

or (c) or section 8462(b) or (c) of title 5, United States Code, or comparable provisions of law.”

TIME OF PAYMENT OF ANNUITY OR RETIRED OR
RETIREMENT PAY WHICH PRESIDENT ADJUSTS

Pub. L. 98-369, div. B, title II, §2201(a), July 18, 1984, 98 Stat. 1058, provided that: “Notwithstanding any other provision of law, beginning with the monthly rate payable for December 1984, any annuity or retired or retirement pay payable under any retirement system for Government officers or employees which the President adjusts pursuant to section 8340(b) of title 5, United States Code, shall be paid no earlier than the first business day of the succeeding month.”

COST-OF-LIVING ADJUSTMENTS DURING FISCAL YEARS
1983, 1984, AND 1985

Pub. L. 97-253, title III, §301(a)-(c), Sept. 8, 1982, 96 Stat. 790, 791, as amended by Pub. L. 98-270, title I, §201(c), Apr. 18, 1984, 98 Stat. 158; Pub. L. 98-396, title I, Aug. 22, 1984, 98 Stat. 1403, provided that:

“(a)(1) Except as provided in paragraph (3), the cost-of-living increase under any Government retirement system in annuity or retired or retainer pay of any early retiree taking effect in each of fiscal years 1983, 1984, and 1985, shall be equal to one-half of the assumed increase in the price index for that year.

“(2) For purposes of this subsection, an individual shall be considered to be an early retiree if—

“(A) the individual is under the age of 62 years as of the effective date of the cost-of-living increase involved (determined without regard to subsection (b));

“(B) the annuity or retired or retainer pay of the individual is not computed in whole or in part based on any disability of the individual; and

“(C) the annuity or retired or retainer pay of the individual is based upon the Government service of the individual.

“(3) If the percentage increase in the price index for fiscal year 1983, 1984, or 1985 (as determined by the Office of Personnel Management under section 8340(b) of title 5, United States Code) exceeds the assumed increase in the price index for that year, then the increase in the annuity or retired or retainer pay of an early retiree under paragraph (1) taking effect in that fiscal year shall be equal to—

“(A) one-half of the assumed increase in the price index for that year, plus

“(B) the amount by which the percentage increase in the price index exceeds the assumed price index increase.

If the percentage increase in the price index for fiscal year 1985 (as determined by the Office of Personnel Management under section 8340(b) of title 5, United States Code) is less than the assumed increase in the price index for that year, then the increase in the annuity or retired or retainer pay of an early retiree under paragraph (1) taking effect in that fiscal year shall be equal to the percentage increase in the price index for that year (as so determined).

“(4) As used in this subsection—

“(A) the term ‘price index’ has the meaning given such term in section 8331(15) of title 5, United States Code; and

“(B) the term ‘assumed increase in the price index’ means—

“(i) 6.6 percent, in the case of fiscal year 1983,

“(ii) 7.2 percent, in the case of fiscal year 1984, and

“(iii) 6.6 percent, in the case of fiscal year 1985.

“(5) The amount of any survivor annuity which is based on the service of any early retiree subject to this subsection shall be computed as if this subsection had not been enacted.

“(b) [Repealed. Pub. L. 98-270, title II, §201(c)(2), Apr. 18, 1984, 98 Stat. 158.]

“(c) For purposes of this section, the term ‘cost-of-living increase under a Government retirement system’ means any increase under—

“(1) section 8340(b) of title 5, United States Code;

“(2) section 826 of the Foreign Service Act of 1980 [22 U.S.C. 4066];

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

“(4) section 1401a(b) of title 10, United States Code; or

“(5) any other adjustment of any annuity under a retirement system for Government officers or employees which the President determines, by Executive order, is based on adjustments under any of the provisions referred to in the preceding paragraph.”

COST-OF-LIVING ADJUSTMENT OF RETIRED PAY OR RETAINER PAY OF MEMBERS AND FORMER MEMBERS OF ARMED FORCES AND COMMISSIONED OFFICERS OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AND PUBLIC HEALTH SERVICE; EFFECTIVE DATE OF AMENDMENT

See provisions of section 801(c) of Pub. L. 94-361, title VIII, July 14, 1976, 90 Stat. 929, set out as a note under section 1401a of Title 10, Armed Forces.

§ 8341. Survivor annuities

(a) For the purpose of this section—

(1) “widow” means the surviving wife of an employee or Member who—

(A) was married to him for at least 9 months immediately before his death; or

(B) is the mother of issue by that marriage;

(2) “widower” means the surviving husband of an employee or Member who—

(A) was married to her for at least 9 months immediately before her death; or

(B) is the father of issue by that marriage;

(3) “dependent”, in the case of any child, means that the employee or Member involved was, at the time of the employee or Member’s death, either living with or contributing to the support of such child, as determined in accordance with such regulations as the Office of Personnel Management shall prescribe; and

(4) “child” means—

(A) an unmarried dependent child under 18 years of age, including (i) an adopted child, and (ii) a stepchild but only if the stepchild lived with the employee or Member in a regular parent-child relationship, and (iii) a recognized natural child, and (iv) a child who lived with and for whom a petition of adoption was filed by an employee or Member, and who is adopted by the surviving spouse of the employee or Member after his death;

(B) such unmarried dependent child regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18; or

(C) such unmarried dependent child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

For the purpose of this paragraph and subsection (e) of this section, a child whose 22nd birthday occurs before July 1 or after August 31 of a calendar year, and while he is regularly pursuing such a course of study or training, is

deemed to have become 22 years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if he shows to the satisfaction of the Office of Personnel Management that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(b)(1) Except as provided in paragraph (2) of this subsection, if an employee or Member dies after having retired under this subchapter and is survived by a widow or widower, the widow or widower is entitled to an annuity equal to 55 percent (or 50 percent if retired before October 11, 1962) of an annuity computed under section 8339(a)–(i), (n), (p), (q), (r), and (s) as may apply with respect to the annuitant, or of such portion thereof as may have been designated for this purpose under section 8339(j)(1) of this title, unless the right to a survivor annuity was waived under such section 8339(j)(1) or, in the case of remarriage, the employee or Member did not file an election under section 8339(j)(5)(C) or section 8339(k)(2) of this title, as the case may be.

(2) If an annuitant—

(A) who retired before April 1, 1948; or

(B) who elected a reduced annuity provided in paragraph (2) of section 8339(k) of this title;

dies and is survived by a widow or widower, the widow or widower is entitled to an annuity in an amount which would have been paid had the annuitant been married to the widow or widower at the time of retirement.

(3) A spouse acquired after retirement is entitled to a survivor annuity under this subsection only upon electing this annuity instead of any other survivor benefit to which he may be entitled under this subchapter or another retirement system for Government employees. The annuity of the widow or widower under this subsection commences on the day after the annuitant dies. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(A) dies; or

(B) except as provided in subsection (k), remarries before becoming 55 years of age.

(4) Notwithstanding the preceding provisions of this subsection, the annuity payable under this subsection to the widow or widower of a retired employee or Member may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under this subsection (determined without regard to any waiver or designation under section 8339(j)(1) of this title or a prior similar provision of law), and

(B) the amount of the survivor annuity payable to any former spouse of such employee or Member under subsection (h) of this section.

