes subject to chapter 84 of this title to payment of a lump-sum credit.

Subsec. (j)(1)(B). Pub. L. 99-251 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “in any case in which there is a former spouse, shall be subject to the terms of a court order or decree issued with respect to such former spouse if—

“(i) the order or decree expressly relates to any portion of the lump-sum credit involved, and

“(ii) payment of the lump-sum credit would extinguish entitlement of the former spouse to a survivor annuity under section 8341(h) of this title or to any portion of an annuity under section 8345(j) of this title.”

1984—Subsec. (a). Pub. L. 98-615, §2(5)(A), substituted “Subject to subsection (j) of this section, an” for “An” in provisions preceding par. (1).

Subsec. (j). Pub. L. 98-615, §2(5)(B), added subsec. (j).

1982—Subsec. (a). Pub. L. 97-346 substituted “such a position” for “such position” in par. (1)(B).

Pub. L. 97-253, §303(c), substituted provisions that an employee or Member who is separated from the service for at least 31 consecutive days or is transferred to a position in which he is not subject to this subchapter for 31 days, and who files an application with the Office of Personnel Management for payment of a lump-sum credit, is not reemployed in a position subject to this subchapter at the time of filing, and will not be eligible for an annuity within 31 days of filing, is entitled to be paid the lump-sum credit and upon receipt of such payment, all annuity rights based on the service upon which the credit is based are voided until reemployment under this subchapter occurs for provisions that such employee or Member who was separated from the service, or was transferred to a position in which he did not continue subject to this subchapter, was entitled to be paid the lump-sum credit if his separation or transfer occurred and application for payment was filed with the Office of Personnel Management at least 31 days before the earliest commencing date of any annuity for which he was eligible, that the receipt of payment of the lump-sum credit by the individual voided all annuity rights under this subchapter until he was reemployed in the service subject to this subchapter, and that this subsection also applied to an employee or Member separated before October 1, 1956, after completing at least 20 years of civilian service.

1978—Subsecs. (a) to (c), (g). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission”.

## Statutory Notes and Related Subsidiaries

### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective with respect to any annuity having a commencement date later than Dec. 1, 1990, see section 7001(b)(3) of Pub. L. 101-508, set out as a note under section 8334 of this title.

### EFFECTIVE DATE OF 1986 AMENDMENT

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

### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions and specific applicability provisions, see section 4(a)(1) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

### EFFECTIVE DATE OF 1982 AMENDMENT

Section 303(d)(2) of Pub. L. 97-253 provided that: “The amendment made by subsection (c) [amending this section] shall take effect October 1, 1982.”

### EFFECTIVE DATE OF 1978 AMENDMENT

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

### REESTABLISHMENT OF RIGHT TO RECEIVE ANNUITY BY JUDGES WHO RECEIVED LUMP-SUM CREDIT

Pub. L. 96-504, §2, Dec. 5, 1980, 94 Stat. 2741, provided that: “A present or former justice or judge of the United States, as defined by section 451 of title 28, United States Code, who, prior to the effective date of this section [Dec. 5, 1980], voided his right to receive an annuity under subchapter III of chapter 83 of title 5, United States Code, by applying for and receiving a refund of his lump-sum credit while serving as such a justice or judge may, upon application filed with the Office of Personnel Management within one year following the effective date of this section, redeposit such refund with interest computed under section 8334(e) of such title 5 and thereby reestablish his right to receive an annuity under such subchapter effective on the date he otherwise was eligible to receive an annuity. The surviving spouse of any such justice or judge who dies before the effective date of this section may apply to make such redeposit within one year following the effective date of this section and receive both (1) the amount of the annuity which the justice or judge would have been entitled to receive before his death had application been made by him for the annuity and (2) any survivor annuity the justice or judge could have provided under the provisions of law in effect at the time of separation from the service on which title to the annuity is based.”

## § 8343. Additional annuities; voluntary contributions

(a) Under regulations prescribed by the Office of Personnel Management, an employee or Member may voluntarily contribute additional sums in multiples of \$25, but the total may not exceed 10 percent of his basic pay for creditable service after July 31, 1920. The voluntary contribution account in each case is the sum of unrefunded contributions, plus interest at 3 percent a year through December 31, 1984, and thereafter at the rate computed under section 8334(e) of this title, compounded annually to—

(1) the date of payment under subsection (d) of this section, separation, or transfer to a position in which he does not continue subject to this subchapter, whichever is earliest; or

(2) the commencing date fixed for a deferred annuity or date of death, whichever is earlier, in the case of an individual who is separated with title to deferred annuity and does not claim the voluntary contribution account.

(b) The voluntary contribution account is used to purchase at retirement an annuity in addition to the annuity otherwise provided. For each \$100 in the voluntary contribution account, the additional annuity consists of \$7, increased by 20 cents for each full year, if any, the employee or Member is over 55 years of age at the date of retirement.

(c) A retiring employee or Member may elect a reduced additional annuity instead of the additional annuity described by subsection (b) of this section and designate in writing an individual to receive after his death an annuity of 50 percent of his reduced additional annuity. The additional annuity of the employee or Member making the election is reduced by 10 percent, and by 5 percent for each full 5 years the individual designated is younger than the retiring employee or Member. However, the total reduction may not exceed 40 percent.

(d) A present or former employee or Member is entitled to be paid the voluntary contribution account if he files application for payment with the Office before receiving an additional annuity. An individual who has been paid the voluntary contribution account may not again deposit additional sums under this section until, after a separation from the service of more than 3 calendar days, he again becomes subject to this subchapter.

(e) If a present or former employee or Member not retired dies, the voluntary contribution account is paid under section 8342(c) of this title. If all additional annuities or any right thereto based on the voluntary contribution account of a deceased employee or Member terminate before the total additional annuity paid equals the account, the difference is paid under section 8342(c) of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 580; Pub. L. 90-83, §1(82), Sept. 11, 1967, 81 Stat. 217; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 97-253, title III, §303(a)(2), Sept. 8, 1982, 96 Stat. 794.)

#### HISTORICAL AND REVISION NOTES 1966 ACT

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and<br/>Statutes at Large</i>   |
|-------------------|------------------|---|
| .....             | 5 U.S.C. 2262.   | July 31, 1956, ch. 804, § 401 "Sec. 12", 70 Stat. 756.<br>Aug. 14, 1958, Pub. L. 85-661, § 1, 72 Stat. 614. |

In subsection (a), the words "after July 31, 1920" are substituted for "on or after August 1, 1920". In paragraph (1), the words "payment under subsection (d) of this section" are based on "but such account shall not in any case include interest beyond date of payment" in former section 2262(d); the latter, accordingly, are omitted from subsection (d).

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

#### 1967 ACT

This section amends 5 U.S.C. 8343(a)(1) for consistency within the subchapter and to reflect that it is the

individual, rather than the position, that is subject to the subchapter.

### Editorial Notes

#### AMENDMENTS

1982—Subsec. (a). Pub. L. 97-253 inserted "through December 31, 1984, and thereafter at the rate computed under section 8334(e) of this title,".

1978—Subsecs. (a), (d). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission" and "Office" for "Commission".

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-253 effective with respect to deposits for service performed, on or after Oct. 1, 1982, and with respect to refunds for which application is received by Office of Personnel Management on or after Oct. 1, 1982, see section 303(d)(1) of Pub. L. 97-253, as amended by Pub. L. 97-346, §3(j)(1), Oct. 15, 1982, 96 Stat. 1649, set out as a note under section 8334 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

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

### § 8343a. Alternative forms of annuities

(a) The Office of Personnel Management shall prescribe regulations under which any employee or Member who has a life-threatening affliction or other critical medical condition may, at the time of retiring under this subchapter (other than under section 8337 of this title), elect annuity benefits under this section instead of any other benefits under this subchapter (including any benefits under section 8341 of this title) based on the service of the employee or Member.

(b) Subject to subsection (c), the Office shall by regulation provide for such alternative forms of annuities as the Office considers appropriate, except that among the alternatives offered shall be—

(1) an alternative which provides for—

(A) payment of the lump-sum credit to the employee or Member; and

(B) payment of an annuity to the employee or Member for life; and

(2) in the case of an employee or Member who is married at the time of retirement, an alternative which provides for—

(A) payment of the lump-sum credit to the employee or Member; and

(B) payment of an annuity to the employee or Member for life, with a survivor annuity payable for the life of a surviving spouse.

(c) Each alternative provided for under subsection (b) shall, to the extent practicable, be designed such that the present value of the benefits provided under such alternative (including any lump-sum credit) is actuarially equivalent to the present value of the annuity which would otherwise be provided the employee or Member under this subchapter, as computed under subsections (a)–(i), (n), (q), (r), and (s) of section 8339.

(d) An employee or Member who, at the time of retiring under this subchapter—

(1) is married, shall be ineligible to make an election under this section unless a waiver is made under section 8339(j)(1) of this title; or

(2) has a former spouse, shall be ineligible to make an election under this section if the former spouse is entitled to benefits under section 8341(h) or 8345(j) of this title (based on the service of the employee or Member) under the terms of a decree of divorce or annulment, or a court order or court-approved property settlement incident to any such decree, with respect to which the Office has been duly notified.

(e) An employee or Member who is married at the time of retiring under this subchapter and who makes an election under this section may, during the 18-month period beginning on the date of retirement, make the election provided for under section 8339(o) of this title, subject to the deposit requirement thereunder.

(Added Pub. L. 99-335, title II, §204(a), June 6, 1986, 100 Stat. 591; amended Pub. L. 101-428, §2(d)(5), Oct. 15, 1990, 104 Stat. 929; Pub. L. 101-508, title VII, §7001(a)(1), Nov. 5, 1990, 104 Stat. 1388-327; Pub. L. 103-66, title XI, §11002(a), Aug. 10, 1993, 107 Stat. 409; Pub. L. 105-61, title V, §516(a)(5), Oct. 10, 1997, 111 Stat. 1306; Pub. L. 106-553, §1(a)(2) [title III, §308(h)(5)], Dec. 21, 2000, 114 Stat. 2762, 2762A-89.)

### Editorial Notes

#### AMENDMENTS

2000—Subsec. (c). Pub. L. 106-553 substituted “(a)–(i), (n), (q), (r), and (s)” for “(a)–(i), (n), (q), and (r)”.

1997—Subsec. (c). Pub. L. 105-61, which directed the substitution of “(q), and (r) of section 8339” for “and (q) of section 8339 of this title” in section 8334a(c), was executed by making the substitution in subsec. (c) of this section to reflect the probable intent of Congress, because there is no section 8334a in this title.

1993—Subsec. (a). Pub. L. 103-66, §11002(a)(1), substituted “any employee or Member who has a life-threatening affliction or other critical medical condition” for “an employee or Member”.

Subsec. (f). Pub. L. 103-66, §11002(a)(2), struck out subsec. (f) which prohibited election of alternative form of annuity where commencement date would be after Dec. 1, 1990, with certain exceptions.

1990—Subsec. (c). Pub. L. 101-428 substituted “(a)–(i), (n), and (q)” for “(a)–(i) and (n)”.

Subsec. (f). Pub. L. 101-508 added subsec. (f).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2000 AMENDMENT

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

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-61 applicable to any annuity commencing before, on, or after Oct. 10, 1997, and effective with regard to any payment made after the first month following Oct. 10, 1997, see section 516(b) of Pub. L. 105-61, set out as a note under section 8334 of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Section 11002(d) of Pub. L. 103-66 provided that: “The amendments made by this section [amending this section and section 8420a of this title, section 4047 of Title 22, Foreign Relations and Intercourse, and section 2143

of Title 50, War and National Defense] shall become effective on October 1, 1994, and shall apply with respect to any annuity commencing on or after that date.”

#### EFFECTIVE DATE

Section effective June 6, 1986, see section 702(b)(3) of Pub. L. 99-335, set out as a note under section 8401 of this title.

#### APPLICABILITY OF SECTIONS 8343a(f) AND 8420a(f) TO INDIVIDUALS CALLED TO OR PERFORMING DUTY IN CONNECTION WITH OPERATION DESERT SHIELD

Section 7001(a)(4) of Pub. L. 101-508 provided that:

“(A) In applying the provisions of section 8343a(f) or 8420a(f) of title 5, United States Code (as amended by paragraph (1)) to any individual described in subparagraph (B), the reference in such provisions to ‘December 1, 1990’ shall be deemed to read ‘December 1, 1991’.

“(B) This paragraph applies with respect to any individual who—

“(i)(I) is a member of the Armed Forces of the United States who, before December 1, 1990, was called or ordered to active duty (other than for training) pursuant to section 672 [now 12301], 673 [now 12302], 673b [now 12304], 674 [now 12306], 675 [now 12307], or 688 of title 10, United States Code, in connection with Operation Desert Shield; or

“(II) is an employee of the Department of Defense who is certified by the Secretary of Defense to have performed, after November 30, 1990, duties essential for the support of Operation Desert Shield; and

“(ii) would have been eligible to make an election under section 8343a or 8420a of title 5, United States Code (as amended by paragraph (1)) as of November 30, 1990.

“(C) The Office of Personnel Management may prescribe such regulations as may be necessary to carry out this paragraph.”

#### PARTIAL DEFERRED PAYMENT OF LUMP-SUM CREDIT FOR CERTAIN INDIVIDUALS ELECTING ALTERNATIVE FORMS OF ANNUITIES

Pub. L. 101-239, title IV, §4005, Dec. 19, 1989, 103 Stat. 2135, as amended by Pub. L. 101-508, title VII, §7001(a)(2)(A)–(C)(i), Nov. 5, 1990, 104 Stat. 1388-328, provided that:

“(a) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in subsection (c), any lump-sum credit payable to an employee or Member pursuant to the election of an alternative form of annuity by such employee or Member under section 8343a or section 8420a of title 5, United States Code, shall be paid in accordance with the schedule under subsection (b) (instead of the schedule which would otherwise apply), if the commencement date of the annuity payable to such employee or Member occurs after December 2, 1989, and before December 2, 1990.

“(b) SCHEDULE OF PAYMENTS.—The schedule of payment of any lump-sum credit subject to this section is as follows:

“(1) 50 percent of the lump-sum credit shall be payable on the date on which, but for the enactment of this section, the full amount of the lump-sum credit would otherwise be payable.

“(2) The remainder of the lump-sum credit shall be payable on the date which occurs 12 months after the date on which the payment described in paragraph (1) is paid.

An amount payable in accordance with paragraph (2) shall be payable with interest, computed using the rate under section 8334(e)(3) of title 5, United States Code.

“(c) EXCEPTIONS.—The Office of Personnel Management shall prescribe regulations to provide that, unless the individual involved indicates otherwise by written notice to the Office (submitted at such time and in such manner as the regulations may require), this section shall not apply—

“(1) in the case of any individual who is separated from Government service involuntarily, other than

for cause on charges of misconduct or delinquency; and

“(2) in the case of any individual as to whom the application of this section would be against equity and good conscience, due to a life-threatening affliction or other critical medical condition affecting such individual.

“(d) ANNUITY BENEFITS NOT AFFECTED.—Nothing in this section shall affect the commencement date, the amount, or any other aspect of any annuity benefits payable under section 8343a or section 8420a of title 5, United States Code.

“(e) DEFINITIONS.—For purposes of this section, the terms ‘lump-sum credit’, ‘employee’, and ‘Member’ each has the meaning given such term by section 8331 or section 8401 of title 5, United States Code, as appropriate.

“(f) CONTINUED APPLICABILITY.—The preceding provisions of this section (disregarding the provision in subsection (a) limiting this section’s applicability to annuities commencing before the date specified in such provision) shall also apply in the case of any employee or Member whose election of an alternative form of annuity would not have been allowable under section 8343a(f) or 8420a(f) of title 5, United States Code (as the case may be), but for—

“(1) paragraph (2)(A) thereof; or

“(2) section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101-508, set out as a note above].”

[Section 7001(a)(2)(C)(ii) of Pub. L. 101-508 provided that: “The amendments made by clause (i) [amending section 4005 of Pub. L. 101-239 and section 6001 of Pub. L. 100-203, set out as notes above and below] shall not apply in any case in which the first half of the lump-sum payment involved was paid before the beginning of the 11-month period which ends on the date of the enactment of this Act [Nov. 5, 1990].”]

Similar provisions were contained in the following acts:

Pub. L. 101-227, § 2, Dec. 12, 1989, 103 Stat. 1943, which was repealed by Pub. L. 101-508, title VII, § 7001(a)(2)(D), Nov. 5, 1990, 104 Stat. 1388-328.

Pub. L. 100-203, title VI, § 6001, Dec. 22, 1987, 101 Stat. 1330-275, as amended by Pub. L. 101-103, § 6, Sept. 30, 1989, 103 Stat. 672; Pub. L. 101-508, title VII, § 7001(a)(2)(C)(i), Nov. 5, 1990, 104 Stat. 1388-328.

#### § 8344. Annuities and pay on reemployment

(a) If an annuitant receiving annuity from the Fund, except—

(1) a disability annuitant whose annuity is terminated because of his recovery or restoration of earning capacity;

(2) an annuitant whose annuity, based on an involuntary separation (other than an automatic separation or an involuntary separation for cause on charges of misconduct or delinquency), is terminated under subsection (b) of this section;

(3) an annuitant whose annuity is terminated under subsection (c) of this section; or

(4) a Member receiving annuity from the Fund;

becomes employed in an appointive or elective position, his service on and after the date he is so employed is covered by this subchapter. Deductions for the Fund may not be withheld from his pay unless the individual elects to have such deductions withheld under subparagraph (A). An amount equal to the annuity allocable to the period of actual employment shall be deducted from his pay, except for lump-sum leave payment purposes under section 5551 of this title. The amounts so deducted shall be deposited in

the Treasury of the United States to the credit of the Fund. If the annuitant serves on a full-time basis, except as President, for at least 1 year, or on a part-time basis for periods equivalent to at least 1 year of full-time service, in employment not excluding him from coverage under section 8331(1)(i) or (ii) of this title—

(A) deductions for the Fund may be withheld from his pay (if the employee so elects), and his annuity on termination of employment is increased by an annuity computed under section 8339(a), (b), (d), (e), (h), (i), (n), (q), (r), and (s) as may apply based on the period of employment and the basic pay, before deduction, averaged during that employment; and

(B) his lump-sum credit may not be reduced by annuity paid during that employment.

