

1998—Pub. L. 105-368, title V, §512(b)(2)(B), Nov. 11, 1998, 112 Stat. 3342, substituted “Judges of the United States Court of Appeals for Veterans Claims” for “Judges of the United States Court of Veterans Appeals” in item 8440d.

1996—Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title II, §206(b)(1)]]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-378, struck out item 8431 “Definition”.

1994—Pub. L. 103-353, §4(a)(2), Oct. 13, 1994, 108 Stat. 3172, added item 8432b.

1992—Pub. L. 102-572, title IX, §902(b)(2), Oct. 29, 1992, 106 Stat. 4516, substituted “Court of Federal Claims” for “Claims Court” in item 8440c.

Pub. L. 102-378, §5(d)(2), Oct. 2, 1992, 106 Stat. 1358, amended directory language of Pub. L. 101-198, §7(c)(4)(B). See 1991 Amendment note below.

1991—Pub. L. 102-198, §7(c)(2), Dec. 9, 1991, 105 Stat. 1625, redesignated item 8440b “Claims Court judges” as item 8440c.

Pub. L. 102-198, §7(c)(4)(B), Dec. 9, 1991, 105 Stat. 1625, as amended by Pub. L. 102-378, §5(d)(2), Oct. 2, 1992, 106 Stat. 1358, redesignated item 8440c “Judges of the United States Court of Veterans Appeals” as item 8440d.

Pub. L. 102-82, §5(a)(2), Aug. 6, 1991, 105 Stat. 376, added item 8440c “Judges of the United States Court of Veterans Appeals”.

1990—Pub. L. 101-650, title III, §306(d)(2), Dec. 1, 1990, 104 Stat. 5111, which directed the amendment of the table of sections for this chapter by adding at the end thereof item 8440b “Claims Court judges”, was executed by adding that item after the first item 8440b.

Pub. L. 101-335, §§2(a)(2), 9(b), July 17, 1990, 104 Stat. 320, 326, added item 8432a and redesignated item 8440a “Bankruptcy judges and magistrates” as item 8440b.

1988—Pub. L. 100-659, §7(b), Nov. 15, 1988, 102 Stat. 3920, added item 8440a “Bankruptcy judges and magistrates”.

Pub. L. 100-654, title IV, §401(b), Nov. 14, 1988, 102 Stat. 3847, added item 8440a “Justices and judges”.

Pub. L. 100-238, title I, §124(a)(2), (b)(2), Jan. 8, 1988, 101 Stat. 1756, added item 8464a, redesignated item 8457 as 8456, and struck out former item 8456 “Relationship to workers’ compensation”.

1986—Pub. L. 99-556, title I, §110(b), Oct. 27, 1986, 100 Stat. 3132, added item 8478a.

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

Words “magistrate judges” substituted for “magistrates” in item 8440b pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

#### SUBCHAPTER I—GENERAL PROVISIONS

#### § 8401. Definitions

For the purpose of this chapter—

(1) the term “account” means an account established and maintained under section 8439(a) of this title;

(2) the term “annuitant” means a former employee or Member who, on the basis of that individual’s service, meets all requirements for title to an annuity under subchapter II or V of this chapter and files claim therefor;

(3) the term “average pay” means the largest annual rate resulting from averaging an employee’s or Member’s rates of basic pay in effect over any 3 consecutive years of service or, in the case of an annuity under this chapter based on service of less than 3 years, over the total service, with each rate weighted by the period it was in effect;

(4) the term “basic pay” has the meaning given such term by section 8331(3);

(5) the term “Board” means the Federal Retirement Thrift Investment Board established by section 8472(a) of this title;

(6) the term “Civil Service Retirement and Disability Fund” or “Fund” means the Civil Service Retirement and Disability Fund under section 8348;

(7) the term “court” means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court;

(8) the term “Director” means the Director of the Office of Personnel Management;

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

(A) investment yields;

(B) increases in rates of basic pay; and

(C) rates of price inflation;

(10) the term “earnings”, when used with respect to the Thrift Savings Fund, means the amount of the gain realized or yield received from the investment of sums in such Fund;

(11) the term “employee” means—

(A) an individual referred to in subparagraph (A), (E), (F), (H), (I), (J), or (K) of section 8331(1) of this title;

(B) a Congressional employee as defined in section 2107 of this title, including a temporary Congressional employee and an employee of the Congressional Budget Office; and

(C) an employee described in section 2105(c) who has made an election under section 8461(n)(1) to remain covered under this chapter;

whose civilian service after December 31, 1983, is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986, except that such term does not include—

(i) any individual referred to in—

(I) clause (i), (vi), or (ix) of paragraph (1) of section 8331;

(II) clause (ii) of such paragraph; or

(III) the undesignated material after the last clause of such paragraph;

(ii) any individual excluded under section 8402(c) of this title;

(iii) a member of the Foreign Service described in section 103(6) of the Foreign Service Act of 1980; or

(iv) an employee who has made an election under section 8461(n)(2) to remain covered by a retirement system established for employees described in section 2105(c);

(12) the term “former spouse” means a former spouse of an individual—

(A) if such individual performed at least 18 months of civilian service creditable under section 8411 as an employee or Member; and

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

(13) the term “Executive Director” means the Executive Director appointed under section 8474(a);

(14) the term “firefighter” means—

(A) an employee, the duties of whose position—

(i) are primarily to perform work directly connected with the control and extinguishment of fires; and

(ii) are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the Director considering the recommendations of the employing agency; and

(B) an employee who is transferred directly to a supervisory or administrative position after performing duties described in subparagraph (A) for at least 3 years;

(15) the term “Government” means the Federal Government, Gallaudet College, and, in the case of an employee described in paragraph (11)(C), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c);

(16) the term “Indian court” has the meaning given such term by section 8331(24);

(17) the term “law enforcement officer” means—

(A) an employee, the duties of whose position—

(i) are primarily—

(I) the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, or

(II) the protection of officials of the United States against threats to personal safety; and