(c) The annuity of a survivor named under section 8339(k)(1) of this title is 55 percent of the reduced annuity of the retired employee or Member. The annuity of the survivor commences on

the day after the retired employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the survivor dies.

(d) If an employee or Member dies after completing at least 18 months of civilian service, his widow or widower is entitled to an annuity equal to 55 percent of an annuity computed under section 8339(a)–(f), (i), (n), (p), (q), (r), and (s) as may apply with respect to the employee or Member, except that, in the computation of the annuity under such section, the annuity of the employee or Member shall be at least the smaller of—

(1) 40 percent of his average pay; or

(2) the sum obtained under such section after increasing his service of the type last performed by the period elapsing between the date of death and the date he would have become 60 years of age.

Notwithstanding the preceding sentence, the annuity payable under this subsection to the widow or widower of an employee or Member may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under this subsection, and

(B) the amount of the survivor annuity payable to any former spouse of such employee or Member under subsection (h) of this section.

The annuity of the widow or widower commences on the day after the employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(i) dies; or

(ii) except as provided in subsection (k), remarries before becoming 55 years of age.

(e)(1) For the purposes of this subsection, “former spouse” includes a former spouse who was married to an employee or Member for less than 9 months and a former spouse of an employee or Member who completed less than 18 months of service covered by this subchapter.

(2) If an employee or Member dies after completing at least 18 months of civilian service, or an employee or Member dies after retiring under this subchapter, and is survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the employee or Member, that surviving child is entitled to an annuity equal to the smallest of—

(A) 60 percent of the average pay of the employee or Member divided by the number of children;

(B) \$900; or

(C) \$2,700 divided by the number of children;

subject to section 8340 of this title. If the employee or Member is not survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the employee or Member, that surviving child is entitled to an annuity equal to the smallest of—

(i) 75 percent of the average pay of the employee or Member divided by the number of children;

(ii) \$1,080; or

(iii) \$3,240 divided by the number of children;

subject to section 8340 of this title.

(3) The annuity of a child under this subchapter or under the Act of May 29, 1930, as amended from and after February 28, 1948, commences on the day after the employee or Member dies, or commences or resumes on the first day of the month in which the child later becomes or again becomes a student as described by subsection (a)(3) of this section, if any lump sum paid is returned to the Fund. This annuity and the right thereto terminate on the last day of the month before the child—

(A) becomes 18 years of age unless he is then a student as described or incapable of self-support;

(B) becomes capable of self-support after becoming 18 years of age unless he is then such a student;

(C) becomes 22 years of age if he is then such a student and capable of self-support;

(D) ceases to be such a student after becoming 18 years of age unless he is then incapable of self-support; or

(E) dies or marries;

whichever first occurs. On the death of the surviving spouse or former spouse or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though the spouse, former spouse, or child had not survived the employee or Member.

(4) If the annuity of a child under this subchapter terminates under paragraph (3)(E) because of marriage, then, if such marriage ends, such annuity shall resume on the first day of the month in which it ends, but only if—

(A) any lump sum paid is returned to the Fund; and

(B) that individual is not otherwise ineligible for such annuity.

(f) If a Member heretofore or hereafter separated from the service with title to deferred annuity from the Fund hereafter dies before having established a valid claim for annuity and is survived by a spouse to whom married at the date of separation, the surviving spouse—

(1) is entitled to an annuity equal to 55 percent of the deferred annuity of the Member commencing on the day after the Member dies and terminating on the last day of the month before the surviving spouse dies or remarries; or

(2) may elect to receive the lump-sum credit instead of annuity if the spouse is the individual who would be entitled to the lump-sum credit and files application therefor with the Office before the award of the annuity.

Notwithstanding the preceding sentence, an annuity payable under this subsection to the surviving spouse of a Member may not exceed the difference between—

(A) the annuity which would otherwise be payable to such surviving spouse under this subsection, and

(B) the amount of the survivor annuity payable to any former spouse of such Member under subsection (h) of this section.

(g) In the case of a surviving spouse whose annuity under this section is terminated because of remarriage before becoming 55 years of age, annuity at the same rate shall be restored com-

mencing on the day the remarriage is dissolved by death, annulment, or divorce, if—

(1) the surviving spouse elects to receive this annuity instead of a survivor benefit to which he may be entitled, under this subchapter or another retirement system for Government employees, by reason of the remarriage; and

(2) any lump sum paid on termination of the annuity is returned to the Fund.

(h)(1) Subject to paragraphs (2) through (5) of this subsection, a former spouse of a deceased employee, Member, annuitant, or former Member who was separated from the service with title to a deferred annuity under section 8338(b) of this title is entitled to a survivor annuity under this subsection, if and to the extent expressly provided for in an election under section 8339(j)(3) of this title, or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(2)(A) The annuity payable to a former spouse under this subsection may not exceed the difference between—

(i) the amount applicable in the case of such former spouse, as determined under subparagraph (B) of this paragraph, and

(ii) the amount of any annuity payable under this subsection to any other former spouse of the employee, Member, or annuitant, based on an election previously made under section 8339(j)(3) of this title, or a court order previously issued.

(B) The applicable amount, for purposes of subparagraph (A)(i) of this paragraph in the case of a former spouse, is the amount which would be applicable—

(i) under subsection (b)(4)(A) of this section in the case of a widow or widower, if the deceased was an employee or Member who died after retirement;

(ii) under subparagraph (A) of subsection (d) of this section in the case of a widow or widower, if the deceased was an employee or Member described in the first sentence of such subsection; or

(iii) under subparagraph (A) of subsection (f) of this section in the case of a surviving spouse, if the deceased was a Member described in the first sentence of such subsection.

(3) The commencement and termination of an annuity payable under this subsection shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—

(A) shall not commence before—

(i) the day after the employee, Member, or annuitant dies, or

(ii) the first day of the second month beginning after the date on which the Office receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Office may prescribe,

whichever is later, and

(B) shall terminate—

(i) except as provided in subsection (k), in the case of an annuity computed by ref-

erence to clause (i) or (ii) of paragraph (2)(B) of this subsection, no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies; or

(ii) in the case of an annuity computed by reference to clause (iii) of such paragraph, no later than the last day of the month before the former spouse remarries or dies.

(4) For purposes of this subchapter, a modification in a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective—

(A) if such modification is made after the retirement or death of the employee or Member concerned, and

(B) to the extent that such modification involves an annuity under this subsection.

(5) For purposes of this subchapter, a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective, in the case of a former spouse, to the extent that it is inconsistent with any joint designation or waiver previously executed with respect to such former spouse under section 8339(j)(1) of this title or a similar prior provision of law.

(6) Any payment under this subsection to a person bars recovery by any other person.

(7) As used in this subsection, “court” means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.