If the annuitant is receiving a reduced annuity as provided in section 8339(j) or section 8339(k)(2) of this title, the increase in annuity payable under subparagraph (A) of this subsection is reduced by 10 percent and the survivor annuity payable under section 8341(b) of this title is increased by 55 percent of the increase in annuity payable under such subparagraph (A), unless, at the time of claiming the increase payable under such subparagraph (A), the annuitant notifies the Office of Personnel Management in writing that he does not desire the survivor annuity to be increased. If the annuitant dies while still reemployed, the survivor annuity payable is increased as though the reemployment had otherwise terminated. If the described employment of the annuitant continues for at least 5 years, or the equivalent of 5 years in the case of part-time employment, he may elect, instead of the benefit provided by subparagraph (A) of this subsection, to deposit in the Fund (to the extent deposits or deductions have not otherwise been made) an amount computed under section 8334(c) of this title covering that employment and have his rights redetermined under this subchapter. If the annuitant dies while still reemployed and the described employment had continued for at least 5 years, or the equivalent of 5 years in the case of part-time employment, the person entitled to survivor annuity under section 8341(b) of this title may elect to deposit in the Fund and have his rights redetermined under this subchapter.

(b) If an annuitant, other than a Member receiving an annuity from the Fund, whose annuity is based on an involuntary separation (other than an automatic separation or an involuntary separation for cause or charges on misconduct or delinquency) is reemployed in a position in which he is subject to this subchapter, payment of the annuity terminates on reemployment.

(c) If an annuitant, other than a Member receiving an annuity from the Fund, is appointed by the President to a position in which he is subject to this subchapter, or is elected as a Member, payment of the annuity terminates on reemployment. Upon separation from such position, an individual whose annuity is so terminated is entitled to have his rights redetermined under this subchapter, except that the amount of the annuity resulting from such redetermination shall be at least equal to the amount of the terminated annuity plus any increases under section 8340 of this title occurring after the ter-

mination and before the commencement of the redetermined annuity.

(d) If a Member receiving annuity from the Fund becomes employed in an appointive or elective position, annuity payments are discontinued during the employment and resumed on termination of the employment in the amount equal to the sum of the amount of the annuity the member was receiving immediately before the commencement of the employment and the amount of the increases which would have been made in the amount of the annuity under section 8340 of this title during the period of the employment if the annuity had been payable during that period, except that—

(1) the retired Member or Member separated with title to immediate or deferred annuity, who serves at any time after separation as a Member in an appointive position in which he is subject to this subchapter, is entitled, if he so elects, to have his Member annuity computed or recomputed as if the service had been performed before his separation as a Member and the annuity as so computed or recomputed is effective—

(A) the day Member annuity commences; or

(B) the day after the date of separation from the appointive position;

whichever is later;

(2) if the retired Member becomes employed after December 31, 1958, in an appointive position on an intermittent-service basis—

(A) his annuity continues during the employment and is not increased as a result of service performed during that employment;

(B) retirement deductions may not be withheld from his pay;

(C) an amount equal to the annuity allocable to the period of actual employment shall be deducted from his pay, except for lump-sum leave payment purposes under section 5551 of this title; and

(D) the amounts so deducted shall be deposited in the Treasury of the United States to the credit of the Fund;

(3) if the retired Member becomes employed after December 31, 1958, in an appointive position without pay on a full-time or substantially full-time basis, his annuity continues during the employment and is not increased as a result of service performed during the employment; and

(4) if the retired Member takes office as Member and gives notice as provided by section 8331(2) of this title, his service as Member during that period shall be credited in determining his right to and the amount of later annuity.

(e) This section does not apply to an individual appointed to serve as a Governor of the Board of Governors of the United States Postal Service.

(f) Notwithstanding the provisions of subsection (a) of this section, if an annuitant receiving annuity from the Fund, except a Member receiving annuity from the Fund, becomes employed as a justice or judge of the United States, as defined by section 451 of title 28, annuity payments are discontinued during such

employment and are resumed in the same amount upon resignation or retirement from regular active service as such a justice or judge.

(g) A former employee or a former Member who becomes employed as a justice or judge of the United States, as defined by section 451 of title 28, may, at any time prior to resignation or retirement from regular active service as such a justice or judge, apply for and be paid, in accordance with section 8342(a) of this title, the amount (if any) by which the lump-sum credit exceeds the total annuity paid, notwithstanding the time limitation contained in such section for filing an application for payment.

(h)(1) Subject to paragraph (2) of this subsection, subsections (a), (b), (c), and (d) of this section shall not apply to any annuitant receiving an annuity from the Fund while such annuitant is employed, during any period described in section 5532(f)(2) of this title (as in effect before the repeal of that section by section 651(a) of Public Law 106-65) or any portion thereof, under the administrative authority of the Administrator, Federal Aviation Administration, or the Secretary of Defense to perform duties in the operation of the air traffic control system or to train other individuals to perform such duties: *Provided, however*, That the amount such an annuitant may receive in pay, excluding premium pay, in any pay period when aggregated with the annuity payable during that same period shall not exceed the rate payable for level V of the Executive Schedule.

(2) Paragraph (1) of this subsection shall apply only in the case of any annuitant receiving an annuity from the Fund who, before December 31, 1987, applied for retirement or separated from the service while being entitled to an annuity under this chapter.

(i)(1) The Director of the Office of Personnel Management may, at the request of the head of an Executive agency—

(A) waive the application of the preceding provisions of this section on a case-by-case basis for employees in positions for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

(B) grant authority to the head of such agency to waive the application of the preceding provisions of this section, on a case-by-case basis, for an employee serving on a temporary basis, but only if, and for so long as, the authority is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances.

(2) The Office shall prescribe regulations for the exercise of any authority under this subsection, including criteria for any exercise of authority and procedures for terminating a delegation of authority under paragraph (1)(B).

(j)(1) If warranted by circumstances described in subsection (i)(1)(A) or (B) (as applicable), the Director of the Administrative Office of the United States Courts shall, with respect to an employee in the judicial branch, have the same waiver authority as would be available to the Director of the Office of Personnel Management, or a duly authorized agency head, under subsection (i) with respect to an employee of an Executive agency.

(2) Authority under this subsection may not be exercised with respect to a justice or judge of

the United States, as defined in section 451 of title 28.

(k)(1) If warranted by circumstances described in subsection (i)(1)(A) or (B) (as applicable), an official or committee designated in paragraph (2) shall, with respect to the employees specified in the applicable subparagraph of such paragraph, have the same waiver authority as would be available to the Director of the Office of Personnel Management, or a duly authorized agency head, under subsection (i) with respect to an employee of an Executive agency.

(2) Authority under this subsection may be exercised—

(A) with respect to an employee of an agency in the legislative branch, by the head of such agency;

(B) with respect to an employee of the House of Representatives, by the Committee on House Oversight of the House of Representatives; and

(C) with respect to an employee of the Senate, by the Committee on Rules and Administration of the Senate.

(3) Any exercise of authority under this subsection shall be in conformance with such written policies and procedures as the agency head, the Committee on House Oversight of the House of Representatives, or the Committee on Rules and Administration of the Senate (as applicable) shall prescribe, consistent with the provisions of this subsection.

(4) For the purpose of this subsection, “agency in the legislative branch”, “employee of the House of Representatives”, “employee of the Senate”, and “congressional employee” each has the meaning given to it in section 5531 of this title.

(l)(1) For purposes of this subsection—

(A) the term “head of an agency” means—

(i) the head of an Executive agency, other than the Department of Defense or the Government Accountability Office;

(ii) the head of the United States Postal Service;

(iii) the Director of the Administrative Office of the United States Courts, with respect to employees of the judicial branch; and

(iv) any employing authority described under subsection (k)(2), other than the Government Accountability Office; and

(B) the term “limited time appointee” means an annuitant appointed under a temporary appointment limited to 1 year or less.

(2) The head of an agency may waive the application of subsection (a) or (b) with respect to any annuitant who is employed in such agency as a limited time appointee, if the head of the agency determines that the employment of the annuitant is necessary to—

(A) fulfill functions critical to the mission of the agency, or any component of that agency;

(B) assist in the implementation or oversight of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) or the Troubled Asset Relief Program under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.);

(C) assist in the development, management, or oversight of agency procurement actions;

(D) assist the Inspector General for that agency in the performance of the mission of that Inspector General;

(E) promote appropriate training or mentoring programs of employees;

(F) assist in the recruitment or retention of employees; or

(G) respond to an emergency involving a direct threat to life of property or other unusual circumstances.

(3) The head of an agency may not waive the application of subsection (a) or (b) with respect to an annuitant—

(A) for more than 520 hours of service performed by that annuitant during the period ending 6 months following the individual’s annuity commencing date;

(B) for more than 1040 hours of service performed by that annuitant during any 12-month period; or

(C) for more than a total of 3120 hours of service performed by that annuitant.

(4)(A) The total number of annuitants to whom a waiver by the head of an agency under this subsection or section 8468(i) applies may not exceed 2.5 percent of the total number of full-time employees of that agency.

(B) If the total number of annuitants to whom a waiver by the head of an agency under this subsection or section 8468(i) applies exceeds 1 percent of the total number of full-time employees of that agency, the head of that agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Personnel Management—

(i) a report with an explanation that justifies the need for the waivers in excess of that percentage; and

(ii) not later than 180 days after submitting the report under clause (i), a succession plan.

(5)(A) The Director of the Office of Personnel Management may promulgate regulations providing for the administration of this subsection.

(B) Any regulations promulgated under subparagraph (A) may—

(i) provide standards for the maintenance and form of necessary records of employment under this subsection;

(ii) to the extent not otherwise expressly prohibited by law, require employing agencies to provide records of such employment to the Office of Personnel Management or other employing agencies as necessary to ensure compliance with paragraph (3);

(iii) authorize other administratively convenient periods substantially equivalent to 12 months, such as 26 pay periods, to be used in determining compliance with paragraph (3)(B);

(iv) include such other administrative requirements as the Director of the Office of Personnel Management may find appropriate to provide for the effective operation of, or to ensure compliance with, this subsection; and

(v) encourage the training and mentoring of employees by any limited time appointee employed under this subsection.

(6)(A) Any hours of training or mentoring of employees by any limited time appointee em-



ployed under this subsection shall not be included in the hours of service performed for purposes of paragraph (3), but those hours of training or mentoring may not exceed 520 hours.

(B) If the primary service performed by any limited time appointee employed under this subsection is training or mentoring of employees, the hours of that service shall be included in the hours of service performed for purposes of paragraph (3).

(7) The authority of the head of an agency under this subsection to waive the application of subsection (a) or (b) shall terminate on December 31, 2024.

(m)(1) For the purpose of subsections (i) through (l), “Executive agency” shall not include the Government Accountability Office.

(2) An employee as to whom a waiver under subsection (i), (j), (k), or (l) is in effect shall not be considered an employee for purposes of this chapter or chapter 84 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 581; Pub. L. 90–83, §1(83), Sept. 11, 1967, 81 Stat. 217; Pub. L. 91–375, §6(c)(20), Aug. 12, 1970, 84 Stat. 776; Pub. L. 91–658, §4, Jan. 8, 1971, 84 Stat. 1962; Pub. L. 92–297, §7(5), May 16, 1972, 86 Stat. 145; Pub. L. 94–397, §1(a)–(c), Sept. 3, 1976, 90 Stat. 1202, 1203; Pub. L. 95–454, title IX, §906(a)(14), Oct. 13, 1978, 92 Stat. 1226; Pub. L. 95–598, title III, §338(d), Nov. 6, 1978, 92 Stat. 2681; Pub. L. 96–179, §4, Jan. 2, 1980, 93 Stat. 1299; Pub. L. 96–504, §1, Dec. 5, 1980, 94 Stat. 2741; Pub. L. 97–141, §5(a), Dec. 29, 1981, 95 Stat. 1719; Pub. L. 97–276, §151(g), Oct. 2, 1982, 96 Stat. 1202; Pub. L. 97–346, §3(j)(2), Oct. 15, 1982, 96 Stat. 1649; Pub. L. 98–353, title I, §112, July 10, 1984, 98 Stat. 343; Pub. L. 98–396, title I, Aug. 22, 1984, 98 Stat. 1403; Pub. L. 98–525, title XV, §1537(e), Oct. 19, 1984, 98 Stat. 2636; Pub. L. 99–88, title I, §100, Aug. 15, 1985, 99 Stat. 351; Pub. L. 99–500, §101(i), Oct. 18, 1986, 100 Stat. 1783–308, and Pub. L. 99–591, §101(i), Oct. 30, 1986, 100 Stat. 3341–308; Pub. L. 100–202, §§101(i) [title I], 106, Dec. 22, 1987, 101 Stat. 1329–358, 1329–362, 1329–433; Pub. L. 100–457, title I, Sept. 30, 1988, 102 Stat. 2129; Pub. L. 101–428, §2(d)(8), Oct. 15, 1990, 104 Stat. 929; Pub. L. 101–509, title V, §529 [title I, §108(b)], Nov. 5, 1990, 104 Stat. 1427, 1450; Pub. L. 101–510, div. A, title XII, §1206(j)(2), Nov. 5, 1990, 104 Stat. 1664; Pub. L. 102–190, div. A, title VI, §655(b), Dec. 5, 1991, 105 Stat. 1391; Pub. L. 102–378, §8(a), Oct. 2, 1992, 106 Stat. 1359; Pub. L. 105–55, title I, §107, Oct. 7, 1997, 111 Stat. 1184; Pub. L. 105–61, title V, §516(a)(6), Oct. 10, 1997, 111 Stat. 1306; Pub. L. 106–398, §1 [[div. A], title X, §1087(f)(5)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293; Pub. L. 106–553, §1(a)(2) [title III, §308(h)(8)], Dec. 21, 2000, 114 Stat. 2762, 2762A–89; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 111–84, div. A, title XI, §1122(a), Oct. 28, 2009, 123 Stat. 2505; Pub. L. 111–383, div. A, title X, §1075(a)(1), Jan. 7, 2011, 124 Stat. 4368; Pub. L. 113–291, div. A, title XI, §1107(a), Dec. 19, 2014, 128 Stat. 3527; Pub. L. 116–92, div. A, title XI, §1117(a), Dec. 20, 2019, 133 Stat. 1605.)

#### HISTORICAL AND REVISION NOTES 1966 ACT

| Derivation | U.S. Code                 | Revised Statutes and Statutes at Large                           |
|------------|---------------------------|--|
| .....      | 5 U.S.C. 2263 (less (a)). | July 31, 1956, ch. 804, §401 “Sec. 13 (less (a))”, 70 Stat. 757. |

#### HISTORICAL AND REVISION NOTES—CONTINUED 1966 ACT

| Derivation | U.S. Code | Revised Statutes and Statutes at Large   |
|------------|-----------|--|
|            |           | July 7, 1960, Pub. L. 86–604, §1(f), 74 Stat. 358.<br>July 12, 1960, Pub. L. 86–622, §3(a), 74 Stat. 410.<br>Oct. 4, 1961, Pub. L. 87–350, §5, 75 Stat. 771. |

In subsections (a) and (b), the words “except for lump-sum leave payment purposes under section 61b of this title” are omitted as unnecessary as section 5551(a) provides that a “lump-sum leave payment is considered pay for taxation purposes only”.

In subsection (a), the words “after September 30, 1956” are substituted for “hereafter” on authority of §406 of the Act of July 31, 1956, ch. 804, 70 Stat. 761. In paragraph (2), the words “other than an automatic separation” are substituted for “excluding a separation under the automatic separation provisions of this chapter”. In the third sentence, the words “and this provision concerning the lump-sum leave payments shall also be effective in the case of each retired employee separated from reemployment after December 15, 1953, and before the effective date of the Civil Service Retirement Act Amendments of 1956” are omitted as executed, and any existing rights are preserved by technical section 8. In the fourth sentence, the words “except as President” are added to preserve the exception stated in former section 2252(b). In the penultimate sentence, the words “after October 3, 1961” are substituted for “on or after October 4, 1961”. In the last sentence, the words “in any manner” are omitted as unnecessary.

In subsection (b), the words “receiving annuity from the Fund” are substituted for “heretofore or hereafter retired under this chapter”. The word “hereafter” is omitted as unnecessary. In paragraph (1)(B), the words “the day after” are substituted for “the first day of the month following” on authority of former section 2264(b), which is carried into section 8345(b). In paragraph (1), former clause (C) is omitted as obsolete. In paragraph (2)(D), the words “of the United States” are omitted as unnecessary.

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

#### 1967 ACT

| Section of title 5 | Source (U.S. Code)               | Source (Statutes at Large)                      |
|--------------------|----------------------------------|---|
| 8344(a) .....      | 5 App.: 2263(b) (last sentence). | Mar. 30, 1966, Pub. L. 89–378, §1, 80 Stat. 93. |

In subsection (a), the words “after July 11, 1960” are substituted for “on or after July 12, 1960.” In subsection (b)(1), the amendment is made for consistency within the subchapter.

In the codification of 5 U.S.C. 8344 by Public Law 89–554, the words “except for lump-sum leave payment purposes under section 61b of this title” were omitted from the third sentence of subsection (a) and from subsection (b)(2)(C) on the basis that they were unnecessary since former 5 U.S.C. 61b [now codified as 5 U.S.C. 5551(a)] provided that a lump-sum leave payment was considered pay for taxation purposes only. This amendment restores to 5 U.S.C. 8344 the language that was so omitted to conform to the source statute (section 13 of the Civil Service Retirement Act, as amended) and in recognition that the language was expressly placed in the source statute to overcome certain decisions of the Comptroller General of the United States (see 28 Comp. Gen. 294; 33 id. 591, and 36 id. 209).

## Editorial Notes

## REFERENCES IN TEXT

Level V of the Executive Schedule, referred to in subsec. (h)(1), is set out in section 5316 of this title.

The American Recovery and Reinvestment Act of 2009, referred to in subsec. (l)(2)(B), is Pub. L. 111-5, Feb. 17, 2009, 123 Stat. 115. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 1 of Title 26, Internal Revenue Code, and Tables.

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (l)(2)(B), is div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765. Title I of the Act is classified principally to subchapter I (§ 5211 et seq.) of chapter 52 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of Title 12 and Tables.