(ii) are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the Director considering the recommendations of the employing agency;

(B) an employee of the Department of the Interior or the Department of the Treasury (excluding any employee under subparagraph (A)) who occupies a position that, but for the enactment of the Federal Employees’ Retirement System Act of 1986, would be subject to the District of Columbia Police and Firefighters’ Retirement System, as determined by the Secretary of the Interior or the Secretary of the Treasury, as appropriate;

(C) an employee who is transferred directly to a supervisory or administrative position after performing duties described in subparagraph (A) and (B) for at least 3 years; and

(D) an employee—

(i) of the Bureau of Prisons or Federal Prison Industries, Incorporated;

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

(iii) in the field service at Army or Navy disciplinary barracks or at any other confinement and rehabilitation facility operated by any of the armed forces;

whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniform Code of Military Justice (chapter 47 of title 10) require frequent direct contact with these individuals in their detention and are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the head of the employing agency;

(18) the term “loss”, as used with respect to the Thrift Savings Fund, includes the amount of any loss resulting from the investment of sums in such Fund, or from the breach of any responsibility, duty, or obligation under section 8477.<sup>1</sup>

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

(A) retirement deductions made from the basic pay of an employee or Member under section 8422(a) of this title (or under section 204 of the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983);

(B) amounts deposited by an employee or Member under section 8422(e);

(C) amounts deposited by an employee, Member, or survivor under section 8411(f) or 8422(i); and

(D) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 8348(c), (d), and (e), as determined by the Secretary (compounded annually);

but does not include interest—

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

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

(20) the term “Member” has the same meaning as provided in section 2106, except that such term does not include an individual who irrevocably elects, by written notice to the official by whom such individual is paid, not to participate in the Federal Employees’ Retirement System, and who (in the case of an individual who is a Member of the House of Representatives, including a Delegate or Resident Commissioner to the Congress) serves as a Member prior to the date of the enactment of the Legislative Branch Appropriations Act, 2004;

(21) the term “net earnings” means the excess of earnings over losses;

(22) the term “net losses” means the excess of losses over earnings;

(23) the term “normal-cost percentage” means the entry-age normal cost of the provisions of the System which relate to the Fund, computed by the Office in accordance with generally accepted actuarial practice and standards (using dynamic assumptions) and

<sup>1</sup> So in original. The period probably should be a semicolon.

expressed as a level percentage of aggregate basic pay;

(24) the term “Office” means the Office of Personnel Management;

(25) the term “price index” has the same meaning as provided in section 8331(15);

(26) the term “service” means service which is creditable under section 8411;

(27) the term “supplemental liability” means the estimated excess of—

(A) the actuarial present value of all future benefits payable from the Fund under this chapter based on the service of current or former employees or Members, over

(B) the sum of—

(i) the actuarial present value of deductions to be withheld from the future basic pay of employees and Members currently subject to this chapter pursuant to section 8422;

(ii) the actuarial present value of the future contributions to be made pursuant to section 8423(a) with respect to employees and Members currently subject to this chapter;

(iii) the Fund balance as of the date the supplemental liability is determined, to the extent that such balance is attributable—

(I) to the System, or

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

(iv) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles;

(28) the term “survivor” means an individual entitled to an annuity under subchapter IV of this chapter;

(29) the term “System” means the Federal Employees’ Retirement System described in section 8402(a);

(30) the term “military technician (dual status)” means an employee described in section 10216 of title 10;

(31) the term “military service” means honorable active service—

(A) in the armed forces;

(B) in the commissioned corps of the Public Health Service after June 30, 1960; or

(C) in the commissioned corps of the National Oceanic and Atmospheric Administration, or a predecessor entity in function, after June 30, 1961;

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

(32) the term “nonforfeitable account balance” means any amounts in an account, established and maintained under subchapter III, which are nonforfeitable (as determined under section 8432(g));

(33) “Nuclear materials courier” has the meaning given that term in section 8331(27);

(34) the term “Government physician” has the meaning given such term under section 5948;

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

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

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

(36) the term “customs and border protection officer” means an employee in the Department of Homeland Security (A) who holds a position within the GS-1895 job series (determined applying the criteria in effect as of September 1, 2007) or any successor position, and (B) whose duties include activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry, including any such employee who is transferred directly to a supervisory or administrative position in the Department of Homeland Security after performing such duties (as described in subparagraph (B)) in 1 or more positions (as described in subparagraph (A)) for at least 3 years;

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

(A) on December 31, 2012—

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

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

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

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

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

(A) on December 31, 2013—

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

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

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

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

(39) “representative payee” means a person (including an organization) designated under section 8466(c)(1) to receive payments on behalf of a minor or an individual mentally incompetent or under other legal disability.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 517; amended Pub. L. 99-556, title I, §§107, 109, 119, Oct. 27, 1986, 100 Stat. 3132, 3134; Pub. L. 100-238, title I, §§103(a)(2), (c), (d)(2), 113(b)(1), Jan. 8, 1988, 101 Stat. 1744, 1745, 1750; Pub. L. 100-679, §13(a)(2), Nov. 17, 1988, 102 Stat. 4071; Pub. L. 101-335, §6(a)(1), July 17, 1990, 104 Stat. 322; Pub. L. 101-474, §5(o), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101-508, title VII, §7202(k)(1), Nov. 5, 1990, 104 Stat. 1388-338; Pub. L. 103-337, div. A, title XVI, §1677(a)(4), Oct. 5, 1994, 108 Stat. 3019; Pub. L. 103-353, §5(c), (e)(1), Oct. 13, 1994, 108 Stat. 3174; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title II, §206(a)(1)]]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-378; Pub. L. 105-261, div. C, title XXXI, §3154(f), Oct. 17, 1998, 112 Stat. 2255; Pub. L. 106-65, div. A, title V, §522(c)(2), Oct. 5, 1999, 113 Stat. 597; Pub. L. 106-571, §3(c)(2), Dec. 28, 2000, 114 Stat. 3056; Pub. L. 108-83, title I, §104(a), Sept. 30, 2003, 117 Stat. 1017; Pub. L. 108-176, title II, §226(a)(2), Dec. 12, 2003, 117 Stat. 2529; Pub. L. 110-161, div. E, title V, §535(b)(1), Dec. 26, 2007, 121 Stat. 2076; Pub. L. 110-181, div. A, title XI, §1115(b), Jan. 28, 2008, 122 Stat. 361; Pub. L. 111-84, div. A, title XIX, §1904(b)(1), Oct. 28, 2009, 123 Stat. 2616; Pub. L. 112-96, title V, §5001(a), Feb. 22, 2012, 126 Stat. 199; Pub. L. 113-67, div. A, title IV, §401(a), Dec. 26, 2013, 127 Stat. 1183; Pub. L. 116-126, §2(a)(2), Mar. 18, 2020, 134 Stat. 174.)