(i) The requirement in subsections (a)(1)(A) and (a)(2)(A) of this section that the surviving spouse of an employee or Member have been married to such employee or Member for at least 9 months immediately before the employee or Member’s death in order to qualify as the widow or widower of such employee or Member shall be deemed satisfied in any case in which the employee or Member dies within the applicable 9-month period, if—

(1) the death of the employee or Member was accidental; or

(2) the surviving spouse of such individual had been previously married to the individual and subsequently divorced, and the aggregate time married is at least 9 months.

(k)(1)¹ Subsections (b)(3)(B), (d)(ii), and (h)(3)(B)(i) (to the extent that they provide for termination of a survivor annuity because of a remarriage before age 55) shall not apply if the widow, widower, or former spouse was married for at least 30 years to the individual on whose service the survivor annuity is based.

(2) A remarriage described in paragraph (1) shall not be taken into account for purposes of section 8339(j)(5)(B) or (C) or any other provision of this chapter which the Office may by regulation identify in order to carry out the purposes of this subsection.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 577; Pub. L. 90-83, §1(80), Sept. 11, 1967, 81 Stat. 216; Pub. L. 91-93, title II, §206, Oct. 20, 1969, 83 Stat. 140; Pub. L. 91-658, §3, Jan. 8, 1971, 84 Stat. 1961; Pub.

L. 92-243, §1, Mar. 9, 1972, 86 Stat. 56; Pub. L. 92-297, §7(4), May 16, 1972, 86 Stat. 145; Pub. L. 93-260, §1(a), Apr. 9, 1974, 88 Stat. 76; Pub. L. 94-183, §2(36), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95-317, §1(b), July 10, 1978, 92 Stat. 382; Pub. L. 95-318, §2, July 10, 1978, 92 Stat. 384; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-598, title III, §338(c), Nov. 6, 1978, 92 Stat. 2681; Pub. L. 96-179, §1, Jan. 2, 1980, 93 Stat. 1299; Pub. L. 98-353, title I, §112, July 10, 1984, 98 Stat. 343; Pub. L. 98-615, §2(4), Nov. 8, 1984, 98 Stat. 3199; Pub. L. 99-251, title II, §§205-207, Feb. 27, 1986, 100 Stat. 25; Pub. L. 99-272, title XV, §15204(a)(2), Apr. 7, 1986, 100 Stat. 335; Pub. L. 101-428, §2(d)(7), Oct. 15, 1990, 104 Stat. 929; Pub. L. 102-378, §2(63), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §633(a)(1)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-362; Pub. L. 105-61, title V, §§516(a)(4), 518(a), Oct. 10, 1997, 111 Stat. 1306, 1307; Pub. L. 106-553, §1(a)(2) [title III, §308(h)(7)], Dec. 21, 2000, 114 Stat. 2762, 2762A-89.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 2251(h)-(j).	July 31, 1956, ch. 804, §401 “Sec. 1(h)-(j)”, 70 Stat. 744. Oct. 11, 1962, Pub. L. 87-793, §1103(f)(A), 76 Stat. 871.
(b)-(f)	5 U.S.C. 2260.	July 31, 1956, ch. 804, §401 “Sec. 10”, 70 Stat. 754. Aug. 27, 1958, Pub. L. 85-772, §1(b), (c), 72 Stat. 930. Sept. 6, 1960, Pub. L. 86-713, §1(a), 74 Stat. 813. Oct. 11, 1962, Pub. L. 87-793, §1103 (less (a) and (f)(A)), 76 Stat. 870, 871.

In subsection (b), the words “designated for this purpose under section 8339(i) of this title” are substituted for “designated in writing for such purpose by the employee or Member at the time of retirement” in view of the provisions of section 8339(i).

In subsection (f), the words “heretofore or hereafter” are substituted “either prior to, on, or after the effective date of the Civil Service Retirement Act Amendments of 1956”.

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

1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8341(a)(4) ...	5 App.: 2251(j) (less last sentence).	Apr. 25, 1966, Pub. L. 89-407, §1 (words before 1st comma), 80 Stat. 131. July 18, 1966, Pub. L. 89-504, §502, 80 Stat. 300.
8341(b) (last sentence).	5 App.: 2260(a)(2).	July 18, 1966, Pub. L. 89-504, §506(a), 80 Stat. 301.
8341(d) (last sentence).	5 App.: 2260(c) (last sentence).	July 18, 1966, Pub. L. 89-504, §506(b), 80 Stat. 301.
8341(e)	5 App.: 2260(d).	July 18, 1966, Pub. L. 89-504, §506(c), 80 Stat. 301.
8341(g)	5 App.: 2260(f).	July 18, 1966, Pub. L. 89-504, §506(d), 80 Stat. 302.

In subsection (a)(4), the words “for the purposes of section 10(d)” are omitted as covered by the words “For the purpose of this section.”

In clause (2) of the last sentence of subsection (b), the word “retired” is inserted before “Member” for clarity and to conform to the penultimate sentence and clause (1) of the last sentence.

¹ So in original. No subsec. (j) has been enacted.

In subsection (e), the words “any lump sum paid” are substituted for “the lump-sum credit, if paid” for clarity and consistency with subsection (g)(2).

In subsection (e)(2)(C), the words “capable of self-support” are substituted for “not incapable of self-support.”

In subsection (g), the words “after July 18, 1966” are substituted for “hereafter.” In clause (1), the word “he” is substituted for “he or she” on authority of 1 U.S.C. 1. The words “another retirement system for Government employees” are substituted for “any other retirement system established for employees of the Government” for consistency with section 8101(1)(ii).

Editorial Notes

REFERENCES IN TEXT

The Act of May 29, 1930, as amended from and after February 28, 1948, referred to in subsec. (e)(3), is the predecessor of section 8338 of this title.

AMENDMENTS

2000—Subsecs. (b)(1), (d). Pub. L. 106-553 substituted “(q), (r), and (s)” for “(q), and (r)”.

1997—Subsec. (b)(1). Pub. L. 105-61, § 516(a)(4), substituted “(q), and (r)” for “and (q) of this title”.

Subsec. (b)(3)(B). Pub. L. 105-61, § 518(a)(2)(A), substituted “except as provided in subsection (k), remarries” for “remarries”.

Subsec. (d). Pub. L. 105-61, §§ 516(a)(4), 518(a)(2)(A), substituted “(q), and (r)” for “and (q) of this title” in introductory provisions and “except as provided in subsection (k), remarries” for “remarries” in cl. (ii).

Subsec. (h)(3)(B)(i). Pub. L. 105-61, § 518(a)(2)(B), substituted “except as provided in subsection (k), in” for “in”.

Subsec. (k). Pub. L. 105-61, § 518(a)(1), added subsec. (k).

1996—Subsec. (e)(4). Pub. L. 104-208 added par. (4).

1992—Subsecs. (b)(1), (d). Pub. L. 102-378 substituted “(p),” for “(o),”.

1990—Subsecs. (b)(1), (d). Pub. L. 101-428 substituted “(n), (o), and (q)” for “(n), and (o)”.

1986—Subsecs. (b)(1), (d). Pub. L. 99-272 substituted “, (n) and (o)” for “and (n)” in subsec. (b)(1), and “(n), and (o)” for “and (n)” in subsec. (d).