## CODIFICATION

Amendment of subsec. (h)(2) by Pub. L. 99-500 and 99-591 is based on provisions under the subheading “Federal Aviation Administration, Operations”, in title I of H.R. 5205 (Department of Transportation and Related Agencies Appropriations Act, 1987), as incorporated by reference by section 101(l) of Pub. L. 99-500 and 99-591, and enacted into law by section 106 of Pub. L. 100-202.

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

## AMENDMENTS

2019—Subsec. (l)(7). Pub. L. 116-92 substituted “December 31, 2024” for “December 31, 2019”.

2014—Subsec. (l)(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”.

2011—Subsec. (l)(2)(B). Pub. L. 111-383 substituted “5211 et seq.” for “5201 et seq.”

2009—Subsec. (l). Pub. L. 111-84, § 1122(a)(1), (2), added subsec. (l). Former subsec. (l) redesignated (m).

Subsec. (m). Pub. L. 111-84, § 1122(a)(1), redesignated subsec. (l) as (m).

Subsec. (m)(1). Pub. L. 111-84, § 1122(a)(3)(A), substituted “(l)” for “(k)”.

Subsec. (m)(2). Pub. L. 111-84, § 1122(a)(3)(B), substituted “(k), or (l)” for “or (k)”.

2004—Subsec. (l)(1). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

2000—Subsec. (a)(A). Pub. L. 106-553 substituted “(q), (r), and (s)” for “(q), and (r)”.

Subsec. (h)(1). Pub. L. 106-398 inserted “(as in effect before the repeal of that section by section 651(a) of Public Law 106-65)” after “section 5532(f)(2) of this title”.

1997—Subsec. (a)(A). Pub. L. 105-61 substituted “(q), and (r)” for “and (q) of this title”.

Subsec. (k)(2)(B), (3). Pub. L. 105-55 substituted “the Committee on House Oversight of the House of Representatives” for “the Speaker of the House of Representatives”.

1992—Subsec. (i). Pub. L. 102-378 repealed Pub. L. 101-510, § 1206(j)(2). See 1990 Amendment note below.

1991—Subsec. (i)(3). Pub. L. 102-190, § 655(b)(2), struck out par. (3) which read as follows: “An employee to whom a waiver under subparagraph (A) or (B) of paragraph (1) applies shall not be deemed an employee for the purposes of this chapter or chapter 84 while such waiver is in effect.”

Subsecs. (j) to (l). Pub. L. 102-190, § 655(b)(1), added subsecs. (j) to (l).

1990—Subsec. (a)(A). Pub. L. 101-428 substituted “(i), (n), and (q)” for “(i), and (n)”.

Subsec. (i). Pub. L. 101-510, § 1206(j)(2), added a subsec. (i) identical to that added by Pub. L. 101-509, see below. Pub. L. 102-378, § 8(a), repealed Pub. L. 101-510, § 1206(j)(2), and provided that this title shall read as if such section 1206(j)(2) had not been enacted.

Pub. L. 101-509 added subsec. (i).

1988—Subsec. (h)(2). Pub. L. 100-457 substituted “1987” for “1986”.

1987—Subsec. (h)(2). Pub. L. 100-202, § 101(l) [title I], substituted “December 31, 1986” for “April 1, 1986”.

For amendment by section 106 of Pub. L. 100-202, see 1986 Amendment note below.

1986—Subsec. (h)(2). Pub. L. 99-500 and Pub. L. 99-591, § 101(l), as enacted by Pub. L. 100-202, § 106, substituted “April 1, 1986” for “April 1, 1985”. See Codification note above.

1985—Subsec. (h)(1). Pub. L. 99-88 inserted proviso directing that the amount an annuitant may receive in pay, excluding premium pay, in any pay period when aggregated with the annuity payable during that same period shall not exceed the rate payable for level V of the Executive Schedule.

Subsec. (h)(2). Pub. L. 99-88 substituted “April 1, 1985” for “August 3, 1981”.

1984—Subsec. (a)(A). Pub. L. 98-353 substituted “and (n)” for “and (o)”.

Subsec. (d). Pub. L. 98-396 substituted “on termination of the employment in the amount equal to the sum of the amount of the annuity the member was receiving immediately before the commencement of the employment and the amount of the increases which would have been made in the amount of the annuity under section 8340 of this title during the period of the employment if the annuity had been payable during that period” for “in the same amount on termination of the employment”.

Subsec. (h)(1). Pub. L. 98-525 inserted “or the Secretary of Defense”.

1982—Subsec. (a). Pub. L. 97-346 inserted “unless the individual elects to have such deductions withheld under subparagraph (A)” and “(to the extent deposits or deductions have not otherwise been made)”.

Subsec. (a)(4)(A). Pub. L. 97-346 inserted “deductions for the Fund may be withheld from his pay (if the employee so elects)”.

Subsec. (h). Pub. L. 97-276 added subsec. (h).

1981—Subsec. (c). Pub. L. 97-141 inserted provision that upon separation from such position, an individual whose annuity is so terminated is entitled to have his rights redetermined under this subchapter, except that the amount of the annuity resulting from such redetermination shall be at least equal to the amount of the terminated annuity plus any increases under section 8340 of this title occurring after the termination and before the commencement of the redetermined annuity.

1980—Subsec. (c). Pub. L. 96-179 inserted “or is elected as a Member,” after “subject to this subchapter,”.

Subsecs. (f), (g). Pub. L. 96-504 added subsecs. (f) and (g).

1978—Subsec. (a). Pub. L. 95-598 inserted reference to subsec. (o) of section 8339 of this title in par. (A).

Pub. L. 95-454 substituted “Office of Personnel Management” for “Commission” in provisions following par. (B).

1976—Subsec. (a). Pub. L. 94-397, § 1(a), inserted provisions requiring applicability to annuitants whose annuity is terminated under subsecs. (b) and (c) of this section, authorizing deducted amounts to be deposited in the Treasury to the credit of the Fund, and covering described employment continuing for the equivalent of five years in the case of part-time employment, and struck out provisions requiring employment after Sept. 30, 1956, or service on July 31, 1956, for application of coverage, and redetermination rights for an annuitant whose annuity is based on involuntary separation from the service and who is separated after July 11, 1960 for full-time employment began before Oct. 1, 1956.

Subsecs. (b), (c). Pub. L. 94-397, § 1(b), added subsecs. (b) and (c). Former subsecs. (b) and (c) redesignated (d) and (e), respectively.

Subsec. (d). Pub. L. 94-397, § 1(b), (c), redesignated former subsec. (b) as (d) and struck out prohibition of application of subsec. to a Member appointed by the President to a position not requiring confirmation by the Senate.

Subsec. (e). Pub. L. 94-397, §1(b), redesignated former subsec. (c) as (e).

1972—Subsec. (a). Pub. L. 92-297 substituted “section 8339(a), (b), (d), (e), (h), and (i)” for “section 8339(a), (b), (d), (g), and (h)”, in subpar. (A), and “section 8339(j) or section 8339(k)(2)” for “section 8339(i) or section 8339(j)(2)”, in sentence following cl. (ii).

1971—Subsec. (a). Pub. L. 91-658 substituted provisions respecting reemployed annuitants and reduction in their annuity and increase in survivor annuity, notice to Commission of a desire not to increase the survivor annuity, increase in survivor annuity where annuitant dies while still reemployed, and redetermination of rights to survivor annuity where reemployment continued for five or more years upon election to deposit in the Fund, for prior provision that employment of an annuitant did not create an annuity for or affect the annuity of a survivor.

1970—Subsec. (c). Pub. L. 91-375 added subsec. (c).

### Statutory Notes and Related Subsidiaries

#### CHANGE OF NAME

Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019. Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

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

Pub. L. 113-291, div. A, title XI, §1107(c), Dec. 19, 2014, 128 Stat. 3527, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 8468 of this title] shall be effective as of October 28, 2014.”

#### EFFECTIVE DATE OF 2000 AMENDMENT

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

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-61 applicable to any annuity commencing before, on, or after Oct. 10, 1997, and effective with regard to any payment made after the first month following Oct. 10, 1997, see section 516(b) of Pub. L. 105-61, set out as a note under section 8334 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

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

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 100-202, §106, Dec. 22, 1987, 101 Stat. 1329-433, provided that the amendment by Pub. L. 99-500 and 99-591 is effective on date of enactment [Oct. 18, 1986] of

the “pertinent joint resolution” making continuing appropriations for fiscal year 1987 [Pub. L. 99-500 and 99-591].

#### EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-525 effective Oct. 1, 1984, see section 1537(f) of Pub. L. 98-525, set out as a note under section 4109 of this title.

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-276 effective at 5 o'clock ante meridian eastern daylight time, Aug. 3, 1981, see section 151(h)(1) of Pub. L. 97-276, set out as an Effective Date note under section 5546a of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-141, §5(b), Dec. 29, 1981, 95 Stat. 1719, provided that:

“(1) Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to individuals whose annuities terminate under section 8344(c) of title 5, United States Code, on or after October 1, 1976.

“(2) In the case of an individual whose reemployment ended before the date of the enactment of this Act [Dec. 29, 1981], the amendment shall apply only upon application by the individual to the Office of Personnel Management within one year after the date of enactment. Upon receipt of such application, the Office shall recompute the annuity, effective as of the day following the day reemployment ended.”

#### EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-504, §6, Dec. 5, 1980, 94 Stat. 2742, provided that:

“(a) The provisions of this Act [amending this section, repealing section 375 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under sections 8342 of this title and section 376 of Title 28] shall take effect on—

“(1) the date of the enactment of this Act [Dec. 5, 1980], or

“(2) October 1, 1980, whichever date is later.

“(b) The provisions of subsection (f) of section 8344 of title 5, United States Code, as added by the first section of this Act, shall apply only to an individual who becomes employed as a justice or judge of the United States on or after the effective date of this Act. The provisions of subsection (g) of such section, as added by the first section of this Act, shall apply to an individual employed as a justice or judge of the United States on the effective date of this Act and to an individual appointed as such a justice or judge on or after such effective date.”

#### EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

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

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-397, §2, Sept. 3, 1976, 90 Stat. 1203, provided that:

“(a) Except as provided under subsection (b) of this section, the amendments made by this Act [amending this section and section 8339 of this title] shall become effective on the date of the enactment of this Act [Sept. 3, 1976] or October 1, 1976, whichever is later, and shall apply to annuitants serving in appointive or elective positions on and after such date.

“(b) The amendment made by subsection (c) of the first section of this Act [amending this section] shall become effective on the date of the enactment of this Act [Sept. 3, 1976] or October 1, 1976, whichever is later, but shall not apply to any annuitant reemployed before such date.”

#### EFFECTIVE DATE OF 1972 AMENDMENT

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

#### EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 91-658, §5(d), Jan. 8, 1971, 84 Stat. 1963, provided that: “The amendment made by section 4 of this Act [amending this section] shall apply only with respect to a reemployed annuitant whose employment terminates on or after the date of enactment of this Act [Jan. 8, 1971].”

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

#### EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by section 1(83)(A), (D) of Pub. L. 90-83 effective as of Sept. 6, 1966, for all purposes, see section 9(h) of Pub. L. 90-83, set out as a note under section 5102 of this title.

#### ELIMINATION OF DUPLICATIVE AMENDMENTS

Pub. L. 102-378, §8(a), Oct. 2, 1992, 106 Stat. 1359, provided that: “Subsections (i) and (j) of section 1206 of the Defense Acquisition Workforce Improvement Act, as contained in the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1662, 1663) [enacting section 5380 of this title, amending this section and sections 5532 and 8468 of this title, and enacting provisions set out as notes under sections 5532 and 5380 of this title], are repealed, and title 5, United States Code, shall read as if such subsections had not been enacted.”

#### CONSTRUCTION OF 2009 AMENDMENT

Pub. L. 111-84, div. A, title XI, §1122(c), Oct. 28, 2009, 123 Stat. 2509, provided that: “Nothing in the amendments made by this section [amending this section, section 8468 of this title, and section 1005 of Title 39, Postal Service] may be construed to authorize the waiver of the hiring preferences under chapter 33 of title 5, United States Code in selecting annuitants to employ in an appointive or elective position.”

#### ANNUAL REPORT TO CONGRESS

Pub. L. 102-190, div. A, title VI, §655(d), Dec. 5, 1991, 105 Stat. 1393, provided that:

“(1) For the purpose of this subsection, the term ‘agency in the legislative branch’ has the meaning given such term by section 5531(4) of title 5, United States Code, as amended by subsection (a).

“(2) Each agency in the legislative branch shall submit to the Speaker of the House of Representatives and the Committee on Rules and Administration of the Senate, for each calendar year, a written report on how any authority made available as a result of the enactment of this section [amending this section and sections 5531, 5532, and 8468 of this title] was used by such agency during the period covered by such report.

“(3) A report under this subsection—

“(A) shall include the number of instances in which each type of authority was exercised, the circumstances justifying the exercise of authority, and, unless previously submitted, a description of the poli-

cies and procedures governing each type of authority exercised; and

“(B) shall be submitted not later than 30 days after the end of the calendar year to which it relates.”

#### COMMISSION ON THE OPERATION OF THE SENATE

Pub. L. 94-252, Mar. 30, 1976, 90 Stat. 294, provided that: “On and after the date of the enactment of the joint resolution [Mar. 30, 1976], the provisions of section 8344 of title 5, United States Code, shall not apply to any individual serving as a member of the Commission on the Operation of the Senate.”

### § 8345. Payment of benefits; commencement, termination, and waiver of annuity

(a) Each annuity is stated as an annual amount, one-twelfth of which, rounded to the next lowest dollar, constitutes the monthly rate payable on the first business day of the month after the month or other period for which it has accrued.

(b)(1) Except as otherwise provided—

(A) an annuity of an employee or Member commences on the first day of the month after—

(i) separation from the service; or

(ii) pay ceases and the service and age requirements for title to annuity are met; and

(B) any other annuity payable from the Fund commences on the first day of the month after the occurrence of the event on which payment thereof is based.

(2) The annuity of—

(A) an employee involuntarily separated from service, except by removal for cause on charges of misconduct or delinquency; and

(B) an employee or Member retiring under section 8337 of this title due to a disability;

shall commence on the day after separation from the service or the day after pay ceases and the service and age or disability requirements for title to annuity are met.

(c) The annuity of a retired employee or Member terminates on the day death or other terminating event provided by this subchapter occurs. The annuity of a survivor terminates on the last day of the month before death or other terminating event occurs.

(d) An individual entitled to annuity from the Fund may decline to accept all or any part of the annuity by a waiver signed and filed with the Office of Personnel Management. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

(e)(1) Payment due a minor, or an individual mentally incompetent or under other legal disability, may be made to the person (including an organization) 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 (including an organization) who, in the judgment of the Office, is responsible for the care of the claimant and may appropriately receive such payments on behalf of the claimant,

and the payment bars recovery by any other person.

(2) If the Office determines that direct payment of a benefit to an individual mentally incompetent or under other legal disability would cause substantial harm to the individual, the Office may defer or suspend direct payment of the benefit until such time as the appointment of a representative payee is made. The Office shall resume payment as soon as practicable, including all amounts due.

(f) The Office may not authorize a person to receive payments on behalf of a minor or individual of legal disability under subsection (e) if that person has been convicted of a violation of—

- (1) section 8345a or 8466a;
- (2) section 208 or 1632 of the Social Security Act (42 U.S.C. 408, 1383a); or
- (3) section 6101 of title 38.

(g) The Office shall prescribe regulations to provide that the amount of any monthly annuity payable under this section accruing for any month and which is computed with regard to service that includes any service referred to in section 8332(b)(6) performed by an individual prior to January 1, 1969, shall be reduced by the portion of any benefits under any State retirement system to which such individual is entitled (or on proper application would be entitled) for such month which is attributable to such service performed by such individual before such date.

(h) An individual entitled to an annuity from the Fund may make allotments or assignments of amounts from his annuity for such purposes as the Office of Personnel Management in its sole discretion considers appropriate.

(i)(1) No payment shall be made from the Fund unless an application for benefits based on the service of an employee or Member is received in the Office of Personnel Management before the one hundred and fifteenth anniversary of his birth.

(2) Notwithstanding paragraph (1) of this subsection, after the death of an employee, Member, or annuitant, no benefit based on his service shall be paid from the Fund unless an application therefor is received in the Office of Personnel Management within 30 years after the death or other event which gives rise to title to the benefit.

(j)(1) Payments under this subchapter which would otherwise be made to an employee, Member, or annuitant based on service of that individual shall be paid (in whole or in part) by the Office to another person if and to the extent expressly provided for in the terms of—

(A) any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation; or

(B) any court order or other similar process in the nature of garnishment for the enforcement of a judgment rendered against such employee, Member, or annuitant, for physically, sexually, or emotionally abusing a child.

In the event that the Office is served with more than 1 decree, order, or other legal process with

respect to the same moneys due or payable to any individual, such moneys shall be available to satisfy such processes on a first-come, first-served basis, with any such process being satisfied out of such moneys as remain after the satisfaction of all such processes which have been previously served.

(2) Paragraph (1) shall only apply to payments made by the Office under this subchapter after the date of receipt in the Office of written notice of such decree, order, other legal process, or agreement, and such additional information and documentation as the Office may prescribe.

(3) For the purpose of this subsection—

(A) the term “court” means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court;

(B) the term “judgment rendered for physically, sexually, or emotionally abusing a child” means any legal claim perfected through a final enforceable judgment, which claim is based in whole or in part upon the physical, sexual, or emotional abuse of a child, whether or not that abuse is accompanied by other actionable wrongdoing, such as sexual exploitation or gross negligence; and

(C) the term “child” means an individual under 18 years of age.

(k)(1) The Office shall, in accordance with this subsection, enter into an agreement with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Office shall withhold State income tax in the case of the monthly annuity of any annuitant who voluntarily requests, in writing, such withholding. The amounts withheld during any calendar quarter shall be held in the Fund and disbursed to the States during the month following that calendar quarter.

(2) An annuitant may have in effect at any time only one request for withholding under this subsection, and an annuitant may not have more than two such requests in effect during any one calendar year.

(3) Subject to paragraph (2) of this subsection, an annuitant may change the State designated by that annuitant for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with such change. An annuitant also may revoke any request of that annuitant for withholding. Any change in the State designated or revocation is effective on the first day of the month after the month in which the request or the revocation is processed by the Office, but in no event later than on the first day of the second month beginning after the day on which such request or revocation is received by the Office.

