

95-366, §1(b), Sept. 15, 1978, 92 Stat. 600; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2265.	July 31, 1956, ch. 804, §401 "Sec. 15", 70 Stat. 758.

In subsection (b), the words "Notwithstanding any other provision of law" are omitted as unnecessary. The second word of the second sentence "or" is substituted for "of" to correct a printing error.

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

#### Editorial Notes

##### AMENDMENTS

1978—Subsec. (a). Pub. L. 95-366 substituted references to subsecs. (h) and (j) of section 8345 for reference to subsec. (g) of section 8345.

Subsec. (b). Pub. L. 95-454 substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

1975—Subsec. (a). Pub. L. 94-166 inserted "except under the provisions of section 8345(g) of this title," after "equity", and ", except as otherwise may be provided by Federal laws" after "process".

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1978 AMENDMENTS

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

Amendment by Pub. L. 95-366 applicable to payments made from Civil Service Retirement and Disability Fund after Sept. 15, 1978, see section 2 of Pub. L. 95-366, set out as a note under section 8345 of this title.

#### § 8347. Administration; regulations

(a) The Office of Personnel Management shall administer this subchapter. Except as otherwise specifically provided herein, the Office shall perform, or cause to be performed, such acts and prescribe such regulations as are necessary and proper to carry out this subchapter.

(b) Applications under this subchapter shall be in such form as the Office prescribes. Agencies shall support the applications by such certificates as the Office considers necessary to the determination of the rights of applicants. The Office shall adjudicate all claims under this subchapter.

(c) The Office shall determine questions of disability and dependency arising under this subchapter. Except to the extent provided under subsection (d) of this section, the decisions of the Office concerning these matters are final and conclusive and are not subject to review. The Office may direct at any time such medical or other examinations as it considers necessary to determine the facts concerning disability or dependency of an individual receiving or applying for annuity under this subchapter. The Office may suspend or deny annuity for failure to submit to examination.

(d)(1) Subject to paragraph (2) of this subsection, an administrative action or order affecting the rights or interests of an individual or

of the United States under this subchapter may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(2) In the case of any individual found by the Office to be disabled in whole or in part on the basis of the individual's mental condition, and that finding was made pursuant to an application by an agency for purposes of disability retirement under section 8337(a) of this title, the procedures under section 7701 of this title shall apply and the decision of the Board shall be subject to judicial review under section 7703 of this title.

(e) The Office shall fix the fees for examinations made under this subchapter by physicians or surgeons who are not medical officers of the United States. The fees and reasonable traveling and other expenses incurred in connection with the examinations are paid from appropriations for the cost of administering this subchapter.

(f) The Office shall select three actuaries, to be known as the Board of Actuaries of the Civil Service Retirement System. The Office shall fix the pay of the members of the Board, except members otherwise in the employ of the United States. The Board shall report annually on the actuarial status of the System and furnish its advice and opinion on matters referred to it by the Office. The Board may recommend to the Office and to Congress such changes as in the Board's judgment are necessary to protect the public interest and maintain the System on a sound financial basis. The Office shall keep, or cause to be kept, such records as it considers necessary for making periodic actuarial valuations of the System. The Board shall make actuarial valuations every 5 years, or oftener if considered necessary by the Office.

(g) The Office may exclude from the operation of this subchapter an employee or group of employees in or under an Executive agency whose employment is temporary or intermittent. However, the Office may not exclude any employee who occupies a position on a part-time career employment basis (as defined in section 3401(2) of this title).

(h) The Office, on recommendation by the Mayor of the District of Columbia, may exclude from the operation of this subchapter an individual or group of individuals employed by the government of the District of Columbia whose employment is temporary or intermittent.

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

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

(k) The Secretary of Agriculture shall prescribe regulations to effect the application and operation of this subchapter to an individual named by section 8331(1)(F) of this title.

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

(m) Notwithstanding any other provision of law, for the purpose of ensuring the accuracy of

information used in the administration of this chapter, at the request of the Director of the Office of Personnel Management—

(1) the Secretary of Defense or the Secretary's designee shall provide information on retired or retainer pay provided under title 10;

(2) the Secretary of Veterans Affairs shall provide information on pensions or compensation provided under title 38;

(3) the Commissioner of Social Security or the Secretary's<sup>1</sup> designee shall provide information contained in the records of the Social Security Administration; and

(4) the Secretary of Labor or the Secretary's designee shall provide information on benefits paid under subchapter I of chapter 81 of this title.