Subsec. (e). Pub. L. 99-251, § 205, added par. (1), redesignated existing pars. (1) and (2) as (2) and (3), respectively, and in par. (2) as redesignated substituted “that surviving child” for “each surviving child” in two places.

Subsec. (h)(1). Pub. L. 99-251, § 206, substituted “annuitant, or former Member who was separated from the service with title to a deferred annuity under section 8338(b) of this title” for “or annuitant”.

Subsec. (h)(4)(A). Pub. L. 99-251, § 207, inserted “or death” after “retirement”.

1984—Subsec. (a)(1)(A), (2)(A). Pub. L. 98-615, § 2(4)(A), substituted “9 months” for “1 year”.

Subsec. (b)(1). Pub. L. 98-615, § 2(4)(B)(i), substituted “by a widow or widower, the widow or widower is entitled to an annuity equal to 55 percent (or 50 percent if retired before October 11, 1962)” for “by a spouse to whom he was married at the time of retirement, or by a widow or widower whom he married after retirement, the spouse, widow, or widower is entitled to an annuity equal to 55 percent, or 50 percent if retired before October 11, 1962” and “section 8339(j)(1) of this title, unless the right to a survivor annuity was waived under such section 8339(j)(1) or, in the case of remarriage, the employee or Member did not file an election under section 8339(j)(5)(C) or section 8339(k)(2) of this title, as the case may be” for “section 8339(j) of this title, unless the employee or Member has notified the Office in writing at the time of retirement that he does not desire any spouse surviving him to receive his annuity, or in the case of remarriage, he did not file an election under the third sentence of section 8339(j) of this title”.

Pub. L. 98-353 substituted “and (n)” for “and (o)”.

Subsec. (b)(3). Pub. L. 98-615, § 2(4)(B)(ii), substituted “widow or widower” for “spouse, widow, or widower” wherever appearing in provisions preceding subpar. (A).

Subsec. (b)(3)(B). Pub. L. 98-615, § 2(4)(B)(iii), substituted “55 years of age” for “60 years of age”.

Subsec. (b)(4). Pub. L. 98-615, § 2(4)(B)(iv), added par. (4).

Subsec. (d). Pub. L. 98-615, § 2(4)(C)(i), inserted provision that the annuity payable under this subsection to the widow or widower of an employee or Member may not exceed the difference between the amount which would otherwise be payable to such widow or widower under this subsection and the amount of the survivor annuity payable to any former spouse of such employee or Member under subsec. (h).

Pub. L. 98-353 substituted “and (n)” for “and (o)”.

Subsec. (d)(i). Pub. L. 98-615, § 2(4)(C)(ii), redesignated subpar. (A) as cl. (i).

Subsec. (d)(ii). Pub. L. 98-615, § 2(4)(C)(ii), redesignated subpar. (B) as cl. (ii) and substituted “55 years of age” for “60 years of age”.

Subsec. (e)(1). Pub. L. 98-615, § 2(4)(D)(i), inserted “or a former spouse who is the natural or adoptive parent of a surviving child of the employee or Member” in provisions preceding subpar. (A) and following subpar. (C).

Subsec. (e)(2). Pub. L. 98-615, § 2(4)(D)(ii), substituted “surviving spouse or former spouse” for “surviving spouse” and “spouse, former spouse, or child” for “spouse or child” in provisions following subpar. (E).

Subsec. (f). Pub. L. 98-615, § 2(4)(E), inserted provision that an annuity payable under this subsection to the surviving spouse of a Member may not exceed the difference between the annuity which would otherwise be payable to such surviving spouse under this subsection and the amount of the survivor annuity payable to any former spouse of such Member under subsec. (h) of this section in provisions following par. (2).

Subsec. (g). Pub. L. 98-615, § 2(4)(F), substituted “55 years of age” for “60 years of age” in provisions preceding par. (1).

Subsecs. (h), (i). Pub. L. 98-615, § 2(4)(G), added subsecs. (h) and (i).

1980—Subsec. (a)(2)(B). Pub. L. 96-179, § 1(1), struck out “and” after “marriage;”.

Subsec. (a)(3). Pub. L. 96-179, § 1(2), added par. (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 96-179, § 1(3), redesignated former par. (3) as (4), substituted “unmarried dependent child” for “unmarried child” wherever appearing in subpars. (A), (B), and (C), substituted “but only if the stepchild” for “or recognized natural child who” in subpar. (A)(ii), and inserted “a recognized natural child, and (iv)” after “(iii)”.

1978—Subsec. (a)(3). Pub. L. 95-454, § 906(a)(2), substituted “Office of Personnel Management” for “Civil Service Commission”.

Subsec. (b)(1). Pub. L. 95-598, § 338(c)(1), inserted reference to subsec. (o) of section 8339 of this title.

Pub. L. 95-454, § 906(a)(3), substituted “Office” for “Commission”.

Pub. L. 95-317 inserted provisions relating to failure to file an election under section 8339(j) of this title in the case of remarriage.

Subsec. (d). Pub. L. 95-598, § 338(c)(2), inserted reference to subsec. (o) of section 8339 of this title.

Subsec. (f)(2). Pub. L. 95-454, § 906(a)(3), substituted “Office” for “Commission”.

Subsec. (g). Pub. L. 95-318 struck out “after July 18, 1966,” after “terminated”.

1975—Subsec. (c). Pub. L. 94-183 substituted “8339(k)(1)” for “8339(k)”.

1974—Subsec. (a)(1)(A), (2)(A). Pub. L. 93-260 substituted “1 year” for “2 years”.

1972—Subsec. (a)(3)(A). Pub. L. 92-243 added cl. (iii).

Subsec. (c). Pub. L. 92-297, § 7(4)(i), substituted “section 8339(a)-i”, “section 8339(j)”, and “section 8339(k)” for “section 8339(a)-h”, “section 8339(i)”, and “section 8339(j)”, respectively.

Pub. L. 92-297, § 7(4)(ii), substituted “section 8339(k)” for “section 8339(j)”.

Subsec. (d). Pub. L. 92-297, §7(4)(iii), substituted "section 8339(a)-(f) and (i)" for "section 8339(a)-(e) and (h)".

1971—Subsec. (a)(3), (4). Pub. L. 91-658, §3(a), struck out par. (3) which defined "dependent widower", and redesignated par. (4) as (3).

Subsec. (b). Pub. L. 91-658, §3(b), designated existing first sentence as par. (1), and inserted exception phrase, provision for survival by widow or widower whom employee or Member marries after retirement, entitlement of widow or widower to 55 percent annuity (limited to 50 percent where retirement before Oct. 11, 1962), and substituted "any spouse surviving him" for "his spouse"; added par. (2); and added par. (3), first sentence, respecting entitlement to survivor annuity by a spouse acquired after retirement upon election from available survivor benefits, and designated as second and third sentences former second and third sentences, providing for widows and widowers and substituting "annuitant" for "retired employee or member".