(4) This subsection does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of this subsection. The Office may not accept pay from a State for services performed in withholding State income taxes from annuities. Any amount erroneously withheld from an an-

nunity and paid to a State by the Office shall be repaid by the State in accordance with regulations issued by the Office.

(5) For the purpose of this subsection, “State” means a State, the District of Columbia, or any territory or possession of the United States.

(l) Transfers of contributions and deposits authorized by section 408(a)(3) of the Foreign Service Act of 1980 shall be deemed to be a complete and final payment of benefits under this chapter.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 582; Pub. L. 93–273, § 1, Apr. 26, 1974, 88 Stat. 93; Pub. L. 94–126, § 1(c), Nov. 12, 1975, 89 Stat. 679; Pub. L. 94–166, § 1, Dec. 23, 1975, 89 Stat. 1002; Pub. L. 94–183, § 1, Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95–366, § 1(a), Sept. 15, 1978, 92 Stat. 600; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 97–35, title XVII, § 1705(a), Aug. 13, 1981, 95 Stat. 758; Pub. L. 97–253, title III, §§ 304(b), 305(a), Sept. 8, 1982, 96 Stat. 795; Pub. L. 98–615, § 2(6), Nov. 8, 1984, 98 Stat. 3202; Pub. L. 99–251, title III, § 305(a), Feb. 27, 1986, 100 Stat. 26; Pub. L. 101–246, title I, § 141(b), Feb. 16, 1990, 104 Stat. 35; Pub. L. 103–358, § 2(a), Oct. 14, 1994, 108 Stat. 3420; Pub. L. 116–126, § 2(c)(1), (d)(1), Mar. 18, 2020, 134 Stat. 175, 176.)

#### HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i>  |
|-------------------|------------------|--|
| .....             | 5 U.S.C. 2264.   | July 31, 1956, ch. 804, § 401 “Sec. 14”, 70 Stat. 757.<br>Sept. 6, 1960, Pub. L. 86–713, § 1(b), 74 Stat. 814. |

In subsection (b), the second sentence of former section 2264(b) is omitted as included in the second sentence of the revised subsection. The words “after September 5, 1960” are substituted for “on or after September 6, 1960”.

In subsection (c), the first sentence of former section 2264(c) is omitted as covered by the remainder of the subsection. The words “on or after September 6, 1960” are omitted as obsolete.

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

#### Editorial Notes

##### REFERENCES IN TEXT

Section 408(a)(3) of the Foreign Service Act of 1980, referred to in subsec. (l), is classified to section 3968(a)(3) of Title 22, Foreign Relations and Intercourse.

##### AMENDMENTS

2020—Subsec. (e). Pub. L. 116–126, § 2(c)(1), designated existing provisions as par. (1), inserted “(including an organization)” after “to the person” and after “to any person”, inserted “and may appropriately receive such payments on behalf of the claimant” after “care of the claimant”, and added par. (2).

Subsec. (f). Pub. L. 116–126, § 2(d)(1), added subsec. (f).  
1994—Subsec. (j)(1). Pub. L. 103–358, § 2(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Payments under this subchapter which would otherwise be made to an employee, Member, or annuitant based upon his service shall be paid (in whole or in part) by the Office to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any pay-

ment under this paragraph to a person bars recovery by any other person.”

Subsec. (j)(2). Pub. L. 103–358, § 2(a)(2), inserted “other legal process,” after “order,”.

Subsec. (j)(3). Pub. L. 103–358, § 2(a)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “As used in this subsection, ‘court’ means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.”

1990—Subsec. (l). Pub. L. 101–246 added subsec. (l).

1986—Subsec. (f). Pub. L. 99–251 struck out subsec. (f) which provided minimum monthly rates of annuity payable under subsec. (a) with certain exceptions.

1984—Subsec. (f)(4). Pub. L. 98–615, § 2(6)(A), added par. (4).

Subsec. (j)(3). Pub. L. 98–615, § 2(6)(B), inserted reference to the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and any Indian court.

1982—Subsec. (a). Pub. L. 97–253, § 304(b), substituted “rounded to the next lowest” for “fixed at the nearest”.

Subsec. (b). Pub. L. 97–253, § 305(a), substituted provisions that an annuity of an employee or Member commences on the first day of the month after separation from service or pay ceases and the service and age requirements for title to annuity are met, that any other annuity payable from the Fund commences on the first day of the month after the occurrence of the event on which the payment thereof is based, and that the annuity of an employee involuntarily separated from service or of an employee or Member retiring due to a disability shall commence on the day after separation from the service or the day after pay ceases and the service and age or disability requirements for title to annuity are met for provisions that the annuity of an employee or Member would commence on the day after he was separated from the service, or on the day after his pay ceased and he met the service and the age or disability requirements for title to annuity and that an annuity payable from the Fund allowed after September 5, 1960, would commence on the day after the occurrence of the event on which payment thereof was based.

1981—Subsec. (k). Pub. L. 97–35 added subsec. (k).

1978—Subsecs. (d), (e). Pub. L. 95–454, § 906(a)(2), (3), substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission”.

Subsec. (g). Pub. L. 95–454, § 906(a)(3), substituted “Office” for “Commission” in the subsec. (g) added by Pub. L. 94–126.

Pub. L. 95–366 redesignated as subsec. (h) the subsec. (g) added by Pub. L. 94–166.

Subsec. (h). Pub. L. 95–454, § 906(a)(2), substituted “Office of Personnel Management” for “Civil Service Commission”.

Pub. L. 95–366 redesignated former subsec. (g), added by Pub. L. 94–166, as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 95–454, § 906(a)(2), substituted “Office of Personnel Management” for “Civil Service Commission” wherever appearing.

Pub. L. 95–366 redesignated former subsec. (h) as (i).  
Subsec. (j). Pub. L. 95–454, § 906(a)(3), substituted “Office” for “Commission” wherever appearing.

Pub. L. 95–366 added subsec. (j).

1975—Subsec. (g). Pub. L. 94–166 added subsec. (g) authorizing allotment or assignment of amounts from annuities.

Pub. L. 94–126 added subsec. (g) relating to the crediting of National Guard technician service in connection with civil service retirement.

Subsec. (h). Pub. L. 94–183 added subsec. (h).

1974—Subsec. (f). Pub. L. 93–273 added subsec. (f).

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE OF 2020 AMENDMENT**

Amendment by Pub. L. 116-126 effective on Mar. 18, 2020, and applicable on and after the effective date of regulations promulgated under section 3(b)(1) of Pub. L. 116-126, see sections 4 and 3(b) of Pub. L. 116-126, set out respectively as an Effective Date of 2020 Amendment note and a Regulations note under section 8331 of this title.

**EFFECTIVE DATE OF 1994 AMENDMENT**

Section 3 of Pub. L. 103-358 provided that: “The amendments made by this Act [amending this section and sections 8437 and 8467 of this title] shall take effect on the date of enactment of this Act [Oct. 14, 1994], and shall apply with respect to any decree, order, or other legal process, or notice of agreement received by the Office of Personnel Management or the Executive Director of the Federal Retirement Thrift Investment Board on or after such date of enactment.”

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions and specific applicability provisions, see section 4(a)(1), (5)(D) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

**EFFECTIVE DATE OF 1982 AMENDMENT**

Amendment by section 304(b) of Pub. L. 97-253 applicable with respect to any annuity commencing on or after Oct. 1, 1982, and with respect to any adjustment or redetermination of any annuity made on or after such date, see section 304(c) of Pub. L. 97-253, set out as a note under section 8340 of this title.

Section 305(b) of Pub. L. 97-253, as amended by Pub. L. 97-377, title I, §124, Dec. 21, 1982, 96 Stat. 1913, provided that: “The amendment made by subsection (a) [amending this section] shall apply to annuities which commence on or after October 1, 1982, except for those individuals who serve three days or less in the month of retirement.”

**EFFECTIVE DATE OF 1981 AMENDMENT**

Section 1705(b) of Pub. L. 97-35 provided that: “The amendment made by subsection (a) [amending this section] shall take effect October 1, 1981.”

**EFFECTIVE DATE OF 1978 AMENDMENTS**

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

Section 2 of Pub. L. 95-366 provided that: “The amendments made by the first section of this Act [amending this section and section 8346 of this title] shall only apply to payments made from the Civil Service Retirement and Disability Fund after the date of the enactment of this Act [Sept. 15, 1978].”

**EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 94-126 effective as of Jan. 1, 1969, applicable to a person who, on Nov. 12, 1975, is receiving or is entitled to receive benefits under any Federal retirement system and requests in writing the application of the amendment to him by the office administering his retirement system, and additional benefits to commence Dec. 1, 1975, see section 3 of Pub. L. 94-126, set out as a note under section 8334 of this title.

**EFFECTIVE DATE OF 1974 AMENDMENT**

Section 3 of Pub. L. 93-273 provided that: “This Act [amending this section and enacting provisions set out as notes under this section and sections 8339 and 8341 of this title] shall become effective on the date of enactment [Apr. 26, 1974]. Annuity increases under this Act shall apply to annuities which commence before, on, or after the date of enactment of this Act, but no increase

in annuity shall be paid for any period prior to the first day of the first month which begins on or after the ninetieth day after the date of enactment of this Act, or the date on which the annuity commences, whichever is later.”

**REGULATIONS**

Regulations to carry out amendment by Pub. L. 116-126 to be promulgated by Office of Personnel Management no later than 1 year after Mar. 18, 2020, with allowance for additional regulations relating to administration of representative payee program, see section 3(b) of Pub. L. 116-126, set out as a note under section 8331 of this title.

**MINIMUM ANNUITY UNDER CIVIL SERVICE RETIREMENT AND DISABILITY SYSTEM**

Section 305(b)-(d) of Pub. L. 99-251 provided that:

“(b) SAVINGS PROVISION.—An annuity payable from the Civil Service Retirement and Disability Fund as of the day before the date of enactment of this Act [Feb. 27, 1986] shall not be reduced—

“(1) by reason of the repeal of section 8345(f) of title 5, United States Code; or

“(2) if or to the extent that the reduction is to be made for the purpose of eliminating an overpayment resulting from the manner in which such section 8345(f) has been administered by the Office of Personnel Management.

“(c) RATIFICATION OF ERRONEOUS PAYMENTS.—Any individual to whom an overpayment of an annuity has been made from the Civil Service Retirement and Disability Fund before the date of enactment of this Act [Feb. 27, 1986] shall be deemed to have been entitled to that overpayment if and to the extent that such overpayment resulted from the manner in which the Office of Personnel Management has administered section 8345(f) of title 5, United States Code.

“(d) ADJUSTMENTS OF CERTAIN REDUCTIONS.—(1) Effective for any month after the date of enactment of this Act [Feb. 27, 1986], the amount of any annuity which—

“(A) is payable from the Civil Service Retirement and Disability Fund; and

“(B) was reduced after June 30, 1985, and before the date of enactment of this Act, to eliminate any overpayment resulting from the manner in which the Office of Personnel Management administered section 8345(f) of title 5, United States Code, shall not be less than the amount which would have been payable as of such date of enactment if the reduction described in clause (B) had not been made.

“(2)(A) The Office shall make a lump-sum payment to each individual receiving an annuity to which paragraph (1) applies.

“(B) The lump-sum payment made to any individual under this paragraph shall be equal to the excess of—

“(i) the total amount of the annuity payments which would have been made to the individual for the period beginning with the first month in which the reduction described in paragraph (1)(B) was made and ending on the last day of the month in which this Act is enacted if the reduction had not been made, over

“(ii) the total amount of the annuity payments which have been paid to such individual for that period.”

**AVAILABILITY OF THE CIVIL SERVICE RETIREMENT AND DISABILITY FUND FOR EXPENSES INCURRED BY THE OFFICE OF PERSONNEL MANAGEMENT**

Section 1705(c) of Pub. L. 97-35 provided that: “The Civil Service Retirement and Disability Fund is available for expenses incurred by the Office of Personnel Management in the initial implementation of the amendments made by this section [amending this section].”

**MONTHLY RATE OF MINIMUM ANNUITY**

Section 2(c) of Pub. L. 93-273 provided that: “The monthly rate of an annuity resulting from an increase

under this section [enacting provisions set out as notes under sections 8339 and 8341 of this title] shall be considered as the monthly rate of annuity payable under section 8345(a) of title 5, United States Code [subsec. (a) of this section], for purposes of computing the minimum annuity under section 8345(f) of title 5 [subsec. (f) of this section], as added by the first section of this Act.”

#### § 8345a. Embezzlement or conversion of payments

##### (a) EMBEZZLING AND CONVERSION GENERALLY.—

(1) IN GENERAL.—It shall be unlawful for a representative payee to embezzle or in any manner convert all or any part of the amounts received from payments received as a representative payee to a use other than for the use and benefit of the minor or individual on whose behalf such payments were received.

(2) REVOCATION.—If the Office determines that a representative payee has embezzled or converted payments as described in paragraph (1), the Office shall promptly—

(A) revoke the certification for payment of benefits to the representative payee; and

(B) certify payment—

- (i) to another representative payee; or
- (ii) if the interest of the individual under this title would be served thereby, to the individual.

(b) PENALTY.—Any person who violates subsection (a)(1) shall be fined under title 18, imprisoned for not more than 5 years, or both.

(Added Pub. L. 116-126, §2(b)(1), Mar. 18, 2020, 134 Stat. 174.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective on Mar. 18, 2020, and applicable on and after the effective date of regulations promulgated under section 3(b)(1) of Pub. L. 116-126, see sections 4 and 3(b) of Pub. L. 116-126, set out respectively as an Effective Date of 2020 Amendment note and a Regulations note under section 8331 of this title.

##### REGULATIONS

Regulations to carry out this section to be promulgated by Office of Personnel Management no later than 1 year after Mar. 18, 2020, with allowance for additional regulations relating to administration of representative payee program, see section 3(b) of Pub. L. 116-126, set out as a note under section 8331 of this title.

#### § 8346. Exemption from legal process; recovery of payments

(a) The money mentioned by this subchapter is not assignable, either in law or equity, except under the provisions of subsections (h) and (j) of section 8345 of this title, or subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal laws.

(b) Recovery of payments under this subchapter may not be made from an individual when, in the judgment of the Office of Personnel Management, the individual is without fault and recovery would be against equity and good conscience. Withholding or recovery of money mentioned by this subchapter on account of a certification or payment made by a former employee of the United States in the discharge of

his official duties may be made only if the head of the agency on behalf of which the certification or payment was made certifies to the Office that the certification or payment involved fraud on the part of the former employee.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 583; Pub. L. 94-166, §2, Dec. 23, 1975, 89 Stat. 1002; Pub. L. 95-366, §1(b), Sept. 15, 1978, 92 Stat. 600; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

#### HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i>         |
|-------------------|------------------|---|
| .....             | 5 U.S.C. 2265.   | July 31, 1956, ch. 804, §401 “Sec. 15”, 70 Stat. 758. |

In subsection (b), the words “Notwithstanding any other provision of law” are omitted as unnecessary. The second word of the second sentence “or” is substituted for “of” to correct a printing error.

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

#### Editorial Notes

##### AMENDMENTS

1978—Subsec. (a). Pub. L. 95-366 substituted references to subsecs. (h) and (j) of section 8345 for reference to subsec. (g) of section 8345.

Subsec. (b). Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively.

1975—Subsec. (a). Pub. L. 94-166 inserted “except under the provisions of section 8345(g) of this title,” after “equity”, and “, except as otherwise may be provided by Federal laws” after “process”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1978 AMENDMENTS

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

Amendment by Pub. L. 95-366 applicable to payments made from Civil Service Retirement and Disability Fund after Sept. 15, 1978, see section 2 of Pub. L. 95-366, set out as a note under section 8345 of this title.

#### § 8347. Administration; regulations

(a) The Office of Personnel Management shall administer this subchapter. Except as otherwise specifically provided herein, the Office shall perform, or cause to be performed, such acts and prescribe such regulations as are necessary and proper to carry out this subchapter.

(b) Applications under this subchapter shall be in such form as the Office prescribes. Agencies shall support the applications by such certificates as the Office considers necessary to the determination of the rights of applicants. The Office shall adjudicate all claims under this subchapter.

(c) The Office shall determine questions of disability and dependency arising under this subchapter. Except to the extent provided under subsection (d) of this section, the decisions of the Office concerning these matters are final and conclusive and are not subject to review. The Office may direct at any time such medical or other examinations as it considers necessary to determine the facts concerning disability or



dependency of an individual receiving or applying for annuity under this subchapter. The Office may suspend or deny annuity for failure to submit to examination.

(d)(1) Subject to paragraph (2) of this subsection, an administrative action or order affecting the rights or interests of an individual or of the United States under this subchapter may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(2) In the case of any individual found by the Office to be disabled in whole or in part on the basis of the individual's mental condition, and that finding was made pursuant to an application by an agency for purposes of disability retirement under section 8337(a) of this title, the procedures under section 7701 of this title shall apply and the decision of the Board shall be subject to judicial review under section 7703 of this title.

(e) The Office shall fix the fees for examinations made under this subchapter by physicians or surgeons who are not medical officers of the United States. The fees and reasonable traveling and other expenses incurred in connection with the examinations are paid from appropriations for the cost of administering this subchapter.

(f) The Office shall select three actuaries, to be known as the Board of Actuaries of the Civil Service Retirement System. The Office shall fix the pay of the members of the Board, except members otherwise in the employ of the United States. The Board shall report annually on the actuarial status of the System and furnish its advice and opinion on matters referred to it by the Office. The Board may recommend to the Office and to Congress such changes as in the Board's judgment are necessary to protect the public interest and maintain the System on a sound financial basis. The Office shall keep, or cause to be kept, such records as it considers necessary for making periodic actuarial valuations of the System. The Board shall make actuarial valuations every 5 years, or oftener if considered necessary by the Office.

(g) The Office may exclude from the operation of this subchapter an employee or group of employees in or under an Executive agency whose employment is temporary or intermittent. However, the Office may not exclude any employee who occupies a position on a part-time career employment basis (as defined in section 3401(2) of this title).

(h) The Office, on recommendation by the Mayor of the District of Columbia, may exclude from the operation of this subchapter an individual or group of individuals employed by the government of the District of Columbia whose employment is temporary or intermittent.