### Editorial Notes

#### REFERENCES IN TEXT

The Social Security Act, referred to in par. (11), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Chapter 21 of the Internal Revenue Code of 1986, referred to in par. (11), is classified to chapter 21 (§3101 et seq.) of Title 26, Internal Revenue Code.

Section 103(6) of the Foreign Service Act of 1980, referred to in par. (11)(iii), is classified to section 3903(6) of Title 22, Foreign Relations and Intercourse.

The Federal Employees' Retirement System Act of 1986, referred to in par. (17)(B), is Pub. L. 99-335, June 6, 1986, 100 Stat. 514. For complete classification of this Act to the Code, see Short Title note set out under section 8401 of this title and Tables.

The Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, referred to in pars. (19)(A) and (27)(B)(iii)(II), is Pub. L. 98-168, title II, Nov. 29, 1983, 97 Stat. 1106, which is set out as a note under section 8331 of this title.

The date of the enactment of the Legislative Branch Appropriations Act, 2004, referred to in par. (20), is the date of enactment of Pub. L. 108-83, which was approved Sept. 30, 2003.

#### AMENDMENTS

2020—Par. (39). Pub. L. 116-126 added par. (39).

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

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

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

2009—Par. (19)(C). Pub. L. 111-84 substituted “8411(f) or 8422(i);” for “8411(f);”.

2008—Par. (31). Pub. L. 110-181, in concluding provisions, substituted “and includes service as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, but” for “but”.

2007—Par. (36). Pub. L. 110-161 added par. (36).

2003—Par. (20). Pub. L. 108-83 inserted before semicolon at end “, and who (in the case of an individual who is a Member of the House of Representatives, including a Delegate or Resident Commissioner to the Congress) serves as a Member prior to the date of the enactment of the Legislative Branch Appropriations Act, 2004”.

Par. (35). Pub. L. 108-176 added par. (35).

2000—Par. (34). Pub. L. 106-571 added par. (34).

1999—Par. (30). Pub. L. 106-65 amended par. (30) generally. Prior to amendment, par. (30) read as follows: “the term ‘military reserve technician’ means a member of one of the reserve components of the armed forces specified in section 10101 of title 10 who—

“(A) is assigned to a civilian position as a technician in the administration and training of such reserve components or in the maintenance and repair of supplies issued to such reserve components; and

“(B) as a condition of employment in such position, is required to be a member of one of such reserve components serving in a specified military grade;”.

1998—Par. (33). Pub. L. 105-261 added par. (33).

1996—Par. (4). Pub. L. 104-208 struck out “except as provided in subchapter III of this chapter,” before “the term”.

1994—Par. (11). Pub. L. 103-353, §5(e)(1), in flush provisions before cl. (i), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

Par. (30). Pub. L. 103-337 substituted “section 10101” for “section 261(a)” in introductory provisions.

Par. (31). Pub. L. 103-353, §5(c), in closing provisions, inserted before semicolon “or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this subchapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990”.

1990—Par. (11)(C). Pub. L. 101-508, §7202(k)(1)(A)(i)-(iii), added subpar. (C).

Par. (11)(i)(I). Pub. L. 101-474 struck out “(v),” after “(i),”.

Par. (11)(iv). Pub. L. 101-508, §7202(k)(1)(A)(iv)-(vi), added cl. (iv).

Par. (15). Pub. L. 101-508, §7202(k)(1)(B), substituted “, Gallaudet College, and, in the case of an employee described in paragraph (11)(C), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c);” for “and Gallaudet College;”.

Par. (32). Pub. L. 101-335 added par. (32).

1988—Par. (11)(A). Pub. L. 100-679 substituted “(J), or (K)” for “or (J)”.

Par. (11)(i)(II). Pub. L. 100-238, §103(d)(2), struck out “(other than an employee of the United States Park Police, or the United States Secret Service, whose civilian service after December 31, 1983, is such employment)”.

Par. (11)(iii). Pub. L. 100-238, §113(b)(1), added cl. (iii).

Par. (14)(A)(ii). Pub. L. 100-238, §103(a)(2), substituted “should be” for “are required to be”.

Par. (14)(B). Pub. L. 100-238, §103(c)(2), substituted “for at least 3 years” for “for at least 10 years”.

Par. (17). Pub. L. 100-238, §103(a)(2), (c)(1), in subpar. (A)(ii), substituted “should be” for “are required to be”, added subpar. (B), redesignated former subpar. (B) as (C) and amended it generally, substituting “subparagraph (A) and (B) for at least 3 years” for “subparagraph (A) for at least 10 years”, redesignated former subpar. (C) as (D), and in concluding provisions, substituted “should be” for “are required to be”.

1986—Par. (11). Pub. L. 99-556, §119, struck out “any of” before “whose civilian service” in two places.

Par. (18). Pub. L. 99-556, §109, amended par. (18) generally. Prior to amendment, par. (18) read as follows: “the term ‘loss’, when used with respect to the Thrift Savings Fund, means the amount of the loss resulting from the investment of sums in such Fund;”.

Par. (19)(C), (D). Pub. L. 99-556, §107, added subpar. (C) and redesignated former subpar. (C) as (D).