Subsec. (d). Pub. L. 91-658, §3(c), substituted "his widow or widower" for "the widow or dependent widower of the employee or Member" in first sentence, struck out "or dependent" before "widower" in second sentence, and substituted in third sentence provision for termination of annuity where widow or widower dies or remarries before becoming 60 years of age for prior termination of annuity before widow or dependent widower dies, the dependent widower becomes capable of self-support, the widow or dependent widower of an employee remarries before becoming 60 years of age, or the widow or dependent widower of a member remarries.

Subsec. (e)(2). Pub. L. 91-658, §3(d), substituted reference to "subsection (a)(3)" for "subsection (a)(4)".

1969—Subsec. (d). Pub. L. 91-93, §206(a), provided for entitlement to a survivor annuity after an 18 month rather than a 5 year period of civilian service and prescribed as the annuity the smaller of two computations when computing the annuity under section 8399 (a) to (e) and (h) of this title.

Subsec. (e)(1). Pub. L. 91-93, §206(b), increased annuity of a surviving child, substituting "eighteen months" for "five years" of civilian service in par. (1), "60 percent", "\$900", and "\$2,700" for "40 percent", "\$600", and "\$1,800" in cls. (A), (B), and (C), respectively, and "75 percent", "\$1,080", and "\$3,240", for "50 percent", "\$720", and "\$2,160" in cls. (i), (ii), and (iii), respectively.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2000 AMENDMENT

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

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 516(a) of Pub. L. 105-61 applicable to any annuity commencing before, on, or after Oct. 10, 1997, and effective with regard to any payment made after the first month following Oct. 10, 1997, see section 516(b) of Pub. L. 105-61, set out as a note under section 8334 of this title.

Section 518(c) of Pub. L. 105-61 provided that: "The amendments made by this section [amending this section and sections 8442 and 8445 of this title] shall apply with respect to remarriages occurring on or after January 1, 1995."

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(f) [title VI, §633(b)] of Pub. L. 104-208 provided that: "The amendments made by subsection (a) [amending this section and sections 8443 and 8908 of this title] shall apply with respect to any termination of marriage taking effect before, on, or after the date of

enactment of this Act [Sept. 30, 1996], except that benefits shall be payable only with respect to amounts accruing for periods beginning on the first day of the month beginning after the later of such termination of marriage or such date of enactment."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective with respect to service performed on or after Apr. 7, 1986, see section 15204(b) of Pub. L. 99-272, as amended, set out as a note under section 8339 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Pub. L. 98-615, §4, Nov. 8, 1984, 98 Stat. 3204, as amended by Pub. L. 99-251, title II, §201(a)-(c), Feb. 27, 1986, 100 Stat. 20, 22; Pub. L. 99-549, §9(a), Oct. 27, 1986, 100 Stat. 3065; Pub. L. 99-556, title V, §501(a), Oct. 27, 1986, 100 Stat. 3139; Pub. L. 100-238, title I, §127, Jan. 8, 1988, 101 Stat. 1758, provided that:

"(a)(1) Except as provided in paragraphs (3), (4), (5), and (6) and subsections (b) and (c), the amendments made by section 2 of this Act [amending this section and sections 8331, 8334, 8339, 8342, 8345, and 8348 of this title] shall take effect May 7, 1985, and shall apply—

"(A) to any individual who, on or after such date, is married to an employee or Member who, on or after such date, retires, dies, or applies for a refund of contributions under subchapter III of chapter 83 of title 5, United States Code, and

"(B) to any individual who, as of such date, is married to a retired employee or Member, unless (i) such employee or Member has waived, under the first sentence of section 8339(j)(1) of such title (or a similar prior provision of law), the right of that individual's spouse to receive a survivor annuity, or (ii) in the case of a post-retirement marriage or remarriage, an election has not been made before such date by such employee or Member with respect to such individual under the applicable provisions of section 8339(j)(1) or 8339(k)(2) of such title, as the case may be (or a similar prior provision of law).

"(2) Except as provided in subsection (f), the amendments made by section 3 of this Act [amending sections 8901 to 8903, 8905, 8907, 8909, and 8913 of this title] shall take effect May 7, 1985, and shall apply to any individual who, on or after such date, is married to an employee or annuitant.

"(3) The amendments made by subparagraphs (B)(iii) and (C)(ii) of section 2(4) of this Act [amending section 8341 of this title] (relating to the termination of survivor benefits for a widow or widower who remarries before age 55) and the amendments made by subparagraph (F) of such section 2(4) [amending section 8341 of this title] (relating to the restoration of a survivor annuity upon the dissolution of such a remarriage) shall apply—

"(A) in the case of a remarriage occurring on or after the date of the enactment of this Act [Nov. 8, 1984]; and

"(B) with respect to periods beginning on or after such date.

"(4)(A) Except as provided in subparagraph (B), the amendment made by section 2(3)(A) of this Act [amending section 8339 of this title] (but only to the extent that it amends title 5, United States Code, by adding a new section 8339(j)(5)(C)) and the amendment made by section 2(3)(C) of this Act [amending section 8339 of this title] (which relate to the election of a survivor annuity for a spouse in the case of a post-retirement marriage or remarriage) shall apply—

"(i) to an employee or Member who retires before, on, or after May 7, 1985; and

"(ii) in the case of a marriage occurring on or after May 7, 1985.

"(B) The amendments referred to in subparagraph (A) shall not apply in the case of a marriage of an employee or Member retiring before May 7, 1985, if the marriage occurred after May 6, 1985, and before the date of the enactment of the Federal Employees Benefits Improvement Act of 1986 [Feb. 27, 1986].

“(C) Any election by an employee or Member described in subparagraph (B) to provide a survivor annuity for that individual’s spouse by a marriage described in such subparagraph shall be effective if made in accordance with the applicable provisions of section 8339(j)(1) or 8339(k)(2) of title 5, United States Code, as the case may be, as in effect on May 6, 1985.

“(5)(A) Paragraphs (3), (4), and (5)(B) of section 8339(j) of title 5, United States Code (as added by section 2(3)(A) of this Act), shall apply in the case of a former spouse of an employee or Member whose marriage to such employee or Member terminated before May 7, 1985, if such employee or Member retires on or after such date. The paragraphs referred to in the preceding sentence shall so apply only insofar as they relate to an election to provide a survivor annuity for a former spouse.

“(B)(i) The requirement described in clause (ii) shall not apply to an election made by an employee or Member under section 8339(j)(3) of title 5, United States Code (as amended by section 2(3)(A) of this Act), in order to provide a survivor annuity under section 8341(h) of such title (as amended by section 2(4)(G) of this Act) in the case of a former spouse referred to in subparagraph (A) if the election meets the requirements of clause (iii).

“(ii) The requirement referred to in clause (i) is the requirement prescribed in section 8339(j)(3) of title 5, United States Code, for an employee or Member to make an election in the case of a former spouse under such section 8339(j)(3) at the time of retirement or, if later, within 2 years after the date on which the marriage of the former spouse to the employee or Member is dissolved.

“(iii) Clause (i) applies to an election which is made by an employee or Member who retires on or after May 7, 1985, and before the date of the enactment of the Federal Employees Benefits Improvement Act of 1986 [Feb. 27, 1986], and is received by the Office of Personnel Management within the 2-year period beginning on the date of the enactment of such Act.