(i) The Architect of the Capitol may exclude from the operation of this subchapter an employee under the Office of the Architect of the Capitol whose employment is temporary or of uncertain duration.

(j) The Librarian of Congress may exclude from the operation of this subchapter an employee under the Library of Congress whose employment is temporary or of uncertain duration.

(k) The Secretary of Agriculture shall prescribe regulations to effect the application and operation of this subchapter to an individual named by section 8331(1)(F) of this title.

(l) The Director or Acting Director of the Botanic Garden may exclude from the operation of this subchapter an employee under the Botanic Garden whose employment is temporary or of uncertain duration.

(m) Notwithstanding any other provision of law, for the purpose of ensuring the accuracy of information used in the administration of this chapter, at the request of the Director of the Office of Personnel Management—

(1) the Secretary of Defense or the Secretary's designee shall provide information on retired or retainer pay provided under title 10;

(2) the Secretary of Veterans Affairs shall provide information on pensions or compensation provided under title 38;

(3) the Commissioner of Social Security or the Secretary's<sup>1</sup> designee shall provide information contained in the records of the Social Security Administration; and

(4) the Secretary of Labor or the Secretary's designee shall provide information on benefits paid under subchapter I of chapter 81 of this title.

The Director shall request only such information as the Director determines is necessary. The Director, in consultation with the officials from whom information is requested, shall establish, by regulation and otherwise, such safeguards as are necessary to ensure that information made available under this subsection is used only for the purpose authorized.

(n)(1) Notwithstanding any other provision of this subchapter, the Director of Central Intelligence shall, in a manner consistent with the administration of this subchapter by the Office, and to the extent considered appropriate by the Director of Central Intelligence—

(A) determine entitlement to benefits under this subchapter based on the service of employees of the Central Intelligence Agency;

(B) maintain records relating to the service of such employees;

(C) compute benefits under this subchapter based on the service of such employees;

(D) collect deposits to the Fund made by such employees, their spouses, and their former spouses;

(E) authorize and direct disbursements from the Fund to the extent based on service of such employees; and

(F) perform such other functions under this subchapter as the Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management, determines to be appropriate.

(2) The Director of the Office of Personnel Management shall furnish such information and, on a reimbursable basis, such services to the Director of Central Intelligence as the Director of Central Intelligence requests to carry out paragraph (1) of this subsection.

(3)(A) The Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management, shall by regulation prescribe appropriate procedures to carry out this subsection.

(B) The regulations shall provide procedures for the Director of the Office of Personnel Man-

<sup>1</sup> So in original. Probably should be "Commissioner's".

agement to inspect and audit disbursements from the Civil Service Retirement and Disability Fund under this subchapter.

(C) The Director of Central Intelligence shall submit the regulations prescribed under subparagraph (A) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the regulations take effect.

(4)(A) Section 201(c) of the Central Intelligence Agency Retirement Act shall apply in the administration of this subchapter to the extent that the provisions of this subchapter are administered under this subsection.

(B) Notwithstanding subparagraph (A) of this paragraph, section 8347(d) of this title shall apply with respect to employees of the Central Intelligence Agency who are subject to the Civil Service Retirement System.

(o) Any provision of law outside of this subchapter which provides coverage, service credit, or any other benefit under this subchapter to any individuals who (based on their being employed by an entity other than the Government) would not otherwise be eligible for any such coverage, credit, or benefit, shall not apply with respect to any individual appointed, transferred, or otherwise commencing that type of employment on or after October 1, 1988.

(p) The Director of the Administrative Office of the United States Courts may exclude from the operation of this subchapter an employee of the Administrative Office of the United States Courts, the Federal Judicial Center, or a court named by section 610 of title 28, whose employment is temporary or of uncertain duration.

(q)(1) Under regulations prescribed by the Office of Personnel Management, an employee who—

(A) has not previously made an election under this subsection or had an opportunity to make an election under this paragraph; and

(B) moves, without a break in service of more than 1 year, to employment in a non-appropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, described in section 2105(c),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered as an employee under this subchapter during any employment described in section 2105(c) after such move.

(2) Under regulations prescribed by the Office of Personnel Management, an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, described in section 2105(c), who—

(A) has not previously made an election under this subsection or had an opportunity to make an election under this paragraph;

(B) is a participant in a retirement system established for employees described in section 2105(c);

(C) moves, without a break in service of more than 1 year, to a position that is not described in section 2105(c); and

(D) is excluded from coverage under chapter 84 by section 8402(b),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to re-

main covered, during any subsequent employment as an employee as defined in section 2105(a) or section 2105(c), by the retirement system applicable to such employee's current or most recent employment described in section 2105(c) rather than be subject to this subchapter.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 583; Pub. L. 90-83, §1(84), Sept. 11, 1967, 81 Stat. 218; Pub. L. 90-623, §1(22), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 95-437, §4(a), Oct. 10, 1978, 92 Stat. 1058; Pub. L. 95-454, title IX, §906(a)(2), (3), (9), (c)(2)(F), Oct. 13, 1978, 92 Stat. 1224, 1225, 1227; Pub. L. 96-54, §2(a)(50), Aug. 14, 1979, 93 Stat. 384; Pub. L. 96-499, title IV, §404(b), Dec. 5, 1980, 94 Stat. 2606; Pub. L. 96-500, §1, Dec. 5, 1980, 94 Stat. 2696; Pub. L. 97-253, title III, §302(b), Sept. 8, 1982, 96 Stat. 793; Pub. L. 99-335, title II, §207(i), June 6, 1986, 100 Stat. 596; Pub. L. 100-238, title I, §108(a)(1), Jan. 8, 1988, 101 Stat. 1747; Pub. L. 101-474, §5(n), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101-508, title VII, §7202(j)(2), Nov. 5, 1990, 104 Stat. 1388-337; Pub. L. 102-54, §13(b)(5), June 13, 1991, 105 Stat. 274; Pub. L. 102-378, §2(64), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 102-496, title VIII, §803(c), Oct. 24, 1992, 106 Stat. 3253; Pub. L. 103-296, title I, §108(e)(5), Aug. 15, 1994, 108 Stat. 1486; Pub. L. 104-106, div. A, title X, §1043(a)(1), Feb. 10, 1996, 110 Stat. 434; Pub. L. 107-107, div. A, title XI, §1131(a), Dec. 28, 2001, 115 Stat. 1242.)

#### HISTORICAL AND REVISION NOTES 1966 ACT

| <i>Derivation</i> | <i>U.S. Code</i>  | <i>Revised Statutes and Statutes at Large</i>  |
|-------------------|---|--|
| (a)-(f) .....     | 5 U.S.C. 2266 (less (f)).                               | July 31, 1956, ch. 804, §401 "Sec. 16 (less (f))", 70 Stat. 758.   |
| (g)-(k) .....     | 5 U.S.C. 2252(e), (f) (words after semicolon), (h) (1). | July 31, 1956, ch. 804, §401 "Sec. 2(e), (f) (words after semicolon)", 70 Stat. 745. July 1, 1960, Pub. L. 86-568, §115(b)(1) "(h) (1)", 74 Stat. 302. |

In subsection (a), the words "to carry out this subchapter" are substituted for "for the purpose of carrying the provisions of this chapter into full force and effect".

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

#### 1967 ACT

| <i>Section of title 5</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>                    |
|---------------------------|---------------------------|--|
| 8347(l) .....             | 5 App.: 2252(f).          | Sept. 26, 1966, Pub. L. 89-604, §1(c), 80 Stat. 847. |

#### Editorial Notes

##### REFERENCES IN TEXT

Section 201(c) of the Central Intelligence Agency Retirement Act, referred to in subsec. (n)(4)(A), is classified to section 2011(c) of Title 50, War and National Defense.

##### AMENDMENTS

2001—Subsec. (q)(1). Pub. L. 107-107, §1131(a)(1), inserted "and" after semicolon in subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: "has 5 or more years of civilian service creditable under this subchapter; and".

Subsec. (q)(2)(B). Pub. L. 107-107, §1131(a)(2), struck out "vested" before "participant in a retirement sys-

tem” and struck out “, as the term ‘vested participant’ is defined by such system” before semicolon at end.

1996—Subsec. (q)(1). Pub. L. 104-106, §1043(a)(1)(A), struck out “of the Department of Defense or the Coast Guard” after “an employee” in introductory provisions and substituted “1 year” for “3 days” in subpar. (C).

Subsec. (q)(2)(C). Pub. L. 104-106, §1043(a)(1)(B), substituted “1 year” for “3 days” and struck out “in the Department of Defense or the Coast Guard, respectively,” after “to a position”.

1994—Subsec. (m)(3). Pub. L. 103-296 substituted “Commissioner of Social Security” for “Secretary of Health and Human Services”.

1992—Subsec. (n)(4)(A). Pub. L. 102-496 substituted “the Central Intelligence Agency Retirement Act” for “the Central Intelligence Agency Retirement Act of 1964 for Certain Employees”.

Subsec. (p). Pub. L. 102-378, §2(64)(A), redesignated subsec. (p), relating to employees of Department of Defense and Coast Guard, as (q).

Subsec. (q). Pub. L. 102-378, §2(64)(A), redesignated subsec. (p), relating to employees of Department of Defense and Coast Guard, as (q).

Subsec. (q)(1)(A), (2)(A). Pub. L. 102-378, §2(64)(B), amended subpars. (A) generally. Prior to amendment, subpars. (A) read as follows: “has not previously made or had an opportunity to make an election under this subsection;”.

1991—Subsec. (m)(2). Pub. L. 102-54 substituted “Secretary” for “Administrator”.

1990—Subsec. (p). Pub. L. 101-508 added subsec. (p) relating to elections by employees of Department of Defense, Coast Guard, or a nonappropriated fund instrumentality of Department of Defense or Coast Guard.

Pub. L. 101-474 added subsec. (p) relating to Director of Administrative Office of United States Courts.

1988—Subsec. (o). Pub. L. 100-238 added subsec. (o).

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

1982—Subsec. (m)(3), (4). Pub. L. 97-253 added pars. (3) and (4).

1980—Subsec. (c). Pub. L. 96-500, §1(a), substituted “Except to the extent provided under subsection (d) of this section, the decisions of the Office concerning” for “The decisions of the Office concerning”.

Subsec. (d). Pub. L. 96-500, §1(b), designated existing provisions as par. (1), made such par. (1) subject to the provisions of par. (2), and added par. (2).

Subsec. (m). Pub. L. 96-499 added subsec. (m).

1979—Subsec. (h). Pub. L. 96-54 substituted “Mayor” for “Commissioner”.

1978—Subsecs. (a) to (c). Pub. L. 95-454, §906(a)(2), (3), substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively.

Subsec. (d). Pub. L. 95-454, §906(a)(9), substituted “Merit Systems Protection Board” for “Commission”, and “Board” for “Commission”.

Subsecs. (e), (f). Pub. L. 95-454, §906(a)(3), substituted “Office” for “Commission” wherever appearing.

Subsec. (g). Pub. L. 95-454, §906(a)(3), (c)(2)(F), substituted “Office” for “Commission” wherever appearing, and “3401” for “3391”.

Pub. L. 95-437 inserted provision prohibiting the Commission from excluding any employee who occupies a position on a part-time career employment basis, as defined in section 3391(2) of this title.

Subsec. (h). Pub. L. 95-454, §906(a)(3), substituted “Office” for “Commission”.

1968—Subsec. (h). Pub. L. 90-623 substituted “Commissioner” for “Commissioners”.

### Statutory Notes and Related Subsidiaries

#### 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 Cen-

tral 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 1994 AMENDMENT

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

#### EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102-496 effective on first day of fourth month beginning after Oct. 24, 1992, see section 805 of Pub. L. 102-496, set out as an Effective Date note under section 2001 of Title 50, War and National Defense.

Amendment by section 2(64) of Pub. L. 102-378 effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102-378, set out as a note under section 6303 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101-508, set out as a note under section 2105 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

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

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-253 effective Oct. 1, 1982, see section 302(c)(1) of Pub. L. 97-253, as amended by section 3(i) of Pub. L. 97-346, set out as a note under section 8337 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENTS

Section 2 of Pub. L. 96-500 provided that: “The amendments made by the first section of this Act [amending this section] shall apply with respect to determinations made by the Office of Personnel Management on or after the first day of the first month beginning after the date of the enactment of this Act [Dec. 5, 1980].”

Amendment by Pub. L. 96-499 effective Dec. 5, 1980, see section 404(c) of Pub. L. 96-499, set out as a note under section 8339 of this title.

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

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

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-623 intended to restate without substantive change the law in effect on Oct. 22,

1968, see section 6 of Pub. L. 90-623, set out as a note under section 5334 of this title.

#### REGULATIONS; EFFECTIVE DATE OF 1996 AMENDMENT

Section 1043(b), (c) of Pub. L. 104-106 provided that:

“(b) REGULATIONS.—Not later than 6 months after the date of the enactment of this Act [Feb. 10, 1996], the Office of Personnel Management (and each of the other administrative authorities, within the meaning of subsection (c)(2)(C)(iii)) shall prescribe any regulations (or make any modifications in existing regulations) necessary to carry out this section [amending this section and sections 3502 and 8461 of this title and enacting provisions set out as a note under section 3502 of this title] and the amendments made by this section, including regulations to provide for the notification of individuals who may be affected by the enactment of this section. All regulations (and modifications to regulations) under the preceding sentence shall take effect on the same date.

#### “(c) APPLICABILITY; RELATED PROVISIONS.—

“(1) PROSPECTIVE RULES.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 3502 and 8461 of this title] shall apply with respect to moves occurring on or after the effective date of the regulations under subsection (b). Moves occurring on or after the date of the enactment of this Act [Feb. 10, 1996] and before the effective date of such regulations shall be subject to applicable provisions of title 5, United States Code, disregarding the amendments made by this section, except that any individual making an election pursuant to this sentence shall be ineligible to make an election otherwise allowable under paragraph (2).

#### “(2) RETROACTIVE RULES.—

“(A) IN GENERAL.—The regulations under subsection (b) shall include provisions for the application of sections 8347(q) and 8461(n) of title 5, United States Code, as amended by this section, with respect to any individual who, at any time after December 31, 1965, and before the effective date of such regulations, moved between positions in circumstances that would have qualified such individual to make an election under the provisions of such section 8347(q) or 8461(n), as so amended, if such provisions had then been in effect.

“(B) DEADLINE; RELATED PROVISIONS.—An election pursuant to this paragraph—

“(i) shall be made within 1 year after the effective date of the regulations under subsection (b), and

“(ii) shall have the same force and effect as if it had been timely made at the time of the move, except that no such election may be made by any individual—

“(I) who has previously made, or had an opportunity to make, an election under section 8347(q) or 8461(n) of title 5, United States Code (as in effect before being amended by this section); however, this subclause shall not be considered to render an individual ineligible, based on an opportunity arising out of a move occurring during the period described in the second sentence of paragraph (1), if no election has in fact been made by such individual based on such move;

“(II) who has not, since the move on which eligibility for the election is based, remained continuously subject (disregarding any break in service of less than 3 days) to CSRS or FERS or both seriatim (if the move was from a NAFI position) or any retirement system (or 2 or more such systems seriatim) established for employees described in section 2105(c) of such title (if the move was to a NAFI position); or

“(III) if such election would be based on a move to the Civil Service Retirement System from a retirement system established for employees described in section 2105(c) of such title.

“(C) TRANSFERS OF CONTRIBUTIONS.—

“(i) IN GENERAL.—If an individual makes an election under this paragraph to be transferred back to a retirement system in which such individual previously participated (in this section referred to as the ‘previous system’), all individual contributions (including interest) and Government contributions to the retirement system in which such individual is then currently participating (in this section referred to as the ‘current system’), excluding those made to the Thrift Savings Plan or any other defined contribution plan, which are attributable to periods of service performed since the move on which the election is based, shall be paid to the fund, account, or other repository for contributions made under the previous system. For purposes of this section, the term ‘current system’ shall be considered also to include any retirement system (besides the one in which the individual is participating at the time of making the election) in which such individual previously participated since the move on which the election is based.

“(ii) CONDITION SUBSEQUENT RELATING TO REPAYMENT OF LUMP-SUM CREDIT.—In the case of an individual who has received such individual’s lump-sum credit (within the meaning of section 8401(19) of title 5, United States Code, or a similar payment) from such individual’s previous system, the payment described in clause (i) shall not be made (and the election to which it relates shall be ineffective) unless such lump-sum credit is redeposited or otherwise paid at such time and in such manner as shall be required under applicable regulations. Regulations to carry out this clause shall include provisions for the computation of interest (consistent with section 8334(e)(2) and (3) of title 5, United States Code), if no provisions for such computation otherwise exist.

“(iii) CONDITION SUBSEQUENT RELATING TO DEFICIENCY IN PAYMENTS RELATIVE TO AMOUNTS NEEDED TO ENSURE THAT BENEFITS ARE FULLY FUNDED.—

“(I) IN GENERAL.—Except as provided in subclause (II), the payment described in clause (i) shall not be made (and the election to which it relates shall be ineffective) if the actuarial present value of the future benefits that would be payable under the previous system with respect to service performed by such individual after the move on which the election under this paragraph is based and before the effective date of the election, exceeds the total amounts required to be transferred to the previous system under the preceding provisions of this subparagraph with respect to such service, as determined by the authority administering such previous system (in this section referred to as the ‘administrative authority’).

“(II) PAYMENT OF DEFICIENCY.—A determination of a deficiency under this clause shall not render an election ineffective if the individual pays or arranges to pay, at a time and in a manner satisfactory to such administrative authority, the full amount of the deficiency described in subclause (I).

“(D) ALTERNATIVE ELECTION FOR AN INDIVIDUAL THEN PARTICIPATING IN FERS.—

“(i) APPLICABILITY.—This subparagraph applies with respect to any individual who—

“(I) is then currently participating in FERS; and

“(II) would then otherwise be eligible to make an election under subparagraphs (A) through (C) of this paragraph, determined disregarding the matter in subclause (I) of subparagraph (B) before the first semicolon therein.

“(ii) ELECTION.—An individual described in clause (i) may, instead of making an election for which such individual is otherwise eligible under this paragraph, elect to have all prior qualifying NAFI service of such individual treated as cred-

itable service for purposes of any annuity under FERS payable out of the Civil Service Retirement and Disability Fund.

