

on the basis of the service of the individual which is creditable toward the annuity or retired pay, subject to the exceptions in section 8311(2) and (3) of this title, if the individual knowingly and willfully made or makes a false, fictitious, or fraudulent statement or representation, or knowingly and willfully concealed or conceals a material fact—

(1) before, on, or after September 1, 1954, concerning his—

(A) past or present membership in, affiliation or association with, or support of the Communist Party, or a chapter, branch, or subdivision thereof, in or outside the United States, or other organization, party, or group advocating—

(i) the overthrow, by force, violence, or other unconstitutional means, of the Government of the United States;

(ii) the establishment, by force, violence, or other unconstitutional means, of a Communist totalitarian dictatorship in the United States; or

(iii) the right to strike against the United States;

(B) conviction of an offense named by subsection (b) of section 8312 of this title, to the extent provided by that subsection; or

(C) failure or refusal to appear, testify, or produce a book, paper, record, or other document, as specified by section 8314 of this title; or

(2) before, on, or after September 26, 1961, concerning his conviction of an offense named by subsection (c) of section 8312 of this title, to the extent provided by that subsection;

in a document executed by the individual in connection with his employment in, or application for, a civilian or military office or position in or under the legislative, executive, or judicial branch of the Government of the United States or the government of the District of Columbia.

(b) The prohibition on the payment of annuity or retired pay applies—

(1) with respect to matters specified by subsection (a)(1) of this section, to the period after the statement, representation, or concealment of fact is made or occurs, or after September 1, 1954, whichever is later; and

(2) with respect to matters specified by subsection (a)(2) of this section, to the period after the statement, representation, or concealment of fact is made or occurs, or after September 26, 1961, whichever is later.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 562.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2283(b), (c).	Sept. 26, 1961, Pub. L. 87-299, § 1 "Sec. 2(b), (c)", 75 Stat. 642.

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

§ 8316. Refund of contributions and deposits

(a) When payment of annuity or retired pay is denied under this subchapter because an indi-

vidual was convicted of an offense named by section 8312 of this title, to the extent provided by that section, or violated section 8314 or 8315 of this title—

(1) the amount, except employment taxes, contributed by the individual toward the annuity, less the amount previously refunded or paid as annuity benefits; and

(2) deposits made under section 1438 of title 10 or section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504) to provide the eligible beneficiary with annuity for any period, less the amount previously paid as retired pay benefits;

shall be refunded, on appropriate application therefor—

(A) to the individual;

(B) if the individual is dead, to the beneficiary designated to receive refunds by or under the statute, regulation, or agreement under which the annuity, the benefits of which are denied under this subchapter, would have been payable; or

(C) if a beneficiary is not designated, in the order of precedence prescribed by section 8342(c) of this title or section 2771 of title 10, as the case may be.

(b) A refund under subsection (a) of this section shall be made with interest at the rate and for the period provided under the statute, regulation, or agreement under which the annuity would have been payable. However, interest may not be computed—

(1) if the individual was convicted of an offense named by section 8312(b) of this title, or violated section 8314 or 8315(a)(1) of this title, for the period after the conviction or commission of the violation, or after September 1, 1954, whichever is later; or

(2) if the individual was convicted of an offense named by section 8312(c) of this title, or violated section 8315(a)(2) of this title, for the period after the conviction or commission of the violation, or after September 26, 1961, whichever is later.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 563.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2284(a), (b).	Sept. 26, 1961, Pub. L. 87-299, § 1 "Sec. 4(a), (b)", 75 Stat. 644.
.....	5 U.S.C. 2284a(b).	Sept. 26, 1961, Pub. L. 87-299, § 1 "Sec. 5(b)", 75 Stat. 645.

This section is reorganized for clarity and conciseness.

The words "and section 3282 of Title 18" in former section 2284(a) are omitted as unnecessary.