“(C) A survivor annuity shall be paid a former spouse as provided in section 8341(h) of title 5, United States Code (as amended by section 2(4)(G) of this Act), pursuant to an election made in the case of such former spouse under this paragraph.

“(D) The amendments made by paragraphs (6) and (7) of section 2 of this Act [amending sections 8345 and 8348 of this title] shall apply in the case of survivor annuities and elections authorized by this paragraph.

“(6) The amendment made by section 2(4)(A) of this Act [amending section 8341 of this title] (relating to the definition of a widow or widower) and the amendment made by section 2(4)(G) of this Act (but only to the extent that it amends title 5, United States Code, by adding a new section 8341(i)) shall apply with respect to any marriage occurring on or after the date of the enactment of this Act [Nov. 8, 1984].

“(b)(1) Notwithstanding subsection (a)(1) of this section, a former spouse of an employee or Member who retired before May 7, 1985, or who died after becoming eligible to retire and before such date, is entitled to a survivor annuity under section 8341(b) of title 5, United States Code, as amended by this Act, if—

“(A) the retired employee or Member elects, in writing, within eighteen months after the date of enactment of this Act, according to procedures prescribed by the Office of Personnel Management, to have the annuity of such employee or Member reduced under section 8339(j) of title 5, United States Code, as amended by this Act, and, except as provided in paragraph (3) of this subsection, to deposit in the Civil Service Retirement and Disability Fund an amount determined by the Office, as nearly as may be administratively feasible, to reflect the amount by which such employee or Member’s annuity would have been reduced had the reduction been in effect since such employee or Member’s annuity commenced, plus interest computed at the annual rate of six percent for each year during which the annuity

would have been reduced if the election had been in effect on and after the date the annuity commenced; or

“(B) where the employee or Member dies or died on or before the one hundred and eightieth day after the date of enactment of this Act or does not make the election described in subparagraph (A)—

“(i) the former spouse’s marriage to the employee or Member was dissolved after September 14, 1978, and before May 8, 1987;

“(ii) the former spouse was married to the employee or Member for at least ten years during periods of creditable service under section 8332 of title 5, United States Code;

“(iii) the former spouse has not remarried before age fifty-five after September 14, 1978;

“(iv) the former spouse files an application for the survivor annuity with the Office on or before May 7, 1989; and

“(v) the former spouse is at least fifty years of age on May 7, 1987.

A survivor annuity under subparagraph (B) shall commence on the day after the employee or Member dies or the first day of the second month after the former spouse’s application is received by the Office, whichever occurs later.

“(2) Except as provided in paragraph (3), if a retired employee or Member who makes an election under subparagraph (A) of paragraph (1) does not make the deposit required by such subparagraph, the Office shall collect the amount of the deposit by offset against the employee or Member’s annuity, up to a maximum of 25 per centum of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset.

“(3) An election made by an individual under subparagraph (A) of paragraph (1) of this subsection to provide a survivor annuity for any person prospectively voids any election previously made by such individual with respect to such person under section 8339(k)(1) of title 5, United States Code, as amended by this Act, or any similar prior provision of law. Notwithstanding the provisions of such subparagraph (A), an individual who made such an election under such section 8339(k)(1) (or prior provision) shall not be required to make the deposit described in such subparagraph.

“(4)(A) A former spouse of an employee or Member referred to in the matter before subparagraph (A) in paragraph (1) of this section shall be entitled to a survivor annuity under subparagraph (B) of such paragraph if—

“(i) the former spouse satisfies the requirements of clauses (ii) through (v) of such subparagraph (B); and

“(ii) there is no surviving spouse of the employee or Member and no other former spouse of such employee or Member who is entitled to receive a survivor annuity under subchapter III of chapter 83 of title 5, United States Code, based on the service of such employee or Member which is creditable under such subchapter and there is no other person who has been designated to receive a survivor annuity under such subchapter by reason of an insurable interest in such employee or Member.

“(B) For the purposes of this paragraph, the term ‘surviving spouse’ means a widow or a widower as defined in paragraphs (1) and (2), respectively, of section 8341(a) of title 5, United States Code.

“(5) A survivor annuity provided under this subsection shall be 55 per centum of the annuity of the retired employee or Member (or of that portion of the annuity which such employee or Member may have designated for this purpose under paragraph (1)(A) of this subsection), as determined under section 8339(a)—(i) and (n) of title 5, United States Code, increased by—

“(A) the total percent increase the retired employee or Member was receiving under section 8340 of such title at death, or

“(B) in the case of a retired employee or Member whose date of death precedes the one hundred and eightieth day after the date of enactment of this Act [Nov. 8, 1984], the total percent increase the retired

employee or Member would have received under such section 8340 had such individual died on the one hundred and eightieth day after such date of enactment, and shall not be subject to reduction under section 8341(h)(2) of such title, as amended by this Act.

“(c) Notwithstanding subsection (a)(1) of this section, an employee or Member who retired before the one hundred and eightieth day after the date of enactment of this Act [Nov. 8, 1984] and who is married to a spouse acquired after retirement for whom such employee or Member was unable to provide a survivor annuity because—

“(1) the employee or Member was married at the time of retirement and elected not to provide a survivor annuity for the employee or Member’s spouse at the time of retirement, or

“(2) the employee or Member failed to notify the Office of the employee or Member’s post-retirement marriage within one year after the marriage, may elect in writing, within one year after the date of enactment of this Act, in accordance with procedures prescribed by the Office, to provide for a survivor annuity for such spouse under section 8341(b) of title 5, United States Code, as amended by this Act, to have the retired employee or Member’s annuity reduced under section 8339(j) of such title, as so amended, and to deposit in the Civil Service Retirement and Disability Fund an amount determined by the Office, as nearly as may be administratively feasible, to reflect the amount by which such employee or Member’s annuity would have been reduced had the election been continuously in effect since the annuity commenced, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which the annuity would have been reduced if the election had been in effect on and after the date the annuity commenced shall be 6 percent. If the retired employee or Member does not make such deposit, the Office shall collect such amount by offset against such employee or Member’s annuity, up to a maximum of 25 percent of the net annuity otherwise payable to such employee or Member, and such employee or Member is deemed to consent to such offset. The Office shall provide for general public notice of the right to make an election under this subsection. In cases to which paragraph (2) of this subsection applies, the retired employee or Member shall provide the Office with such documentation as the Office shall decide is appropriate, that such employee or Member attempted to elect a reduced annuity with survivor benefit for such employee or Member’s current spouse and that such employee or Member’s election was rejected by the Office because it was untimely filed.

“(d) A deposit required by subsection (b)(1)(A) or (c) of this section may be made by the surviving former spouse or spouse, as applicable, of the retired employee or Member.

“(e) The Office shall determine at the end of each fiscal year—

“(1) the cost of survivor annuities provided under subsections (b) and (c) of this section, less an amount determined appropriate by the Office to reflect the value of any deposits made under subsection (b)(1)(A), (c), or (d), and

“(2) the cost of administering subsections (b) and (c).