**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 2008 AMENDMENT**

Amendment by Pub. L. 110–181 applicable to any annuity, eligibility for which is based upon a separation occurring before, on, or after Jan. 28, 2008, and any period of service as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, occurring before, on, or after Jan. 28, 2008, see section 1115(c) of Pub. L. 110–181, set out as a note under section 8331 of this title.

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

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

**EFFECTIVE DATE OF 2003 AMENDMENT**

Pub. L. 108–176, title II, § 226(c), Dec. 12, 2003, 117 Stat. 2530, provided that:

“(1) IN GENERAL.—This section [amending this section and sections 8331, 8335, 8415, 8422, 8425, 8452, and 8468 of this title] and the amendments made by this section—

“(A) shall take effect on the 60th day after the date of enactment of this Act [Dec. 12, 2003]; and

“(B) shall apply with respect to—

“(i) any annuity entitlement to which is based on an individual’s separation from service occurring on or after the effective date of this section; and

“(ii) any service performed by any such individual before, on, or after the effective date of this section, subject to paragraph (2).

“(2) SPECIAL RULE.—

“(A) DEPOSIT REQUIREMENT.—For purposes of determining eligibility for immediate retirement under section 8412(e) of title 5, United States Code, the amendment made by subsection (a)(2) [amending this section] shall, with respect to any service described in subparagraph (B), be disregarded unless there is deposited into the Civil Service Retirement and Disability Fund, with respect to such service, in such time, form, and manner as the Office of Personnel Management by regulation requires, an amount equal to the amount by which—

“(i) the deductions from pay which would have been required for such service if the amendments made by subsection (a)(2) had been in effect when such service was performed, exceeds

“(ii) the unrefunded deductions or deposits actually made under subchapter II of chapter 84 of such title with respect to such service.

An amount under this subparagraph shall include interest, computed under paragraphs (2) and (3) of section 8334(e) of such title 5.

“(B) PRIOR SERVICE DESCRIBED.—This paragraph applies with respect to any service performed by an individual before the effective date of this section as an employee described in section 8401(35)(B) of title 5, United States Code (as amended by subsection (a)(2)).”

**EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105–261 effective at the beginning of the first pay period that begins after Oct. 17,

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

**EFFECTIVE DATE OF 1996 AMENDMENT**

Amendment by Pub. L. 104–208 effective Sept. 30, 1996, and withdrawals and elections as provided under such amendment to be made at earliest practicable date as determined by Executive Director in regulations, see section 101(f) [title VI, § 659 [title II, § 207]] of Pub. L. 104–208, set out as a note under section 5545a of this title.

**EFFECTIVE DATE OF 1994 AMENDMENTS**

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

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

**EFFECTIVE DATE OF 1990 AMENDMENTS**

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

Amendment by Pub. L. 101–335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or such earlier date as Executive Director may by regulation prescribe, and applicable with respect to separations occurring before, on, or after that effective date, see section 6(c) of Pub. L. 101–335, set out as a note under section 8351 of this title.

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by section 103(a)(2), (c), and (d)(2) of Pub. L. 100–238, effective Jan. 1, 1987, see section 103(f) of Pub. L. 100–238, set out as a note under section 3307 of this title.

Pub. L. 100–238, title I, § 113(b)(2), Jan. 8, 1988, 101 Stat. 1751, provided that: “The amendments made by paragraph (1) [amending this section] shall be effective as of January 1, 1987. Any refund which becomes payable as a result of the preceding sentence shall, to the extent that such refund involves an individual’s contributions to the Thrift Savings Fund (established under section 8437 of title 5, United States Code), be adjusted to reflect any earnings attributable thereto.”

**EFFECTIVE DATE**

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

“(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments made by this Act [see Short Title note below] shall take effect on January 1, 1987.

“(b) EXCEPTIONS.—(1) Subchapter VII of chapter 84 of title 5, United States Code, as added by section 101 of this Act, shall take effect on the date of the enactment of this Act [June 6, 1986].

“(2) Except as provided in section 305 of this Act [enacting and amending provisions set out as notes under section 8331 of this title], title III of this Act, and the

amendments made by such title [amending sections 3121 and 6103 of Title 26, Internal Revenue Code, section 1005 of Title 39, Postal Service, and section 410 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 8331, 8432, and 8472 of this title and section 6103 of Title 26, and amending provisions set out as a note under section 8331 of this title], shall take effect on the date of the enactment of this Act.

“(3) The amendments made by sections 204 and 205 of this Act [enacting sections 8343a and 8350 of this title and amending section 8342 of this title] shall take effect on the date of the enactment of this Act.

“(4) Section 701 of this Act [enacting provisions set out as a note under section 8472 of this title] shall take effect on the date of the enactment of this Act.

“(5) Sections 505 [amending provisions formerly set out as a note under section 403 of Title 50, War and National Defense] and 601 of this Act and the amendments made by such section 601 [not classified to the Code] shall take effect on the date of the enactment of this Act.”

Reference to a specific date in section 702(a) of Pub. L. 99-335, set out above, for certain purposes, deemed to be a reference to the first day of the first pay period beginning after such date, or to the day before such day, as appropriate, see section 505 of Pub. L. 99-556, set out as a Coordination With Pay Periods note under section 8331 of this title.

#### SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106-168, title II, §201, Dec. 12, 1999, 113 Stat. 1817, provided that: “This title [enacting section 8431 of this title, amending sections 8351, 8402, and 8411 of this title, and enacting provisions set out as notes under sections 8402 and 8431 of this title] may be cited as the ‘Federal Reserve Board Retirement Portability Act’.”

#### SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-274, §1, Oct. 21, 1998, 112 Stat. 2419, provided that: “This Act [amending section 8402 of this title and enacting provisions set out as a note under section 8402 of this title] may be cited as the ‘District of Columbia Courts and Justice Technical Corrections Act of 1998’.”

#### SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title I, §101]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, provided that: “This title [title I (§§101-104) of section 659 of section 101(f) of Pub. L. 104-208, amending sections 8438 and 8439 of this title and enacting provisions set out as a note under section 8438 of this title] may be cited as the ‘Thrift Savings Investment Funds Act of 1996’.”

Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title I, §201]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-374, provided that: “This title [title II (§§201-207) of section 659 of section 101(f) of Pub. L. 104-208, amending this section and sections 5545a, 8351, 8433, 8435, and 8440a to 8440c of this title, repealing section 8431 of this title, enacting provisions set out as notes under sections 5545a and 8433 of this title, and amending provisions set out as a note under section 5343 of this title] may be cited as the ‘Thrift Savings Plan Act of 1996’.”

#### SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-335, §1, July 17, 1990, 104 Stat. 319, provided that: “This Act [enacting section 8432a of this title, amending this section and sections 3392, 8351, 8433 to 8435, 8438, 8440a, 8440b, and 8477 of this title, renumbering former section 8440a of this title as section 8440b, enacting provisions set out as notes under sections 3392, 8351, 8432a, 8433, 8434, and 8438 of this title, and amending provisions set out as a note under section 8477 of this title] may be cited as the ‘Thrift Savings Plan Technical Amendments Act of 1990’.”

#### SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100-43, §1, May 22, 1987, 101 Stat. 315, provided: “That this Act [amending section 8438 of this title]

may be cited as the ‘Thrift Savings Fund Investment Act of 1987’.”

#### SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-556, §1, Oct. 27, 1986, 100 Stat. 3131, provided that: “This Act [enacting section 8478a of this title and section 4069 of Title 22, Foreign Relations and Intercourse, amending this section and sections 6301, 8332, 8350, 8402, 8411 to 8413, 8415, 8421a, 8442, 8443, 8452, 8457, 8461, 8462, 8477, 8478, and 8901 of this title and sections 4046, 4064, 4071c, 4071d, and 4071j of Title 22, enacting provisions set out as notes under sections 6301, 8331, 8332, 8335, 8341, 8477, and 8478 of this title and section 4046 of Title 22, and amending provisions set out as notes under sections 8331 and 8341 of this title] may be cited as the ‘Federal Employees’ Retirement System Technical Corrections Act of 1986’.”

#### SHORT TITLE

Pub. L. 99-335, title I, §100(a), June 6, 1986, 100 Stat. 514, provided that: “This Act [enacting this chapter, sections 8343a, 8349, 8350, and 8351 of this title, and sections 4068 and 4071 to 4071k of Title 22, Foreign Relations and Intercourse, amending sections 2105, 2109, 5102, 5314, 6301, 6303, 8116, 8331, 8332, 8334, 8342, 8347, 8348, 8701, 8706, 8714, 8714b, 8714c, 8901, and 8905 of this title, section 1605 of Title 10, Armed Forces, sections 4041 to 4049, 4054 to 4056, 4058, 4060, 4061, 4063, 4064, 4066, and 4067 of Title 22, sections 3121 and 6103 of Title 26, Internal Revenue Code, section 1005 of Title 39, Postal Service, and section 410 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 8331, 8351, 8432, and 8472 of this title, sections 3901 and 4046 of Title 22, and section 6103 of Title 26, and amending provisions set out as notes under section 8331 of this title and sections 402 and 403 of Title 50, War and National Defense] may be cited as the ‘Federal Employees’ Retirement System Act of 1986’.”

#### 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.

#### TRANSFER OF FUNCTIONS

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

#### ELECTION

Pub. L. 108-83, title I, §104(b), Sept. 30, 2003, 117 Stat. 1018, provided that:

“(1) During the 60-day period which begins on the date of the enactment of the Legislative Branch Appropriations Act, 2004 [Sept. 30, 2003], any individual who, as of such date, is serving as a Member of the House of Representatives and on such date is not subject to chapter 84 of title 5, United States Code, may elect to become subject to such chapter.

“(2) Any election under this paragraph shall be carried out in accordance with such procedures as the Office of Personnel Management may provide.

“(3) In this subsection, the term ‘Member of the House of Representatives’ includes a Delegate or Resident Commissioner to the Congress.”

#### SERVICE AS LAW ENFORCEMENT OFFICER

Pub. L. 104-52, title VI, §640, Nov. 19, 1995, 109 Stat. 513, as amended by Pub. L. 104-208, div. A, title I, §101(f)

[title VI, § 629(a)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-362, provided that: “Hereafter, service performed during the period January 1, 1984, through December 31, 1986, which would, if performed after that period, be considered service as a law enforcement officer, as defined in section 8401(17)(A)(i)(II) and (B) of title 5, United States Code, shall be deemed service as a law enforcement officer for the purposes of chapter 84 of such title.”

[Pub. L. 104-208, div. A, title I, § 101(f) [title VI, § 629(b)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-362, provided that: “The amendment made by subsection (a) [amending section 640 of Pub. L. 104-52, set out above] shall take effect as if included in Public Law 104-52 on the date of its enactment [Nov. 19, 1995].”]

#### CONGRESSIONAL DECLARATION OF PURPOSE

Pub. L. 99-335, title I, § 100A, June 6, 1986, 100 Stat. 516, provided that: “The purposes of this Act [see Short Title note above] are—

- “(1) to establish a Federal employees’ retirement plan which is coordinated with title II of the Social Security Act [42 U.S.C. 401 et seq.];
- “(2) to ensure a fully funded and financially sound retirement benefits plan for Federal employees;
- “(3) to enhance portability of retirement assets earned as an employee of the Federal Government;
- “(4) to provide options for Federal employees with respect to retirement planning;
- “(5) to assist in building a quality career work force in the Federal Government;
- “(6) to encourage Federal employees to increase personal savings for retirement; and
- “(7) to extend financial protection from disability to additional Federal employees and to increase such protection for eligible Federal employees.”