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

Editorial Notes

REFERENCES IN TEXT

Section 5 of the Uniform Services Contingency Option Act of 1953 (67 Stat. 504), referred to in text, is covered by section 1438 of Title 10, Armed Forces.

§ 8317. Repayment of annuity or retired pay properly paid; waiver

(a) An individual, or his survivor or beneficiary, to whom payment of annuity is denied under this subchapter is not thereafter required to repay that part of the annuity otherwise properly paid to the individual, or to his survivor or beneficiary on the basis of the service of the individual, which is in excess of the aggregate amount of the contributions of the individual toward the annuity, with applicable interest.

(b) An individual, including an eligible beneficiary under chapter 73 of title 10 or section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504), to whom payment of retired pay is denied under this subchapter is not thereafter required to repay retired pay otherwise properly paid to the individual or beneficiary which is paid in violation of this subchapter.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 563.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row (a) refers to 5 U.S.C. 2284(c), (d) and Sept. 26, 1961, Pub. L. 87-299, § 1 "Sec. 4(c), (d)". Row (b) refers to 5 U.S.C. 2284a(a) and Sept. 26, 1961, Pub. L. 87-299, § 1 "Sec. 5(a)".

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

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

Editorial Notes

REFERENCES IN TEXT

Section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504), referred to in text, is covered by section 1438 of Table 10, Armed Forces.

§ 8318. Restoration of annuity or retired pay

(a) If an individual who was convicted, before, on, or after September 1, 1954, of—

- (1) an offense named by section 8312 of this title; or
(2) an offense constituting a violation of section 8314 or 8315 of this title;

is pardoned by the President, the right of the individual and his survivor or beneficiary to receive annuity or retired pay previously denied under this subchapter is restored as of the date of the pardon.

(b) The President may restore, effective as of the date he prescribes, the right to receive annuity or retired pay which is denied, before, on, or after September 1, 1954, under section 8314 or 8315 of this title, to the individual and to his survivor or beneficiary.

(c) Payment of annuity or retired pay which results from pardon or restoration by the President under subsection (a) or (b) of this section may not be made for a period before—

- (1) the date of pardon referred to by subsection (a) of this section; or
(2) the effective date of restoration referred to by subsection (b) of this section.

(d) Credit for a period of service covered by a refund under section 8316 of this title is allowed only after the amount refunded has been redeposited.

(e) The spouse of an individual whose annuity or retired pay is forfeited under section 8312 or 8313 after the date of enactment of this subsection shall be eligible for spousal pension benefits if the Attorney General of the United States determines that the spouse fully cooperated with Federal authorities in the conduct of a criminal investigation and subsequent prosecution of the individual which resulted in such forfeiture.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 563; Pub. L. 104-93, title III, §305, Jan. 6, 1996, 109 Stat. 965.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1 refers to 5 U.S.C. 2285(a), (b) and Sept. 26, 1961, Pub. L. 87-299, § 1 "Sec. 6(a), (b)".

The section is reorganized for clarity and conciseness.

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

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

Editorial Notes

REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsec. (e), is the date of enactment of Pub. L. 104-93, which was approved Jan. 6, 1996.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104-93 added subsec. (e).

§ 8319. Removal of members of the uniformed services from rolls; restoration; reappointment

(a) The President may drop from the rolls a member of a uniformed service who is deprived of retired pay under this subchapter.

- (b) The President may restore—
(1) military status to an individual dropped from the rolls to whom retired pay is restored under this subchapter or under section 2 of the Act of September 26, 1961 (75 Stat. 648); and
(2) all rights and privileges to the individual and his beneficiaries of which he or they were deprived because his name was dropped from the rolls.

(c) If the individual restored was a commissioned officer, the President alone may reappoint him to the grade and position on the retired list held when his name was dropped from the rolls.

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

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1 refers to 5 U.S.C. 2287 and Sept. 26, 1961, Pub. L. 87-299, § 1 "Sec. 8".

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