The Office shall notify the Secretary of the Treasury of the amounts so determined. The Secretary of the Treasury, before closing the account for the fiscal year in question, shall credit to the Civil Service Retirement and Disability Fund, out of any money in the Treasury not otherwise appropriated, such amounts, which shall be available in the same manner as provided under subparagraphs (A) and (B) of section 8348(a)(1) of title 5, United States Code, as amended by this Act.

“(f) Any individual—

“(1) who is entitled to a survivor annuity under subsection (b) of this section or pursuant to an election authorized by reason of the application of subsection (a)(5) of this section,

“(2) as to whom a court order or decree referred to in section 8345(j) of title 5, United States Code (or similar provision of law under a retirement system for Government employees other than the Civil Service Retirement System) has been issued before May 7, 1985, or

“(3) who is entitled (other than as described in paragraph (2)) to an annuity or any portion of an annuity as a former spouse under a retirement system for Government employees as of May 7, 1985, shall be considered to have satisfied section 8901(10)(C) of title 5, United States Code, as amended by this Act. Notwithstanding subsection (a)(2) of this section, any such individual who otherwise meets the definition of a former spouse under section 8901 of title 5, United States Code, as so amended, may, within 12 months after the date of the enactment of the Federal Employees Benefits Improvement Act of 1986 [Feb. 27, 1986], enroll in an approved health benefits plan described by section 8903 of such title, under the conditions set forth in section 8905(c) of such title, as so amended (other than the conditions prescribed in subparagraphs (A) and (B) of paragraph (1) of such section 8905(c)).

“(g)(1) For purposes of subsections (a)(1), (b), (c), (d), and (e), ‘employee’, ‘Member’, and ‘former spouse’ each has the meaning given that term under section 8331 of title 5, United States Code, as amended by this Act.

“(2) For purposes of subsection (a)(2), ‘employee’ and ‘annuitant’ each has the meaning given that term under section 8901 of title 5, United States Code.

“(h) Section 827 of the Foreign Service Act of 1980 [22 U.S.C. 4067] and section 292 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees [former 50 U.S.C. 403 note] shall not apply with respect to either the amendments made by section 2 [amending sections 8331, 8334, 8339, 8341, 8342, 8345, and 8348 of this title] or the preceding provisions of this section.”

[Section 501(b) of Pub. L. 99-556 provided that: “The amendments made by this section [amending note above] shall be effective as of May 7, 1985.”]

[Section 9(b) of Pub. L. 99-549 provided that: “The amendments made by this section [amending note above] shall be effective as of May 7, 1985.”]

[The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in Pub. L. 98-615, set out above, is Pub. L. 88-643, Oct. 13, 1964, 78 Stat. 1043, which was revised generally by Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196, is known as the Central Intelligence Agency Retirement Act and is classified generally to chapter 38 (§2001 et seq.) of Title 50, War and National Defense.]

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

EFFECTIVE DATE OF 1980 AMENDMENT

Section 5(a) of Pub. L. 96-179 provided that: “The amendments made by the first section [amending this section] and section 2 of this Act [amending section 8901 of this title] shall take effect on the date of the enactment of this Act [Jan. 2, 1980], except that no benefits under chapter 89 of title 5, United States Code, made available by reason of such amendments shall be payable for any period before October 1, 1979.”

EFFECTIVE DATE OF 1978 AMENDMENTS

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

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

Section 3 of Pub. L. 95-318 provided that: “The foregoing provisions of this Act [amending this section and enacting provisions set out as notes under this section] shall take effect on—

“(1) the first day of the month following the date of the enactment of this Act [July 10, 1978], or

“(2) October 1, 1978, whichever date is later.”

EFFECTIVE DATE OF 1978 AMENDMENT; SURVIVOR ANNUITIES SUBJECT TO REDUCTION, ETC.

For effective date of amendment by Pub. L. 95-317 as first day of first month which begins on or after date of enactment of Pub. L. 95-317, which was approved July 10, 1978, or Oct. 1, 1978, whichever is later, and provisions respecting eligibility of an individual to a survivor annuity, or the reduction therefor, see section 4 of Pub. L. 95-317, set out as a note under section 8339 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 1(b) of Pub. L. 93-260 provided that: “The amendments made by subsection (a) of this section [amending this section] shall not apply in the cases of employees, Members, or annuitants who died before the date of enactment of this Act [Apr. 9, 1974]. The rights of such individuals and their survivors shall continue in the same manner and to the same extent as if such amendments had not been enacted.”

EFFECTIVE DATE OF 1972 AMENDMENTS

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

Section 2 of Pub. L. 92-243 provided that: “The amendment made by the first section of this Act [amending this section] is effective upon enactment [Mar. 9, 1972]. Upon application to the Civil Service Commission, it also applies to a child of an employee or Member who died or retired before such date of enactment [Mar. 9, 1972] but no annuity shall be paid by reason of the amendment for any period prior to the date of enactment.”

EFFECTIVE DATE OF 1969 AMENDMENTS

Section 2 of Pub. L. 91-189 provided that: “The provisions of section 8341(e) of title 5, United States Code, as amended by section 206(b) of Public Law 91-93 (83 Stat. 140), shall be effective as of October 20, 1969.”

Amendment by Pub. L. 91-93 inapplicable in cases of persons retired or otherwise separated prior to Oct. 20, 1969, their rights and of their survivors continued as if such amendment had not been enacted, see section 207(a) of Pub. L. 91-93 set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT; RECOMPUTATION AND REDUCTION OF SURVIVOR ANNUITIES

Section 207(c) of Pub. L. 91-93 provided that:

“(1) The amendment made by section 206(b) of this Act [amending this section] shall become effective on the first day of the first month which begins on or after the date of enactment of this Act [Oct. 20, 1969].

“(2) The annuity of each surviving child who, immediately prior to the effective date of such amendment [amending this section] is receiving an annuity under section 8341(e) of title 5, United States Code, or under a comparable provision of any prior law, or who hereafter becomes entitled to receive annuity under the Act of May 29, 1930, as amended from and after February 28, 1948, shall be recomputed effective on such date, or computed from commencing date if later, in accordance with such amendment. No increase allowed and in force prior to such date shall be included in the computation or recomputation of any such annuity. This paragraph shall not operate to reduce any annuity.”

ADDITIONAL ELECTIONS UNDER CIVIL SERVICE RETIREMENT SPOUSE EQUITY ACT OF 1984

Section 201(d) of Pub. L. 99-251 provided that:

“(1) Notwithstanding the time limitation prescribed in subparagraph (A) of section 4(b)(1) of the Civil Serv-

ice Retirement Spouse Equity Act of 1984 [Pub. L. 98-615, §4(b)(1)(A), set out as a note above], an election may be made under such subparagraph before the expiration of the 12-month period beginning on the date on which the regulations under paragraph (3) of this subsection first take effect.

“(2) Any retired employee or Member who has made an election under section 4(b)(1)(A) of the Civil Service Retirement Spouse Equity Act of 1984 [set out as a note above] (as in effect at the time of such election) before the regulations under paragraph (3) of this subsection become effective may modify such election by designating, in writing, that only a portion of such employee or Member's annuity is to be used as the base for the survivor annuity for the former spouse for whom the election was made. A modification under this subparagraph shall be subject to the deadline under paragraph (1) of this subsection.