“(iii) QUALIFYING NAFI SERVICE.—For purposes of this subparagraph, the term ‘qualifying NAFI service’ means any service which, but for this subparagraph, would be creditable for purposes of any retirement system established for employees described in section 2105(c) of title 5, United States Code.

“(iv) SERVICE CEASES TO BE CREDITABLE FOR NAFI RETIREMENT SYSTEM PURPOSES.—Any qualifying NAFI service that becomes creditable for FERS purposes by virtue of an election made under this subparagraph shall not be creditable for purposes of any retirement system referred to in clause (iii).

“(v) CONDITIONS.—An election under this subparagraph shall be subject to requirements, similar to those set forth in subparagraph (C), to ensure that—

“(I) appropriate transfers of individual and Government contributions are made to the Civil Service Retirement and Disability Fund; and

“(II) the actuarial present value of future benefits under FERS attributable to service made creditable by such election is fully funded.

“(E) ALTERNATIVE ELECTION FOR AN INDIVIDUAL THEN PARTICIPATING IN A NAFI RETIREMENT SYSTEM.—

“(i) APPLICABILITY.—This subparagraph applies with respect to any individual who—

“(I) is then currently participating in any retirement system established for employees described in section 2105(c) of title 5, United States Code (in this subparagraph referred to as a ‘NAFI retirement system’); and

“(II) would then otherwise be eligible to make an election under subparagraphs (A) through (C) of this paragraph (determined disregarding the matter in subclause (I) of subparagraph (B) before the first semicolon therein) based on a move from FERS.

“(ii) ELECTION.—An individual described in clause (i) may, instead of making an election for which such individual is otherwise eligible under this paragraph, elect to have all prior qualifying FERS service of such individual treated as creditable service for purposes of determining eligibility for benefits under a NAFI retirement system, but not for purposes of computing the amount of any such benefits except as provided in clause (v)(II).

“(iii) QUALIFYING FERS SERVICE.—For purposes of this subparagraph, the term ‘qualifying FERS service’ means any service which, but for this subparagraph, would be creditable for purposes of the Federal Employees’ Retirement System.

“(iv) SERVICE CEASES TO BE CREDITABLE FOR PURPOSES OF FERS.—Any qualifying FERS service that becomes creditable for NAFI purposes by virtue of an election made under this subparagraph shall not be creditable for purposes of the Federal Employees’ Retirement System.

“(v) FUNDING REQUIREMENTS.—

“(I) IN GENERAL.—Except as provided in subclause (II), nothing in this section or in any other provision of law or any other authority shall be considered to require any payment or transfer of monies in order for an election under this subparagraph to be effective.

“(II) CONTRIBUTION REQUIRED ONLY IF INDIVIDUAL ELECTS TO HAVE SERVICE MADE CREDITABLE FOR COMPUTATION PURPOSES AS WELL.—Under regulations prescribed by the appropriate administrative authority, an individual making an election under this subparagraph may further elect to have the qualifying FERS service made creditable for computation purposes under a NAFI retirement system, but only if the individual pays or arranges to pay, at a

time and in a manner satisfactory to such administrative authority, the amount necessary to fully fund the actuarial present value of future benefits under the NAFI retirement system attributable to the qualifying FERS service.

“(3) INFORMATION.—The regulations under subsection (b) shall include provisions under which any individual—

“(A) shall, upon request, be provided information or assistance in determining whether such individual is eligible to make an election under paragraph (2) and, if so, the exact amount of any payment which would be required of such individual in connection with any such election; and

“(B) may seek any other information or assistance relating to any such election.”

#### TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the report required by subsec. (f) of this section is listed on page 187), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### TREATMENT OF INDIVIDUALS ELECTING TO REMAIN SUBJECT TO THEIR FORMER RETIREMENT SYSTEM

For provisions relating to the deductions and contributions required with respect to individuals electing under section 8347(q) or 8461(n) of this title to remain covered under subchapter III of chapter 83 of this title, chapter 84 of this title, or a retirement system for employees described in section 2105(c) of this title, see section 7202(n) of Pub. L. 101-508, set out as a note under section 2105 of this title.

### § 8348. Civil Service Retirement and Disability Fund

(a) There is a Civil Service Retirement and Disability Fund. The Fund—

(1) is appropriated for the payment of—

(A) benefits as provided by this subchapter or by the provisions of chapter 84 of this title which relate to benefits payable out of the Fund; and

(B) administrative expenses incurred by the Office of Personnel Management in placing in effect each annuity adjustment granted under section 8340 or 8462 of this title, in administering survivor annuities and elections providing therefor under sections 8339 and 8341 of this title or subchapters II and IV of chapter 84 of this title, in administering alternative forms of annuities under sections 8343a and 8420a (and related provisions of law), in making an allotment or assignment made by an individual under section 8345(h) or 8465(b) of this title, in administering fraud prevention under sections 8345, 8345a, 8466, and 8466a of this title, and in withholding taxes pursuant to section 3405 of title 26 or section 8345(k) or 8469 of this title;

(2) is made available, subject to such annual limitation as the Congress may prescribe, for

any expenses incurred by the Office in connection with the administration of this chapter, chapter 84 of this title, and other retirement and annuity statutes; and

(3) is made available, subject to such annual limitation as the Congress may prescribe, for any expenses incurred by the Merit Systems Protection Board in the administration of appeals authorized under sections 8347(d) and 8461(e) of this title.

(b) The Secretary of the Treasury may accept and credit to the Fund money received in the form of a donation, gift, legacy, or bequest, or otherwise contributed for the benefit of civil-service employees generally.

(c) The Secretary shall immediately invest in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

(d) The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are extended to authorize the issuance at par of public-debt obligations for purchase by the Fund. The obligations issued for purchase by the Fund shall have maturities fixed with due regard for the needs of the Fund and bear interest at a rate equal to the average market yield computed as of the end of the calendar month next preceding the date of the issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of that calendar month. If the average market yield is not a multiple of  $\frac{1}{8}$  of 1 percent, the rate of interest on the obligations shall be the multiple of  $\frac{1}{8}$  of 1 percent nearest the average market yield.

(e) The Secretary may purchase other interest-bearing obligations of the United States, or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price only if he determines that the purchases are in the public interest.

(f) Any statute which authorizes—

(1) new or liberalized benefits payable from the Fund, including annuity increases other than under section 8340 of this title;

(2) extension of the coverage of this subchapter to new groups of employees; or

(3) increases in pay on which benefits are computed;

is deemed to authorize appropriations to the Fund to finance the unfunded liability created by that statute, in 30 equal annual installments with interest computed at the rate used in the then most recent valuation of the Civil Service Retirement System and with the first payment thereof due as of the end of the fiscal year in which each new or liberalized benefit, extension of coverage, or increase in pay is effective.

(g) At the end of each fiscal year, the Office shall notify the Secretary of the Treasury of the amount equivalent to (1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and (2) that portion of disbursement for annuities for that year which the Office estimates is attributable to credit al-

lowed for military service, less an amount determined by the Office to be appropriate to reflect the value of the deposits made to the credit of the Fund under section 8334(j) of this title. Before closing the accounts for each fiscal year, the Secretary shall credit to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the following percentages of such amounts: 10 percent for 1971; 20 percent for 1972; 30 percent for 1973; 40 percent for 1974; 50 percent for 1975; 60 percent for 1976; 70 percent for 1977; 80 percent for 1978; 90 percent for 1979; and 100 percent for 1980 and for each fiscal year thereafter.

(h)(1) In this subsection, the term “Postal surplus or supplemental liability” means the estimated difference, as determined by the Office, between—

(A) the actuarial present value of all future benefits payable from the Fund under this subchapter to current or former employees of the United States Postal Service and attributable to civilian employment with the United States Postal Service; and

(B) the sum of—

(i) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter under section 8334;

(ii) that portion of the Fund balance, as of the date the Postal surplus or supplemental liability is determined, attributable to payments to the Fund by the United States Postal Service and its employees, minus benefit payments attributable to civilian employment with the United States Postal Service, plus the earnings on such amounts while in the Fund; and

(iii) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

(2)(A) Not later than June 15, 2007, the Office shall determine the Postal surplus or supplemental liability, as of September 30, 2006. If that result is a surplus, the amount of the surplus shall be transferred to the Postal Service Retiree Health Benefits Fund established under section 8909a by June 30, 2007.

(B) The Office shall redetermine the Postal surplus or supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2007, through the fiscal year ending September 30, 2038. If the result is a surplus, that amount shall remain in the Fund until distribution is authorized under subparagraph (C). Beginning June 15, 2017, if the result is a supplemental liability, the Office shall establish an amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2043.

(C) As of the close of the fiscal years ending September 30, 2015, 2025, 2035, and 2039, if the result is a surplus, that amount shall be transferred to the Postal Service Retiree Health Benefits Fund, and any prior amortization schedule for payments shall be terminated.

(D) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

(E) The United States Postal Service shall pay the amounts so determined to the Office, with payments due not later than the date scheduled by the Office.

(3) Notwithstanding any other provision of law, in computing the amount of any payment under any other subsection of this section that is based upon the amount of the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.

(i)(1) Notwithstanding any other provision of law, the Panama Canal Commission shall be liable for that portion of any estimated increase in the unfunded liability of the fund which is attributable to any benefits payable from the Fund to or on behalf of employees and their survivors to the extent attributable to the amendments made by sections 1241 and 1242, and the provisions of sections 1231(b) and 1243(a)(1), of the Panama Canal Act of 1979, and the amendments made by section 3506 of the Panama Canal Commission Authorization Act for Fiscal Year 1991.

(2) The estimated increase in the unfunded liability referred to in paragraph (1) of this subsection shall be determined by the Office of Personnel Management. The Panama Canal Commission shall pay to the Fund from funds available to it for that purpose the amount so determined in annual installments with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

(j)(1) Notwithstanding subsection (c) of this section, the Secretary of the Treasury may suspend additional investment of amounts in the Fund if such additional investment could not be made without causing the public debt of the United States to exceed the public debt limit.

(2) Any amounts in the Fund which, solely by reason of the public debt limit, are not invested shall be invested by the Secretary of the Treasury as soon as such investments can be made without exceeding the public debt limit.

(3) Upon expiration of the debt issuance suspension period, the Secretary of the Treasury shall immediately issue to the Fund obligations under chapter 31 of title 31 that (notwithstanding subsection (d) of this section) bear such interest rates and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of the Fund will replicate to the maximum extent practicable the obligations that would then be held by the Fund if the suspension of investment under paragraph (1) of this subsection, and any redemption or disinvestment under subsection (k) of this section for the purpose described in such paragraph, during such period had not occurred.

(4) On the first normal interest payment date after the expiration of any debt issuance suspension period, the Secretary of the Treasury shall pay to the Fund, from amounts in the general fund of the Treasury of the United States not

otherwise appropriated, an amount determined by the Secretary to be equal to the excess of—

(A) the net amount of interest that would have been earned by the Fund during such debt issuance suspension period if—

(i) amounts in the Fund that were not invested during such debt issuance suspension period solely by reason of the public debt limit had been invested, and

(ii) redemptions and disinvestments with respect to the Fund which occurred during such debt issuance suspension period solely by reason of the public debt limit had not occurred, over

(B) the net amount of interest actually earned by the Fund during such debt issuance suspension period.

(5) For purposes of this subsection and subsections (k) and (l) of this section—

(A) the term “public debt limit” means the limitation imposed by section 3101(b) of title 31; and

(B) the term “debt issuance suspension period” means any period for which the Secretary of the Treasury determines for purposes of this subsection that the issuance of obligations of the United States may not be made without exceeding the public debt limit.

(k)(1) Subject to paragraph (2) of this subsection, the Secretary of the Treasury may sell or redeem securities, obligations, or other invested assets of the Fund before maturity in order to prevent the public debt of the United States from exceeding the public debt limit.

(2) The Secretary may sell or redeem securities, obligations, or other invested assets of the Fund under paragraph (1) of this subsection only during a debt issuance suspension period, and only to the extent necessary to obtain any amount of funds not exceeding the amount equal to the total amount of the payments authorized to be made from the Fund under the provisions of this subchapter or chapter 84 of this title or related provisions of law during such period. A sale or redemption may be made under this subsection even if, before the sale or redemption, there is a sufficient amount in the Fund to ensure that such payments are made in a timely manner.

(l)(1) The Secretary of the Treasury shall report to Congress on the operation and status of the Fund during each debt issuance suspension period for which the Secretary is required to take action under paragraph (3) or (4) of subsection (j) of this section. The report shall be submitted as soon as possible after the expiration of such period, but not later than the date that is 30 days after the first normal interest payment date occurring after the expiration of such period.

(2) Whenever the Secretary of the Treasury determines that, by reason of the public debt limit, the Secretary will be unable to fully comply with the requirements of subsection (c) of this section, the Secretary shall immediately notify Congress of the determination. The notification shall be made in writing.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 584; Pub. L. 90-83, §1(85), Sept. 11, 1967, 81 Stat. 218; Pub. L.

91-93, title I, §103(a), Oct. 20, 1969, 83 Stat. 137; Pub. L. 93-349, §1, July 12, 1974, 88 Stat. 354; Pub. L. 94-183, §2(37), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-70, title I, §1244, Sept. 27, 1979, 93 Stat. 474; Pub. L. 97-253, title III, §306(f), Sept. 8, 1982, 96 Stat. 797; Pub. L. 97-346, §3(g), Oct. 15, 1982, 96 Stat. 1648; Pub. L. 98-216, §3(a)(5), Feb. 14, 1984, 98 Stat. 6; Pub. L. 98-615, §2(7), Nov. 8, 1984, 98 Stat. 3202; Pub. L. 99-335, title II, §207(j), June 6, 1986, 100 Stat. 597; Pub. L. 99-509, title VI, §6002, Oct. 21, 1986, 100 Stat. 1931; Pub. L. 100-203, title V, §5428(d), Dec. 22, 1987, 101 Stat. 1330-274; Pub. L. 101-239, title IV, §4002(a), Dec. 19, 1989, 103 Stat. 2133; Pub. L. 101-508, title VII, §§7001(a)(3), 7101(a), Nov. 5, 1990, 104 Stat. 1388-328, 1388-331; Pub. L. 101-510, div. C, title XXXV, §3506(c), Nov. 5, 1990, 104 Stat. 1847; Pub. L. 103-424, §10, Oct. 29, 1994, 108 Stat. 4366; Pub. L. 104-52, title IV, §2, Nov. 19, 1995, 109 Stat. 490; Pub. L. 104-316, title I, §103(h), Oct. 19, 1996, 110 Stat. 3829; Pub. L. 105-362, title XIII, §1302(c), Nov. 10, 1998, 112 Stat. 3293; Pub. L. 108-18, §2(c), (d)(1)(A), Apr. 23, 2003, 117 Stat. 625, 626; Pub. L. 109-435, title VIII, §802(a)(2), Dec. 20, 2006, 120 Stat. 3249; Pub. L. 116-126, §3(a), Mar. 18, 2020, 134 Stat. 176.)

#### HISTORICAL AND REVISION NOTES 1966 ACT

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and<br/>Statutes at Large</i>   |
|-------------------|------------------|---|
| (a)-(f) .....     | 5 U.S.C. 2267.   | July 31, 1956, ch. 804, §401 "Sec. 17", 70 Stat. 759.<br>Oct. 4, 1961, Pub. L. 87-350, §1(a), 75 Stat. 770.     |
| (g) .....         | [Uncodified].    | Aug. 28, 1958, Pub. L. 85-844, §101 (par. under "Civil Service Retirement and Disability Fund"), 72 Stat. 1064. |

In subsection (a), the first sentence is based on former section 2251(f), which is carried into section 8331.

In subsection (f), the words "to carry out this chapter" are substituted for "to continue this chapter in full force and effect".

In subsection (g), the words "after the enactment of this Act" are omitted as executed.

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

#### 1967 ACT

| <i>Section of<br/>title 5</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>                    |
|-------------------------------|---------------------------|--|
| 8348(a) .....                 | 5 App.: 2267(a).          | Sept. 27, 1965, Pub. L. 89-205, §1(b), 79 Stat. 840. |

The change in subsection (f) is made for uniformity in style and because the full title of the Commission appears in subsection (a).

#### Editorial Notes

##### REFERENCES IN TEXT

Sections 1241 and 1242 of the Panama Canal Act of 1979 [Pub. L. 96-70], referred to in subsec. (i)(1), amended sections 8336 and 8339 of this title, respectively.

Sections 1231(b) and 1243(a)(1) of the Panama Canal Act of 1979 [Pub. L. 96-70], referred to in subsec. (i)(1), are classified to sections 3671(b) and 3681(a)(1) of Title 22, Foreign Relations and Intercourse, respectively.

Section 3506 of the Panama Canal Commission Authorization Act for Fiscal Year 1991 [Pub. L. 101-510,

div. C, title XXXV], referred to in subsec. (i)(1), amended sections 8336, 8339, and 8348 of this title.

#### AMENDMENTS

2020—Subsec. (a)(1)(B). Pub. L. 116-126 inserted "in administering fraud prevention under sections 8345, 8345a, 8466, and 8466a of this title," after "8465(b) of this title,".

2006—Subsec. (h). Pub. L. 109-435 amended subsec. (h) generally. Prior to amendment, subsec. (h) related to postal supplemental liability.

2003—Subsec. (h). Pub. L. 108-18, §2(c), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows:

"(h)(1) Notwithstanding any other statute, the United States Postal Service shall be liable for that portion of any estimated increase in the unfunded liability of the Fund which is attributable to any benefits payable from the Fund to active and retired Postal Service officers and employees, and to their survivors, when the increase results from an employee-management agreement under title 39, or any administrative action by the Postal Service taken pursuant to law, which authorizes increases in pay on which benefits are computed.

"(2) The estimated increase in the unfunded liability, referred to in paragraph (1) of this subsection, shall be determined by the Office of Personnel Management. The United States Postal Service shall pay the amount so determined to the Office in 30 equal annual installments with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System, with the first payment thereof due at the end of the fiscal year in which an increase in pay becomes effective."