#### USE OF NORMAL-COST PERCENTAGE

Pub. L. 99-335, title III, § 307, June 6, 1986, 100 Stat. 607, as amended by Pub. L. 100-366, § 1, July 13, 1988, 102 Stat. 826, provided that: “Notwithstanding any other provision of law, the normal-cost percentage (as defined by section 8401(23) of title 5, United States Code, as added by this Act) of the Federal Employees’ Retirement System shall be used to value the cost of such System to the Civil Service Retirement and Disability Fund for all purposes in which the cost of the System is required to be determined by the Federal Government. For any comparisons between the cost of performing commercial activities under the contract with commercial sources and the cost of performing such activities using Government facilities and personnel, the cost of the System shall include the cost of such System to the Civil Service Retirement and Disability Fund as specified in the preceding sentence, the cost of the thrift savings plan under subchapter III of chapter 84 of title 5, United States Code, and the cost of social security.”

#### FIRST COST-OF-LIVING ADJUSTMENT

Pub. L. 99-335, title VII, § 702(c), June 6, 1986, 100 Stat. 631, provided that:

“(1) For purposes of the first adjustment under subsection (b) of section 8462 of title 5, United States Code (as added by section 101 of this Act), the base quarter ending on September 30, 1986, shall be considered to have been the base quarter for a year in which an adjustment under such subsection was made.

“(2) As used in paragraph (1), the term ‘base quarter’ has the meaning provided by section 8462(a)(1) of title 5, United States Code (as added by section 101 of this Act).”

### § 8402. Federal Employees’ Retirement System; exclusions

(a) The provisions of this chapter comprise the Federal Employees’ Retirement System.

(b) The provisions of this chapter shall not apply with respect to—

(1) any individual who has performed service of a type described in subparagraph (C), (D), (E), or (F) of section 210(a)(5) of the Social Security Act continuously since December 31, 1983 (determined in accordance with the provisions of section 210(a)(5)(B) of the Social Security Act, relating to continuity of employment); or

(2)(A) any employee or Member who has separated from the service after—

(i) having been subject to—

(I) subchapter III of chapter 83 of this title;

(II) subchapter I of chapter 8 of title I of the Foreign Service Act of 1980; or

(III) the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act; and

(ii) having completed—

(I) at least 5 years of civilian service creditable under subchapter III of chapter 83 of this title;

(II) at least 5 years of civilian service creditable under subchapter I of chapter 8 of title I of the Foreign Service Act of 1980; or

(III) at least 5 years of civilian service (other than any service performed in the employ of a Federal Reserve Bank) creditable under the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act,

determined without regard to any deposit or redeposit requirement under either such subchapter or under such benefit structure, or any requirement that the individual become subject to either such subchapter or to such benefit structure after performing the service involved; or

(B) any employee having at least 5 years of civilian service performed before January 1, 1987, creditable under subchapter III of chapter 83 of this title (determined without regard to any deposit or redeposit requirement under such subchapter, any requirement that the individual become subject to such subchapter after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual’s desire to become subject to such subchapter);

except to the extent provided for under subsection (d) of this section or title III of the Federal Employees’ Retirement System Act of 1986 pursuant to an election under such title to become subject to this chapter.

(c)(1) The Office may exclude from the operation of this chapter an employee or group of employees in or under an Executive agency, the United States Postal Service, or the Postal Regulatory Commission, whose employment is tem-

porary or intermittent, except an employee whose employment is part-time career employment (as defined in section 3401(2)).

(2) The Architect of the Capitol may exclude from the operation of this chapter an employee under the Office of the Architect of the Capitol whose employment is temporary or of uncertain duration.

(3) The Librarian of Congress may exclude from the operation of this chapter an employee under the Library of Congress whose employment is temporary or of uncertain duration.

(4) The Director or Acting Director of the Botanic Garden may exclude from the operation of this chapter an employee under the Botanic Garden whose employment is temporary or of uncertain duration.

(5) The Chief Administrative Officer of the House of Representatives and the Secretary of the Senate each may exclude from the operation of this chapter a Congressional employee—

(A) whose employment is temporary or intermittent; and

(B) who is paid by such Chief Administrative Officer or Secretary, as the case may be.

(6) The Director of the Office of Technology Assessment may exclude from the operation of this chapter an employee under the Office of Technology Assessment whose employment is temporary or intermittent.

(7) The Director of the Congressional Budget Office may exclude from the operation of this chapter an employee under the Congressional Budget Office whose employment is temporary or intermittent.

(8) The Director of the Administrative Office of the United States Courts may exclude from the operation of this chapter an employee of the Administrative Office of the United States Courts, the Federal Judicial Center, or a court named by section 610 of title 28, whose employment is temporary or of uncertain duration.

(9) The Joint Committee on Judicial Administration in the District of Columbia may exclude from the operation of this chapter an employee of the District of Columbia Courts whose employment is temporary or of uncertain duration.

(d) Paragraph (2) of subsection (b) shall not apply to an individual who—

(1) becomes subject to—

(A) subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 (relating to the Foreign Service Pension System) pursuant to an election; or

(B) the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984, participate, which benefit structure is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act (and any redesignated or successor version of such benefit structure, if so identified in writing by the Board of Governors of the Federal Reserve System for purposes of this chapter); and

(2) subsequently enters a position in which, but for paragraph (2) of subsection (b), such individual would be subject to this chapter.

(e) A bankruptcy judge or magistrate judge who is covered by section 377 of title 28 or sec-

tion 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 shall be excluded from the operation of this chapter, other than subchapters III and VII of such chapter, if the judge or magistrate judge notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such election, the judge or magistrate judge shall be entitled to a lump-sum credit under section 8424 of this title.

(f) A judge who is covered by section 7296 of title 38 shall be excluded from the operation of this chapter if the judge notifies the Director of the Office of Personnel Management of an election of a retirement annuity under that section. Upon such election, the judge shall be entitled to a lump-sum credit under section 8424 of this title.