“(3) The Office of Personnel Management shall prescribe regulations to carry out this subsection, including regulations under which an appropriate refund shall be made in the case of a modification under paragraph (2) of this subsection.”

RESTORATION OF SURVIVOR ANNUITIES FOR CERTAIN WIDOWS AND WIDOWERS REMARRYING BEFORE JULY 18, 1966, AND WHERE MEMBER DIED BEFORE JANUARY 8, 1971

Section 1 of Pub. L. 95-318, eff. Oct. 1, 1978, provided that:

“(a) Upon application to the Civil Service Commission, the annuity of—

“(1) a surviving spouse of an employee which was terminated under the provisions of section 8341 (b) or (d) of title 5, United States Code, or of any prior applicable law, because of the remarriage of such spouse before July 18, 1966, and

“(2) a surviving spouse of a Member who died before January 8, 1971, which was terminated under any such provision, because of the remarriage of such spouse, shall be restored in accordance with the provisions of subsection (b) of this section.

“(b)(1) In the case of a remarriage occurring after the surviving spouse became sixty years of age, the annuity shall be restored to such spouse under subsection (a) of this section only if any lump sum paid on termination of the annuity is returned to the Civil Service Retirement and Disability Fund. If such amount is paid, the annuity shall be so restored commencing on the effective date of this section at the rate which would have been in effect if the annuity had not been terminated.

“(2) In the case of a remarriage occurring before the surviving spouse became sixty years of age, the annuity shall be restored to such spouse under subsection (a) of this section only if—

“(A) such spouse elects to receive this annuity instead of a survivor benefit to which the spouse may be entitled under subchapter III of chapter 83 of such title 5 or under another retirement system for Government employees by reason of the marriage; and

“(B) any lump sum paid on termination of the annuity is returned to such fund.

If the requirements of the preceding sentence are satisfied, such annuity shall be so restored commencing on the effective date of this section or on the first day of the month following the date the remarriage is dissolved by death, annulment, or divorce, whichever date is later, at the rate which was in effect when the annuity was terminated.”

INCREASE IN ANNUITY PAYABLE TO SURVIVING SPOUSES OF MEMBERS, EMPLOYEES, OF ANNUITIES BASED ON SEPARATION OCCURRING PRIOR TO OCT. 20, 1969

Section 2(b) of Pub. L. 93-273, Apr. 26, 1974, 88 Stat. 93, provided that: “In lieu of any increase based on an increase under subsection (a) of this section, an annuity payable from the Civil Service Retirement and Disability Fund to the surviving spouse of an employee, Member, or annuitant, which is based on a separation

occurring prior to October 20, 1969 shall be increased by \$132.”

Section 3 of Pub. L. 93-273, Apr. 26, 1974, 88 Stat. 93 provided in part that annuity increases under this pension shall apply to annuities which commence before, on, or after Apr. 26, 1974, but that no increase in annuity shall be paid for any period prior to the first day of the first month which begins on or after the ninetieth day after Apr. 26, 1974, or the date on which the annuity commences, whichever is later. See section 3 of Pub. L. 93-273, set out as a note under section 8345 of this title.

REMARRIAGE PROVISIONS

Section 205 of Pub. L. 91-93 provided that: “The provisions of subsection (b)(1), (d)(3), and (g) of section 8341 of title 5, United States Code, also shall apply in the case of any widow or widower—

“(1) of an employee who died, retired, or was otherwise finally separated before July 18, 1966;

“(2) who shall have remarried on or after such date; and

“(3) who, immediately before such remarriage, was receiving annuity from the Civil Service Retirement and Disability Fund;

except that no annuity shall be paid by reason of this section for any period prior to the enactment of this section. No annuity shall be terminated solely by reason of the enactment of this section. Notwithstanding the prohibition contained in the first sentence of this section on the payment of annuity for any period prior to the enactment of this section, in any case in which the Civil Service Commission determines that—

“(1) the remarriage of any widow or widower described in such sentence was entered into by the widow or widower in good faith and in reliance on erroneous information provided by Government authority prior to that remarriage that the then existing survivor annuity of the widow or widower would not be terminated because of the remarriage; and

“(2) such annuity was terminated by law because of that remarriage;

then payment of annuity may be made by reason of this section in such case, beginning as of the effective date of the termination because of the remarriage.”

§ 8342. Lump-sum benefits; designation of beneficiary; order of precedence

(a) Subject to subsection (j) of this section, an employee or Member who—

(1)(A) is separated from the service for at least thirty-one consecutive days; or

(B) is transferred to a position in which he is not subject to this subchapter, or chapter 84 of this title, and remains in such a position for at least thirty-one consecutive days;

(2) files an application with the Office of Personnel Management for payment of the lump-sum credit;

(3) is not reemployed in a position in which he is subject to this subchapter, or chapter 84 of this title, at the time he files the application; and

(4) will not become eligible to receive an annuity within thirty-one days after filing the application,

is entitled to be paid the lump-sum credit. Except as provided in section 8343a or 8334(d)(2) of this title, the receipt of the payment of the lump-sum credit by the employee or Member voids all annuity rights under this subchapter based on the service on which the lump-sum credit is based, until the employee or Member is reemployed in the service subject to this subchapter. In applying this subsection to an employee or Member who becomes subject to chap-

ter 84 (other than by an election under title III of the Federal Employees' Retirement System Act of 1986) and who, while subject to such chapter, files an application with the Office for a payment under this subsection—

(i) entitlement to payment of the lump-sum credit shall be determined without regard to paragraph (1) or (3) if, or to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees' Retirement System Act of 1986; and

(ii) if, or to the extent that, the lump-sum credit so relates to service of a type referred to in clause (i), it shall (notwithstanding section 8331(8)) consist of—

(I) the amount by which any unrefunded amount described in section 8331(8)(A) or (B) relating to such service, exceeds 1.3 percent of basic pay for such service; and

(II) interest on the amount payable under subclause (I), computed in a manner consistent with applicable provisions of section 8331(8).

(b) Under regulations prescribed by the Office, a present or former employee or Member may designate a beneficiary or beneficiaries for the purpose of this subchapter.

(c) Lump-sum benefits authorized by subsections (d)–(f) of this section shall be paid to the person or persons surviving the employee or Member and alive at the date title to the payment arises in the following order of precedence, and the payment bars recovery by any other person:

First, to the beneficiary or beneficiaries designated by the employee or Member in a signed and witnessed writing received in the Office before his death. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee or Member.

Third, if none of the above, to the child or children of the employee or Member and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or Member or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee or Member.

Sixth, if none of the above, to such other next of kin of the employee or Member as the Office determines to be entitled under the laws of the domicile of the employee or Member at the date of his death.

For the purpose of this subsection, “child” includes a natural child and an adopted child, but does not include a stepchild.

(d) If an employee or Member dies—

(1) without a survivor; or

(2) with a survivor or survivors and the right of all survivors terminates before a claim for survivor annuity is filed;

or if a former employee or Member not retired dies, the lump-sum credit shall be paid.