Subsec. (m). Pub. L. 108-18, §2(d)(1)(A), struck out subsec. (m) which read as follows:

"(m)(1) Notwithstanding any other provision of law, the United States Postal Service shall be liable for that portion of any estimated increase in the unfunded liability of the Fund which is attributable to any benefits payable from the Fund to former employees of the Postal Service who first become annuitants by reason of separation from the Postal Service on or after July 1, 1971, or to their survivors, or to the survivors of individuals who die on or after July 1, 1971, while employed by the Postal Service, when the increase results from a cost-of-living adjustment under section 8340 of this title.

"(2) The estimated increase in the unfunded liability referred to in paragraph (1) of this subsection shall be determined by the Office after consultation with the Postal Service. The Postal Service shall pay the amount so determined to the Office in 15 equal annual installments with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System, and with the first payment thereof due at the end of the fiscal year in which the cost-of-living adjustment with respect to which the payment relates becomes effective.

"(3) In determining any amount for which the Postal Service is liable under this subsection, the amount of the liability shall be prorated to reflect only that portion of total service (used in computing the benefits involved) which is attributable to civilian service performed after June 30, 1971, as estimated by the Office."

1998—Subsec. (g). Pub. L. 105-362 struck out at end "The Office shall report to the President and to the Congress the sums credited to the Fund under this subsection."

1996—Subsec. (l)(1). Pub. L. 104-316 struck out at end "The Secretary shall concurrently transmit a copy of such report to the Comptroller General of the United States."

1995—Subsec. (a)(1)(B). Pub. L. 104-52 inserted "in making an allotment or assignment made by an individual under section 8345(h) or 8465(b) of this title," after "of law," and "or section 8345(k) or 8469 of this title" before semicolon at end.

1994—Subsec. (a)(3). Pub. L. 103-424 added par. (3).



1990—Subsec. (a)(1)(B). Pub. L. 101-508, §7001(a)(3), inserted “in administering alternative forms of annuities under sections 8343a and 8420a (and related provisions of law),” before “and in withholding”.

Subsec. (i)(1). Pub. L. 101-510 substituted “1979, and the amendments made by section 3506 of the Panama Canal Commission Authorization Act for Fiscal Year 1991” for “1979”.

Subsec. (m)(1). Pub. L. 101-508, §7101(a), substituted “July 1, 1971” for “October 1, 1986” in two places.

1989—Subsec. (m). Pub. L. 101-239 added subsec. (m).

1987—Subsec. (i)(2). Pub. L. 100-203 substituted “The Panama Canal Commission shall pay to the Fund from funds available to it” for “The Secretary of the Treasury shall pay to the Fund from appropriations”.

1986—Subsec. (a). Pub. L. 99-335 inserted reference to provisions of chapter 84 of this title which relate to benefits payable out of the Fund in par. (1)(A), inserted “or 8462” and reference to subchapters II and IV of chapter 84 of this title in par. (1)(B), and inserted reference to chapter 84 of this title in par. (2).

Subsecs. (j) to (l). Pub. L. 99-509 added subsecs. (j) to (l).

1984—Subsec. (a)(1)(B). Pub. L. 98-615 inserted “, in administering survivor annuities and elections providing therefor under sections 8339 and 8341 of this title,”.

Subsec. (d). Pub. L. 98-216 substituted “chapter 31 of title 31” for “the Second Liberty Bond Act, as amended,”.

1982—Subsec. (a)(1)(B). Pub. L. 97-346 inserted “and in withholding taxes pursuant to section 3405 of title 26”.

Subsec. (g). Pub. L. 97-253, §306(f), inserted “, less an amount determined by the Office to be appropriate to reflect the value of the deposits made to the credit of the Fund under section 8334(j) of this title” after “allowed for military service”.

1979—Subsec. (i). Pub. L. 96-70 added subsec. (i).

1978—Subsecs. (a), (g), (h)(2). Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively, wherever appearing.

1975—Subsec. (h)(2). Pub. L. 94-183 substituted “30” for “thirty”.

1974—Subsec. (h). Pub. L. 93-349 added subsec. (h).

1969—Subsec. (a). Pub. L. 91-93, §103(a)(1), designated existing provisions as par. (1)(A) and (B) and added par. (2).

Subsec. (f). Pub. L. 91-93, §103(a)(2), added subsec. (f) and struck out former subsec. (f) which required the Commission to submit estimates of appropriations necessary to finance the Fund on a normal cost plus interest basis and to carry out this subchapter.

Subsec. (g). Pub. L. 91-93, §103(a)(2), added subsec. (g) and struck out former subsec. (g) which contained restriction against use of Fund money to pay an increase in annuity benefits or a new annuity benefit under this subchapter or an earlier statute without an appropriation being made to the Fund in a sufficient amount to prevent an immediate increase in the unfunded accrued liability of the Fund.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-435 effective Oct. 1, 2006, see section 805(a) of Pub. L. 109-435, set out as a note under section 8334 of this title.

##### EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-18, §2(d)(2), Apr. 23, 2003, 117 Stat. 627, provided that: “Nothing in this subsection [repealing subsec. (m) of this section and provisions set out as a note under this section] shall be considered to affect any payments made before the date of the enactment of this Act [Apr. 23, 2003] under either of the provisions of law repealed by paragraph (1).”

##### EFFECTIVE DATE OF 1990 AMENDMENT

Section 7101(d) of Pub. L. 101-508 provided that: “This section and the amendments made by this section

[amending this section, enacting provisions set out as a note under this section, and repealing provisions set out as notes under this section] shall take effect on October 1, 1990.”

##### EFFECTIVE DATE OF 1989 AMENDMENT

Section 4002(b)(1) of Pub. L. 101-239, which provided that section 4002 of Pub. L. 101-239 (amending this section and enacting provisions set out as notes under this section) be effective as of Oct. 1, 1986, was repealed by Pub. L. 101-508, title VII, §7101(b), Nov. 5, 1990, 104 Stat. 1388-331.

##### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 effective Jan. 1, 1988, see section 5429 of Pub. L. 100-203, set out as a note under section 3712 of Title 22, Foreign Relations and Intercourse.

##### EFFECTIVE DATE OF 1986 AMENDMENT

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

##### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions and specific applicability provisions, see section 4(a)(1), (5)(D) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

##### EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97-346 effective Sept. 8, 1982, see section 3(n) of Pub. L. 97-346, set out as a note under section 8332 of this title.

Amendment by Pub. L. 97-253 effective Oct. 1, 1982, except that any employee or Member who retired after Sept. 8, 1982, and before Oct. 1, 1985, or is entitled to an annuity under chapter 83 of this title based on a separation from service occurring during such period, or a survivor of such individual, may make a payment under section 8334(j)(1) of this title, and regulations required to be issued under section 8334(j)(1) of this title, to be issued by the Office of Personnel Management within 90 days after such effective date, see section 306(g) of Pub. L. 97-253, as amended, set out as a note under section 8331 of this title.

##### EFFECTIVE DATE OF 1979 AMENDMENT

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

##### EFFECTIVE DATE OF 1978 AMENDMENT

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

##### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-349 effective July 1, 1971, except that the Postal Service shall not be required to make (1) the payments due June 30, 1972, June 30, 1973, and June 30, 1974, attributable to pay increases granted by the Postal Service prior to July 1, 1973, until such time as funds are appropriated to the Postal Service for that purpose, and (2) the transfer to the Civil Service Retirement and Disability Fund required by title II of the Treasury, Postal Service, and General Government Appropriation Act, 1974, Public Law 93-143, see section 3 of Pub. L. 93-349, set out as a note under section 1005 of Title 39, Postal Service.

##### EFFECTIVE DATE OF 1969 AMENDMENT

Section 103(b)(1) of Pub. L. 91-93 provided that: “The provisions of subsection (g) of section 8348 of title 5, United States Code, as contained in the amendment made by subsection (a)(2) of this section, shall become

effective at the beginning of the fiscal year which ends on June 30, 1971.”

#### REVIEW BY POSTAL REGULATORY COMMISSION

Pub. L. 109-435, title VIII, §802(c), Dec. 20, 2006, 120 Stat. 3250, provided that:

##### “(1) IN GENERAL.—

“(A) REQUEST FOR REVIEW.—Notwithstanding any other provision of this section [amending this section and section 8334 of this title] (including any amendment made by this section), any determination or redetermination made by the Office of Personnel Management under this section (including any amendment made by this section) shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this subsection.

“(B) REPORT.—Upon receiving a request under subparagraph (A), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of pension obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this paragraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

“(2) RECONSIDERATION.—Upon receiving the report from the Commission under paragraph (1), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.”

#### PAYMENTS TO REIMBURSE FUND FOR INCREASE IN UNFUNDED LIABILITY

Pub. L. 105-261, div. C, title XXXI, §3154(l), Oct. 17, 1998, 112 Stat. 2256, provided that:

“(1) The Department of Energy shall pay into the Civil Service Retirement and Disability Fund an amount determined by the Director of the Office of Personnel Management to be necessary to reimburse the Fund for any estimated increase in the unfunded liability of the Fund resulting from the amendments related to the Civil Service Retirement System under this section [amending sections 3307, 8331, 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title], and for any estimated increase in the supplemental liability of the Fund resulting from the amendments related to the Federal Employees Retirement System under this section.

“(2) The Department shall pay the amount so determined in five equal annual installments with interest computed at the rate used in the most recent valuation of the Federal Employees Retirement System.

“(3) The Department shall make payments under this subsection from amounts available for weapons activities of the Department.”

#### PAYMENTS BY POSTAL SERVICE RELATING TO CORRECTED CALCULATIONS FOR PAST RETIREMENT COLAS

Pub. L. 103-66, title XI, §11101(a), Aug. 10, 1993, 107 Stat. 413, required the United States Postal Service to pay into the Civil Service Retirement and Disability Fund a total of \$693,000,000 not later than September 30, 1998, in addition to other payments required by law.

#### TIMELY PROCESSING OF RETIREMENT BENEFITS

Pub. L. 102-484, div. D, title XLIV, §4436(d), Oct. 23, 1992, 106 Stat. 2724, as amended by Pub. L. 103-337, div. A, title III, §341(b)(2), Oct. 5, 1994, 108 Stat. 2720; Pub. L. 105-85, div. A, title XI, §1106(b)(2), Nov. 18, 1997, 111 Stat. 1924, provided that:

“(1) In order to ensure the timely processing of applications for retirement benefits, under the Civil Service Retirement System or the Federal Employees’ Retirement System, for civilian employees of the Department of Defense and other employees who retire when their agency is undergoing a major reorganization, a major reduction in force, or a major transfer of function, the costs incurred by the Office of Personnel Management in processing any such application shall be deemed to be an administrative expense described in section 8348(a)(1)(B) of title 5, United States Code.

“(2) This subsection shall apply with respect to applications for retirement benefits based on separations occurring before January 1, 2002.”

#### PRE-1991 COST-OF-LIVING ADJUSTMENTS

Pub. L. 101-508, title VII, §7101(c), Nov. 5, 1990, 104 Stat. 1388-331, as amended by Pub. L. 102-378, §5(a)(1), Oct. 2, 1992, 106 Stat. 1358, related to pre-1991 cost-of-living adjustments, prior to repeal by Pub. L. 108-18, §2(d)(1)(B), Apr. 23, 2003, 117 Stat. 627.

#### PAYMENTS RELATING TO AMOUNTS WHICH WOULD HAVE BEEN DUE BEFORE FISCAL YEAR 1987

Pub. L. 101-508, title VII, §7103, Nov. 5, 1990, 104 Stat. 1388-333, required the United States Postal Service to pay, not later than Sept. 30, 1995, into the Civil Service Retirement and Disability Fund and into the Employees Health Benefits Fund certain sums for retirement COLA and health benefits which would have been due in any pre-1987 fiscal year if certain amendments had been in effect as of July 1, 1971.

#### CERTAIN POSTAL SERVICE ANNUITANTS; SIZE OF ANNUAL INSTALLMENTS TO FUND PREVIOUS YEARS’ COLAS

Section 4002(b)(2) of Pub. L. 101-239, which provided that notwithstanding any provision of section 8348(m) of this title the estimated increase in the unfunded liability referred to in section 8348(m)(1) was to be payable based on annual installments equal to specified amounts for fiscal years 1987 to 1989, was repealed by Pub. L. 101-508, title VII, §7101(b), Nov. 5, 1990, 104 Stat. 1388-331.

#### CERTAIN POSTAL SERVICE ANNUITANTS; ADDITIONAL AMOUNT PAYABLE

Section 4002(b)(3) of Pub. L. 101-239, which provided that first payment made under provisions of section 8348(m) of this title was to include, in addition to the amount which would otherwise have been payable at that time, an amount equal to the sum of any amounts which would have been due under those provisions in any prior year if this section had been enacted before Oct. 1, 1986, and which provided the method of computation, was repealed by Pub. L. 101-508, title VII, §7101(b), Nov. 5, 1990, 104 Stat. 1388-331.

#### STATUS OF ORIGINAL SUBSEC. (g) PROVISIONS DURING PERIOD FROM OCT. 20, 1969 TO JUNE 30, 1970

Section 103(b)(2) of Pub. L. 91-93 provided that: “Paragraph (1) of this subsection [set out as Effective Date of 1969 Amendment note above], shall not be held or considered to continue in effect after the enactment of this Act [Oct. 20, 1969], the provisions of section 8348(g) of title 5, United States Code, as in effect immediately prior to such enactment.”

#### INAPPLICABILITY TO BENEFITS UNDER PUB. L. 89-737 OF PROHIBITION AGAINST PAYMENT OF INCREASED ANNUITY BENEFIT WITHOUT COMPENSATING APPROPRIATION

Section 3 of Pub. L. 89-737, Nov. 2, 1966, 80 Stat. 1164, which provided that section 8348(g) of title 5, United States Code, does not apply with respect to annuity benefits resulting from the enactment of this Act [amending sections 8114, 8331, and 8704 of this title and section 1117 of former Title 5, Executive Departments and Government Officers and Employees], was repealed by Pub. L. 90-83, §10(b), Sept. 11, 1967, 81 Stat. 223.

REDEMPTION OF OBLIGATIONS HELD PRIOR TO OCT. 4, 1961; REINVESTMENT OF PROCEEDS

Pub. L. 87-350, §1(b) Oct. 4, 1961, 75 Stat. 770, provided that all special issues in which the civil service retirement and disability fund was invested in accordance with subsecs. (d) and (e) of this section before Oct. 4, 1961, were to be redeemed and the moneys reinvested by the Secretary of the Treasury in equal annual amounts over the period of ten calendar years beginning with the calendar year 1962.

**§ 8349. Offset relating to certain benefits under the Social Security Act**

(a)(1) Notwithstanding any other provision of this subchapter, if an individual under section 8402(b)(2) is entitled, or would on proper application be entitled, to old-age insurance benefits under title II of the Social Security Act, the annuity otherwise payable to such individual shall be reduced under this subsection.

(2) A reduction under this subsection commences beginning with the first month for which the individual both—

(A) is entitled to an annuity under this subchapter; and

(B) is entitled, or would on proper application be entitled, to old-age insurance benefits under title II of the Social Security Act.

(3)(A)(i) Subject to clause (ii) and subparagraphs (B) and (C), the amount of a reduction under this subsection shall be equal to the difference between—

(I) the old-age insurance benefit which would be payable to the individual for the month referred to in paragraph (2); and

(II) the old-age insurance benefit which would be so payable, excluding all wages derived from Federal service of the individual, and assuming the individual were fully insured (as defined by section 214(a) of the Social Security Act).

(ii) For purposes of this subsection, the amount of a benefit referred to in subclause (I) or (II) of clause (i) shall be determined without regard to subsections (b) through (l) of section 203 of the Social Security Act, and without regard to the requirement that an application for such benefit be filed.

(B) A reduction under this subsection—

(i) may not exceed an amount equal to the product of—

(I) the old-age insurance benefit to which the individual is entitled (or would on proper application be entitled) for the month referred to in paragraph (2), determined without regard to subsections (b) through (l) of section 203 of the Social Security Act; and

(II) a fraction, as determined under section 8421(b)(3) with respect to the individual, except that the reference to “service” in subparagraph (A) of such section shall be considered to mean Federal service; and

(ii) may not cause the annuity payment for an individual to be reduced below zero.

(C) An amount computed under subclause (I) or (II) of subparagraph (A)(i), or under subparagraph (B)(i)(I), for purposes of determining the amount of a reduction under this subsection shall be adjusted under section 8340 of this title.

(4) A reduction under this subsection applies with respect to the annuity otherwise payable to

such individual under this subchapter (other than under section 8337) for the month involved—

(A) based on service of such individual; and

(B) without regard to section 8345(j), if otherwise applicable.

(5) The operation of the preceding paragraphs of this subsection shall not be considered for purposes of applying the provisions of the second sentence of section 215(a)(7)(B)(i) or the provisions of section 215(d)(5)(ii) of the Social Security Act in determining any amount under subclause (I) or (II) of paragraph (3)(A)(i) or paragraph (3)(B)(i)(I) for purposes of this subsection.

(b)(1) Notwithstanding any other provision of this subchapter—

(A) a disability annuity to which an individual described in section 8402(b)(2) is entitled under this subchapter, and

(B) a survivor annuity to which a person is entitled under this subchapter based on the service of an individual described in section 8402(b)(2),

shall be subject to reduction under this subsection if that individual or person is also entitled (or would on proper application also be entitled) to any similar benefits under title II of the Social Security Act based on the wages and self-employment income of such individual described in section 8402(b)(2).

(2)(A) Subject to subparagraph (B), reductions under this subsection shall be made in a manner consistent with the manner in which reductions under subsection (a) are computed and otherwise made.

(B) Reductions under this subsection shall be discontinued if, or for so long as, entitlement to the similar benefits under title II of the Social Security Act (as referred to in paragraph (1)) is terminated (or, in the case of an individual who has not made proper application therefor, would be terminated).

(3) For the purpose of applying section 224 of the Social Security Act to the disability insurance benefit used to compute the reduction under this subsection, the amount of the CSRS annuity considered shall be the amount of the CSRS annuity before application of this section.

(4) The Office shall prescribe regulations to carry out this subsection.

(c) For the purpose of this section, the term “Federal service” means service which is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986 by reason of the amendments made by section 101 of the Social Security Amendments of 1983.

(d) In administering subsections (a) through (c)—

(1) the terms “an individual under section 8402(b)(2)” and “an individual described in section 8402(b)(2)” shall each be considered to include any individual—

(A) who is subject to this subchapter as a result of any provision of law described in section 8347(o), and

(B) whose employment (as described in section 8347(o)) is also employment for purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986; and

(2) the term “Federal service”, as applied with respect to any individual to whom this section applies as a result of paragraph (1), means any employment referred to in paragraph (1)(B) performed after December 31, 1983.