(g) A judge of the United States Court of Federal Claims who is covered by section 178 of title 28 shall be excluded from the operation of this chapter, other than subchapters III and VII of such chapter, if the judge notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such election, the judge shall be entitled to a lump-sum credit under section 8424 of this title.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 521; amended Pub. L. 99-556, title I, §116, Oct. 27, 1986, 100 Stat. 3134; Pub. L. 100-238, title I, §130, Jan. 8, 1988, 101 Stat. 1759; Pub. L. 100-659, §6(c), Nov. 15, 1988, 102 Stat. 3919; Pub. L. 101-94, title I, §102(b), Aug. 16, 1989, 103 Stat. 626; Pub. L. 101-474, §5(p), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101-650, title III, §§306(e)(3), 321, Dec. 1, 1990, 104 Stat. 5112, 5117; Pub. L. 102-40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 102-198, §7(d), Dec. 9, 1991, 105 Stat. 1625; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104-53, title I, §115, Nov. 19, 1995, 109 Stat. 527; Pub. L. 104-186, title II, §215(13), Aug. 20, 1996, 110 Stat. 1746; Pub. L. 105-274, §6(a), Oct. 21, 1998, 112 Stat. 2424; Pub. L. 106-168, title II, §202(b), Dec. 12, 1999, 113 Stat. 1818; Pub. L. 109-435, title VI, §604(b), Dec. 20, 2006, 120 Stat. 3241.)

## Editorial Notes

### REFERENCES IN TEXT

Section 210(a)(5) of the Social Security Act, referred to in subsec. (b)(1), is classified to section 410(a)(5) of Title 42, The Public Health and Welfare.

The Federal Employees' Retirement System Act of 1986, referred to in subsec. (b), is Pub. L. 99-335, June 6, 1986, 100 Stat. 514. Title III of the Federal Employees' Retirement System Act of 1986 amended sections 3121 and 6103 of Title 26, Internal Revenue Code, section 1005 of Title 39, Postal Service, and section 410 of Title 42, enacted provisions set out as notes under sections 8331, 8401, 8432, and 8472 of this title and section 6103 of Title 26, and amended provisions set out as a note under section 8331 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8401 of this title and Tables.

The Foreign Service Act of 1980, referred to in subsecs. (b)(2)(A)(i)(II), (ii)(II) and (d)(1)(A), is Pub. L. 96-465, Oct. 17, 1980, 94 Stat. 2071. Subchapters I and II of chapter 8 of title I of the Act are classified generally to parts I (§4041 et seq.) and II (§4071 et seq.), respectively, of subchapter VIII of chapter 52 of Title 22, For-



eign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

Section 10 of the Federal Reserve Act, referred to in subsecs. (b)(2)(A)(i)(III), (ii)(III) and (d)(1)(B), is section 10 of act Dec. 23, 1913, ch. 6, 38 Stat. 260. For classification of section 10 to the Code, see Codification note set out under section 241 of Title 12, Banks and Banking, and Tables.

Section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, referred to in subsec. (e), is section 2(c) of Pub. L. 100-659, which is set out as a note under section 377 of Title 28, Judiciary and Judicial Procedure.

#### AMENDMENTS

2006—Subsec. (c)(1). Pub. L. 109-435 substituted “Postal Regulatory Commission” for “Postal Rate Commission”.

1999—Subsec. (b)(2)(A). Pub. L. 106-168, § 202(b)(1), added subpar. (A) and struck out former subpar. (A) which read as follows: “any employee or Member who has separated from the service after—

“(i) having been subject to subchapter III of chapter 83 of this title, or subchapter I of chapter 8 of the Foreign Service Act of 1980; and

“(ii) having completed at least 5 years of civilian service creditable under subchapter III of chapter 83 of this title, or at least 5 years of civilian service creditable under subchapter I of the Foreign Service Act of 1980 (determined without regard to any deposit or redeposit requirement under either such subchapter, or any requirement that the individual become subject to either such subchapter after performing the service involved); or”.

Subsec. (d). Pub. L. 106-168, § 202(b)(2), amended subsec. (d) generally. Prior to amendment, text read as follows: “Paragraph (2) of subsection (b) shall not apply to an individual who becomes subject to subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 (relating to the Foreign Service Pension System) pursuant to an election and who subsequently enters a position in which, but for such paragraph (2), he would be subject to this chapter.”

1998—Subsec. (c)(9). Pub. L. 105-274 added par. (9).

1996—Subsec. (c)(5). Pub. L. 104-186 substituted “Chief Administrative Officer” for “Clerk” in introductory provisions and subpar. (B).

1995—Subsec. (c)(7), (8). Pub. L. 104-53 added par. (7) and redesignated former par. (7) as (8).

1992—Subsec. (g). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

1991—Subsec. (f). Pub. L. 102-40 substituted “section 7296 of title 38” for “section 4096 of title 38”.

Subsec. (g). Pub. L. 102-198 inserted a comma after “such chapter”.

1990—Subsec. (c)(7). Pub. L. 101-474 added par. (7).

Subsec. (g). Pub. L. 101-650 added subsec. (g).

1989—Subsec. (f). Pub. L. 101-94 added subsec. (f).

1988—Subsec. (b)(2). Pub. L. 100-238, § 130(1), inserted “subsection (d) of this section or” before “title III” in concluding provisions.

Subsec. (d). Pub. L. 100-238, § 130(2), added subsec. (d).

Subsec. (e). Pub. L. 100-659 added subsec. (e).

1986—Subsec. (c)(5), (6). Pub. L. 99-556 added pars. (5) and (6).

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

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

##### EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-168, title II, § 202(d), Dec. 12, 1999, 113 Stat. 1819, provided that:

“(1) IN GENERAL.—Subject to succeeding provisions of this subsection, this section [amending this section and section 8411 of this title and enacting provisions set out as a note under this section] and the amendments made by this section shall take effect on the date of the enactment of this Act [Dec. 12, 1999].

“(2) PROVISIONS RELATING TO CREDITABILITY AND CERTAIN FORMER EMPLOYEES.—The amendments made by subsection (a) [amending section 8411 of this title] and the provisions of subsection (c) [set out as a note below] shall apply only to individuals who separate from service subject to chapter 84 of title 5, United States Code, on or after the date of the enactment of this Act [Dec. 12, 1999].

