

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).¹

(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

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)² 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 “Sec. 5”, 70 Stat. 748. Feb. 7, 1964, Pub. L. 88-267, § 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.

¹ See References in Text note below.

² 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-