(Added Pub. L. 99-335, title II, §201(b)(1), June 6, 1986, 100 Stat. 589; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-238, title I, §108(b)(2), Jan. 8, 1988, 101 Stat. 1748.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Social Security Act, referred to in text, 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. Sections 203, 214, 215, and 224 of the Social Security Act are classified to sections 403, 414, 415, and 424a, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Chapter 21 of the Internal Revenue Code of 1986, referred to in subsecs. (c) and (d)(1)(B), is classified to chapter 21 (§3101 et seq.) of Title 26, Internal Revenue Code.

Section 101 of the Social Security Amendments of 1983 [Pub. L. 98-21], referred to in subsec. (c), amended section 3121 of Title 26 and sections 409 and 410 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under section 3121 of Title 26 and section 410 of Title 42.

##### AMENDMENTS

1988—Subsec. (d). Pub. L. 100-238 added subsec. (d).

1986—Subsec. (c). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

##### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective Jan. 1, 1987, see section 108(b)(3) of Pub. L. 100-238, set out as a note under section 8334 of this title.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

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

##### OFFSETS TO PREVENT FULL DOUBLE COVERAGE FOR EMPLOYEES OF PARK POLICE AND SECRET SERVICE

For provisions relating to offsets for prevention of full double coverage for employees of Park Police and Secret Service, see section 103(e) of Pub. L. 100-238, set out as a note under section 8334 of this title.

### § 8350. Retirement counseling

(a) For the purposes of this section, the term “retirement counselor”, when used with respect to an agency, means an employee of the agency who is designated by the head of the agency to furnish information on benefits under this subchapter and chapter 84 of this title and counseling services relating to such benefits to other employees of the agency.

(b) The Director of the Office of Personnel Management shall establish a training program for all retirement counselors of agencies of the Federal Government.

(c)(1) The training program established under subsection (b) of this section shall provide for comprehensive training in the provisions and

administration of this subchapter and chapter 84 of this title, shall be designed to promote fully informed retirement decisions by employees and Members under this subchapter and individuals subject to chapter 84 of this title, and shall be revised as necessary to assure that the information furnished to retirement counselors of agencies under the program is current.

(2) The Director shall conduct a training session under the training program at least once every 3 months.

(3) Once each year, each retirement counselor of an agency shall successfully complete a training session conducted under the training program.

(Added Pub. L. 99-335, title II, §205(a), June 6, 1986, 100 Stat. 592; amended Pub. L. 99-556, title II, §202, Oct. 27, 1986, 100 Stat. 3135.)

#### Editorial Notes

##### AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 99-556 substituted “subsection (b)” for “subsection (b)(1)”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective June 6, 1986, see section 702(b)(3) of Pub. L. 99-335, set out as a note under section 8401 of this title.

##### ENHANCING FINANCIAL LITERACY

Pub. L. 108-469, §2, Dec. 21, 2004, 118 Stat. 3892, provided that:

“(a) IN GENERAL.—The Federal Retirement Thrift Investment Board (in this section referred to as the ‘Board’) shall periodically evaluate whether the tools available to participants provide the information needed to understand, evaluate, and compare financial products, services, and opportunities offered through the Thrift Savings Plan. The Board shall use these evaluations to improve its existing education program for Thrift Savings Plan participants.

“(b) REPORT ON FINANCIAL LITERACY EFFORTS.—The Board shall annually report to the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Committee on Government Reform [now Committee on Oversight and Accountability] of the House of Representatives on its Thrift Savings Plan education efforts on behalf of plan participants.

“(c) STRATEGY.—As part of the retirement training offered by Office of Personnel Management under section 8350 of title 5, United States Code, the Office, in consultation with the Board, shall—

“(1) not later than 6 months after the date of enactment of this Act [Dec. 21, 2004], develop and implement a retirement financial literacy and education strategy for Federal employees that—

“(A) shall educate Federal employees on the need for retirement savings and investment; and

“(B) provide information related to how Federal employees can receive additional information on how to plan for retirement and calculate what their retirement investment should be in order to meet their retirement goals; and

“(2) submit a report to the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Committee on Government Reform [now Committee on Oversight and Accountability] of the House of Representatives on the strategy described under paragraph (1).”

**§ 8351. Participation in the Thrift Savings Plan**

(a)(1) An employee or Member may elect to contribute to the Thrift Savings Fund established by section 8437 of this title.

(2) An election may be made under paragraph (1) as provided under section 8432(b) for individuals who are subject to chapter 84 of this title.

(b)(1) Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of this title shall apply with respect to employees and Members making contributions to the Thrift Savings Fund under subsection (a) of this section.

(2)(A) An employee or Member may contribute to the Thrift Savings Fund in any pay period any amount not exceeding the maximum percentage of such employee's or Member's basic pay for such pay period allowable under subparagraph (B).

(B) The maximum percentage allowable under this subparagraph shall be determined in accordance with the following table:

| <b>In the case of a pay period beginning in fiscal year:</b> | <b>The maximum percentage allowable is:</b> |
|--|---|
| 2001 .....   | 6   |
| 2002 .....   | 7   |
| 2003 .....   | 8   |
| 2004 .....   | 9   |
| 2005 .....   | 10  |
| 2006 or thereafter .....                                     | 100.  |

(C) Notwithstanding any limitation under this paragraph, an eligible participant (as defined by section 414(v) of the Internal Revenue Code of 1986) may make such additional contributions to the Thrift Savings Fund as are permitted by such section 414(v) and regulations of the Executive Director consistent therewith.

(3) No contributions may be made by an employing agency for the benefit of an employee or Member under section 8432(c) of this title.

(4) Section 8433(b) of this title applies to any employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and separates from Government employment.

(5)(A) The provisions of section 8435 of this title that require a waiver or consent by the spouse of an employee or Member (or former employee or Member) shall not apply with respect to sums in the Thrift Savings Fund contributed by the employee or Member (or former employee or Member) and earnings in the fund attributable to such sums.

(B) An election or change of election authorized by subchapter III of chapter 84 of this title shall be effective in the case of a married employee or Member, and a loan or withdrawal may be approved under section 8433(g) and (h) of this title in such case, only after the Executive Director notifies the employee's or Member's spouse that the election or change of election has been made or that the Executive Director has received an application for such loan or withdrawal, as the case may be.

(C) Subparagraph (B) may be waived with respect to a spouse if the employee or Member establishes to the satisfaction of the Executive Director of the Federal Retirement Thrift Investment Board that the whereabouts of such spouse cannot be determined.

(D) Except with respect to the making of loans or withdrawals under section 8433(g) or (h), none of the provisions of this paragraph requiring notification to a spouse or former spouse of an employee, Member, former employee, or former Member shall apply in any case in which the nonforfeitable account balance of the employee, Member, former employee, or former Member is \$3,500 or less.

(6) Notwithstanding paragraph (4), if an employee or Member separates from Government employment and such employee's or Member's nonforfeitable account balance is less than an amount that the Executive Director prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.

(7) For the purpose of this section, the term "nonforfeitable account balance" has the same meaning as under section 8401(32).

(8) In applying section 8432b to an employee contributing to the Thrift Savings Fund after being restored to or reemployed in a position subject to this subchapter, pursuant to chapter 43 of title 38—

(A) any reference in such section to contributions under section 8432(a) shall be considered a reference to employee contributions under this section, except that the reference in section 8432b(b)(2)(B) to employee contributions under section 8432(a) shall be considered a reference to employee contributions under this subchapter and section 8440e;

(B) the contribution rate under section 8432b(b)(2)(A) shall be the maximum percentage allowable under subsection (b)(2) of this section; and

(C) subsections (c) and (d) of section 8432b shall be disregarded.

(9) For the purpose of this section, separation from Government employment includes a transfer described in section 8431.

(c) A member of the Foreign Service described in section 103(6) of the Foreign Service Act of 1980 shall be ineligible to make any election under this section.

(d)(1) A foreign national employee of the Central Intelligence Agency whose services are performed outside the United States shall be ineligible to make an election under this section.

(2)(A) Only those employees of the Central Intelligence Agency participating in the pilot project required by section 402(b) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107-306; 50 U.S.C. 403-4 note)<sup>1</sup> and making contributions to the Thrift Savings Fund out of basic pay may also contribute (by direct transfer to the Fund) any part of bonus pay received by the employee as part of the pilot project.

(B) Contributions under this paragraph are subject to section 8432(d) of this title.

(e) The Executive Director of the Federal Retirement Thrift Investment Board may prescribe regulations to carry out this section.

(Added Pub. L. 99-335, title II, § 206(a)(1), June 6, 1986, 100 Stat. 593; amended Pub. L. 100-238, title I, § 111(a), Jan. 8, 1988, 101 Stat. 1750; Pub. L.

<sup>1</sup> See References in Text note below.

101-335, §§3(b)(1), 6(b)(1), July 17, 1990, 104 Stat. 320, 323; Pub. L. 102-183, title III, §308(a), Dec. 4, 1991, 105 Stat. 1265; Pub. L. 102-484, div. D, title XLIV, §4437(c), Oct. 23, 1992, 106 Stat. 2724; Pub. L. 103-226, §9(a), (i)(1), (2), Mar. 30, 1994, 108 Stat. 118, 121; Pub. L. 103-353, §4(d), Oct. 13, 1994, 108 Stat. 3172; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title II, §202]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-374; Pub. L. 106-65, div. A, title VI, §661(a)(3)(B), Oct. 13, 1999, 113 Stat. 671; Pub. L. 106-168, title II, §203(b), Dec. 12, 1999, 113 Stat. 1820; Pub. L. 106-554, §1(a)(4) [div. B, title I, §138(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-234; Pub. L. 107-304, §1(a), Nov. 27, 2002, 116 Stat. 2363; Pub. L. 108-177, title IV, §405(b)(1), Dec. 13, 2003, 117 Stat. 2632; Pub. L. 108-469, §1(d)(1), Dec. 21, 2004, 118 Stat. 3891.)

### Editorial Notes

#### REFERENCES IN TEXT

Section 414(v) of the Internal Revenue Code of 1986, referred to in subsec. (b)(2)(C), is classified to section 414(v) of Title 26, Internal Revenue Code.

Section 103(6) of the Foreign Service Act of 1980, referred to in subsec. (c), is classified to section 3903(6) of Title 22, Foreign Relations and Intercourse.

The Intelligence Authorization Act for Fiscal Year 2003, referred to in subsec. (d)(2)(A), 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

2004—Subsec. (a)(2). Pub. L. 108-469 substituted “as” for “only during a period”.

2003—Subsec. (d). Pub. L. 108-177 designated existing provisions as par. (1) and added par. (2).

2002—Subsec. (b)(2)(C). Pub. L. 107-304 added subpar. (C).

2000—Subsec. (b)(2). Pub. L. 106-554 designated existing provisions as subpar. (A), substituted “the maximum percentage of such employee’s or Member’s basic pay for such pay period allowable under subparagraph (B).” for “5 percent of the amount of the employee’s or Member’s basic pay for such period.”, and added subpar. (B).

1999—Subsec. (b)(8)(A). Pub. L. 106-65, §661(a)(3)(B)(ii), inserted before semicolon at end “, except that the reference in section 8432b(b)(2)(B) to employee contributions under section 8432(a) shall be considered a reference to employee contributions under this subchapter and section 8440e”.

Pub. L. 106-65, §661(a)(3)(B)(i), and Pub. L. 106-168, amended subsec. (b) identically, redesignating par. (11) as (8).

Subsec. (b)(9). Pub. L. 106-168 added par. (9).

Subsec. (b)(11). Pub. L. 106-65, §661(a)(3)(B)(i), and Pub. L. 106-168, amended subsec. (b) identically, redesignating par. (11) as (8).

1996—Subsec. (b)(5)(B). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §202(1)(A)]], substituted “An election or change of election” for “An election, change of election, or modification (relating to the commencement date of a deferred annuity)”, inserted “or withdrawal” after “and a loan” and “and (h)” after “8433(g)”, substituted “the election or change of election” for “the election, change of election, or modification”, and inserted “or withdrawal” after “for such loan”.

Subsec. (b)(5)(D). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §202(1)(B)]], inserted “or withdrawals” after “of loans” and “or (h)” after “8433(g)”.

Subsec. (b)(6). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §202(2)]], substituted “less than an amount that the Executive Director prescribes by regulation” for “\$3,500 or less” and struck out “unless the employee

or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under subsection (b)” before period at end.

1994—Subsec. (b)(4). Pub. L. 103-226, §9(a)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “Section 8433(b) of this title applies to any employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and separates from Government employment entitled to an immediate annuity under this subchapter (including a disability retirement annuity under section 8337 of this title), separates from Government employment pursuant to regulations under section 3502(a) of this title or procedures under section 3595(a) of this title in a reduction in force, or separates from Government employment entitled to benefits under subchapter I of chapter 81 of this title.”

Subsec. (b)(5). Pub. L. 103-226, §9(a)(2), (3), redesignated par. (7) as (5) and struck out former par. (5) which read as follows: “Section 8433(c) of this title applies to any employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and separates entitled to a deferred annuity under this subchapter.”

Subsec. (b)(5)(B) to (D). Pub. L. 103-226, §9(a)(4), (i)(1), (2), substituted “section 8433(g)” for “section 8433(i)” in subpars. (B) and (D) and struck out “or former spouse” after “spouse” in two places in subpar. (C).

Subsec. (b)(6). Pub. L. 103-226, §9(a)(5), amended par. (6) generally. Prior to amendment, par. (6) read as follows: “Notwithstanding paragraphs (4) and (5), if an employee or Member separates from Government employment under circumstances making such employee or Member eligible to make an election under subsection (b) or (c) of section 8433, and such employee’s or Member’s nonforfeitable account balance is \$3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the employee or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under such subsection (b) or (c), as applicable.”

Pub. L. 103-226, §9(a)(2), (3), redesignated par. (9) as (6) and struck out former par. (6) which read as follows: “Section 8433(d) of this title applies to any employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and separates from the service before becoming entitled to an immediate or deferred annuity under this subchapter.”

Subsec. (b)(7). Pub. L. 103-226, §9(a)(6), which directed substitution of “nonforfeitable” for “nonforfeiture”, could not be executed because the term “nonforfeiture” does not appear in text.

Pub. L. 103-226, §9(a)(3), redesignated par. (10) as (7). Former par. (7) redesignated (5).

Subsec. (b)(8). Pub. L. 103-226, §9(a)(2), struck out par. (8) which read as follows: “Notwithstanding paragraph (6), if an employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) separates from Government employment before becoming entitled to a deferred or immediate annuity under this subchapter, and such employee’s or Member’s nonforfeitable account balance is \$3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the employee or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, to have the nonforfeitable account balance transferred to an eligible retirement plan as provided in section 8433(e).”

Subsec. (b)(9), (10). Pub. L. 103-226, §9(a)(3), redesignated pars. (9) and (10) as (6) and (7), respectively.

Subsec. (b)(11). Pub. L. 103-353 added par. (11).

1992—Subsec. (b)(4). Pub. L. 102-484 inserted “, separates from Government employment pursuant to regulations under section 3502(a) of this title or procedures under section 3595(a) of this title in a reduction in force,” after “section 8337 of this title”).

1991—Subsecs. (d), (e). Pub. L. 102-183 added subsec. (d) and redesignated former subsec. (d) as (e).

1990—Subsec. (b)(7)(D). Pub. L. 101-335, §6(b)(1)(B), added subpar. (D).

Subsec. (b)(8). Pub. L. 101-335, §6(b)(1)(A), added par. (8).

Pub. L. 101-335, §3(b)(1), struck out par. (8) which read as follows: “Sums contributed under this section and earnings attributable to such sums may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.”

Subsec. (b)(9), (10). Pub. L. 101-335, §6(b)(1)(A), added pars. (9) and (10).

1988—Subsecs. (c), (d). Pub. L. 100-238 added subsec. (c) and redesignated former subsec. (c) as (d).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-304, §1(c), Nov. 27, 2002, 116 Stat. 2363, provided that: “The amendments made by this section [amending this section and sections 8432 and 8440f of this title] shall take effect as of the earliest practicable date, as determined by the Executive Director (appointed under section 8474(a) of title 5, United States Code) in regulations.”

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-554, §1(a)(4) [div. B, title I, §138(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-234, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting section 8440f of this title and amending this section and sections 8432 and 8440a to 8440e of this title] shall take effect on the date of enactment of this Act [Dec. 21, 2000].

“(2) COORDINATION WITH ELECTION PERIODS.—The Executive Director shall by regulation determine the first election period in which elections may be made consistent with the amendments made by this section.

“(3) DEFINITIONS.—For purposes of this section—

“(A) the term ‘election period’ means a period afforded under section 8432(b) of title 5, United States Code; and

“(B) the term ‘Executive Director’ has the meaning given such term by section 8401(13) of title 5, United States Code.”

#### EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by Pub. L. 106-168 applicable with respect to transfers occurring before, on, or after Dec. 12, 1999, with special rule for applying amendment with respect to transfers occurring before Dec. 12, 1999, see section 203(c) of Pub. L. 106-168, set out as an Effective Date note under section 8431 of this title.

Amendment by section 661(a)(3)(B)(ii) of Pub. L. 106-65 effective 180 days after Oct. 30, 2000, unless postponed, see section 663 of Pub. L. 106-65, as amended, set out as an Effective Date note under section 8440e of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective Sept. 30, 1996, and withdrawals and elections as provided under such amendment to be made at earliest practicable date as determined by Executive Director in regulations, see section 101(f) [title VI, §659 [title II, §207]] of Pub. L. 104-208, set out as a note under section 5545a of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103-353 effective Oct. 13, 1994, and applicable to any employee whose release from military service, discharge from hospitalization, or other similar event making the individual eligible to seek restoration or reemployment under chapter 43 of Title 38, Veterans' Benefits, occurs on or after Aug. 2, 1990, with special rules for applying amendment to em-

ployees 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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## Editorial Notes

### AMENDMENTS

2020—Pub. L. 116–126, §2(b)(3)(B), Mar. 18, 2020, 134 Stat. 175, added item 8466a.

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.