“(3) PROVISIONS RELATING TO EXCLUSION FROM CHAPTER.—The amendments made by subsection (b) [amending this section] shall not apply to any former employee of the Board of Governors of the Federal Reserve System who, subsequent to his or her last period of service as an employee of the Board of Governors of the Federal Reserve System and prior to the date of the enactment of this Act [Dec. 12, 1999], became subject to subchapter III of chapter 83 or chapter 84 of title 5, United States Code, under the law in effect at the time of the individual’s appointment.”

##### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-274, § 10, Oct. 21, 1998, 112 Stat. 2429, provided that: “Except as otherwise specifically provided, this Act [amending this section and enacting provisions set out as a note under section 8401 of this title] and the amendments made by this Act shall take effect as if included in the enactment of title XI of the Balanced Budget Act of 1997 [Pub. L. 105-33].”

##### EFFECTIVE DATE OF 1992 AMENDMENT

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

##### EFFECTIVE DATE OF 1990 AMENDMENT

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

##### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-659 effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrate judges who retire on or after Nov. 15, 1988, with exception for judges and magistrate judges retiring on or after July 31, 1987, see section 9 of Pub. L. 100-659, as amended, set out as an Effective Date note under section 377 of Title 28, Judiciary and Judicial Procedure.

##### PROVISIONS RELATING TO CERTAIN FORMER EMPLOYEES

Pub. L. 106-168, title II, § 202(c), Dec. 12, 1999, 113 Stat. 1819, provided that: “A former employee of the Board of Governors of the Federal Reserve System who—

“(1) has at least 5 years of civilian service (other than any service performed in the employ of a Federal Reserve Bank) creditable under the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act [Act Dec. 23, 1913, ch. 6, see Codification note set out under 12 U.S.C. 241];

“(2) was subsequently employed subject to the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984, participate, which benefit structure is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act (and any redesignated or successor version of such

benefit structure, if so identified in writing by the Board of Governors of the Federal Reserve System for purposes of chapter 84 of title 5, United States Code; and

“(3) after service described in paragraph (2), becomes subject to and thereafter entitled to benefits under chapter 84 of title 5, United States Code, shall, for purposes of section 302 of the Federal Employees’ Retirement System Act of 1986 [Pub. L. 99-335] (100 Stat. 601; 5 U.S.C. 8331 note) be considered to have become subject to chapter 84 of title 5, United States Code, pursuant to an election under section 301 of such Act [5 U.S.C. 8331 note].”

#### § 8403. Relationship to the Social Security Act

Except as otherwise provided in this chapter, the benefits payable under the System are in addition to the benefits payable under the Social Security Act.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 522.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Social Security Act, referred to in text, 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.

#### SUBCHAPTER II—BASIC ANNUITY

#### § 8410. Eligibility for annuity

Notwithstanding any other provision of this chapter, an employee or Member must complete at least 5 years of civilian service creditable under section 8411 in order to be eligible for an annuity under this subchapter.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 522.)

#### § 8411. Creditable service

(a)(1) The total service of an employee or Member is the full years and twelfth parts thereof, excluding from the aggregate the fractional part of a month, if any.

(2) Credit may not be allowed for a period of separation from the service in excess of 3 calendar days.

(b) For the purpose of this chapter, creditable service of an employee or Member includes—

(1) employment as an employee, and any service as a Member (including the period from the date of the beginning of the term for which elected or appointed to the date of taking office as a Member), after December 31, 1986;

(2) except as provided in subsection (f), service with respect to which deductions and withholdings under section 204(a)(1) of the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 have been made;

(3) except as provided in subsection (f) or (h), any civilian service (performed before January 1, 1989, other than any service under paragraph (1) or (2)) which, but for the amendments made by subsections (a)(4) and (b) of section 202 of the Federal Employees’ Retirement System

Act of 1986, would be creditable under subchapter III of chapter 83 of this title (determined without regard to any deposit or redeposit requirement under such subchapter, any requirement that the individual become subject to such subchapter after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual’s desire to become subject to such subchapter);

(4) a period of service (other than any service under any other paragraph of this subsection and other than any military service) that was creditable under the Foreign Service Pension System described in subchapter II of chapter 8<sup>1</sup> of the Foreign Service Act of 1980, if the employee or Member waives credit for such service under the Foreign Service Pension System and makes a payment to the Fund equal to the amount that would have been deducted from pay under section 8422(a) had the employee been subject to this chapter during such period of service (together with interest on such amount computed under paragraphs (2) and (3) of section 8334(e));

(5) a period of service (other than any service under any other paragraph of this subsection, any military service, and any service performed in the employ of a Federal Reserve Bank) that was creditable under the Bank Plan (as defined in subsection (i)), if the employee waives credit for such service under the Bank Plan and makes a payment to the Fund equal to the amount that would have been deducted from pay under section 8422(a) had the employee been subject to this chapter during such period of service (together with interest on such amount computed under paragraphs (2) and (3) of section 8334(e)); and

(6) service performed by any individual as an employee paid from nonappropriated funds of an instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) that is not otherwise creditable, if the individual elects (in accordance with regulations prescribed by the Office) to have such service credited under this paragraph.

Paragraph (5) shall not apply in the case of any employee as to whom subsection (g) (or, to the extent subchapter III of chapter 83 is involved, section 8332(n)) otherwise applies.

(c)(1) Except as provided in paragraphs (2), (3), and (5), an employee or Member shall be allowed credit for—

(A) each period of military service performed before January 1, 1957; and

(B) each period of military service performed after December 31, 1956, and before the separation on which title to annuity is based, if a deposit (including interest, if any) is made with respect to such period in accordance with section 8422(e).

(2) If an employee or Member is awarded retired pay based on any period of military service, the service of the employee or Member may not include credit for such period of military service unless the retired pay is awarded—

<sup>1</sup> See References in Text note below.