The Director shall request only such information as the Director determines is necessary. The Director, in consultation with the officials from whom information is requested, shall establish, by regulation and otherwise, such safeguards as are necessary to ensure that information made available under this subsection is used only for the purpose authorized.

(n)(1) Notwithstanding any other provision of this subchapter, the Director of Central Intelligence shall, in a manner consistent with the administration of this subchapter by the Office, and to the extent considered appropriate by the Director of Central Intelligence—

(A) determine entitlement to benefits under this subchapter based on the service of employees of the Central Intelligence Agency;

(B) maintain records relating to the service of such employees;

(C) compute benefits under this subchapter based on the service of such employees;

(D) collect deposits to the Fund made by such employees, their spouses, and their former spouses;

(E) authorize and direct disbursements from the Fund to the extent based on service of such employees; and

(F) perform such other functions under this subchapter as the Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management, determines to be appropriate.

(2) The Director of the Office of Personnel Management shall furnish such information and, on a reimbursable basis, such services to the Director of Central Intelligence as the Director of Central Intelligence requests to carry out paragraph (1) of this subsection.

(3)(A) The Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management, shall by regulation prescribe appropriate procedures to carry out this subsection.

(B) The regulations shall provide procedures for the Director of the Office of Personnel Management to inspect and audit disbursements from the Civil Service Retirement and Disability Fund under this subchapter.

(C) The Director of Central Intelligence shall submit the regulations prescribed under subparagraph (A) to the Select Committee on Intel-

ligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the regulations take effect.

(4)(A) Section 201(c) of the Central Intelligence Agency Retirement Act shall apply in the administration of this subchapter to the extent that the provisions of this subchapter are administered under this subsection.

(B) Notwithstanding subparagraph (A) of this paragraph, section 8347(d) of this title shall apply with respect to employees of the Central Intelligence Agency who are subject to the Civil Service Retirement System.

(o) Any provision of law outside of this subchapter which provides coverage, service credit, or any other benefit under this subchapter to any individuals who (based on their being employed by an entity other than the Government) would not otherwise be eligible for any such coverage, credit, or benefit, shall not apply with respect to any individual appointed, transferred, or otherwise commencing that type of employment on or after October 1, 1988.

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

(q)(1) Under regulations prescribed by the Office of Personnel Management, an employee who—

(A) has not previously made an election under this subsection or had an opportunity to make an election under this paragraph; and

(B) moves, without a break in service of more than 1 year, to employment in a non-appropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, described in section 2105(c),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered as an employee under this subchapter during any employment described in section 2105(c) after such move.

(2) Under regulations prescribed by the Office of Personnel Management, an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, described in section 2105(c), who—

(A) has not previously made an election under this subsection or had an opportunity to make an election under this paragraph;

(B) is a participant in a retirement system established for employees described in section 2105(c);

(C) moves, without a break in service of more than 1 year, to a position that is not described in section 2105(c); and

(D) is excluded from coverage under chapter 84 by section 8402(b),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered, during any subsequent employment as an employee as defined in section 2105(a) or section 2105(c), by the retirement system applicable to such employee's current or most recent employment described in section 2105(c) rather than be subject to this subchapter.

<sup>1</sup> So in original. Probably should be "Commissioner's".

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 583; Pub. L. 90-83, §1(84), Sept. 11, 1967, 81 Stat. 218; Pub. L. 90-623, §1(22), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 95-437, §4(a), Oct. 10, 1978, 92 Stat. 1058; Pub. L. 95-454, title IX, §906(a)(2), (3), (9), (c)(2)(F), Oct. 13, 1978, 92 Stat. 1224, 1225, 1227; Pub. L. 96-54, §2(a)(50), Aug. 14, 1979, 93 Stat. 384; Pub. L. 96-499, title IV, §404(b), Dec. 5, 1980, 94 Stat. 2606; Pub. L. 96-500, §1, Dec. 5, 1980, 94 Stat. 2696; Pub. L. 97-253, title III, §302(b), Sept. 8, 1982, 96 Stat. 793; Pub. L. 99-335, title II, §207(i), June 6, 1986, 100 Stat. 596; Pub. L. 100-238, title I, §108(a)(1), Jan. 8, 1988, 101 Stat. 1747; Pub. L. 101-474, §5(n), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101-508, title VII, §7202(j)(2), Nov. 5, 1990, 104 Stat. 1388-337; Pub. L. 102-54, §13(b)(5), June 13, 1991, 105 Stat. 274; Pub. L. 102-378, §2(64), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 102-496, title VIII, §803(c), Oct. 24, 1992, 106 Stat. 3253; Pub. L. 103-296, title I, §108(e)(5), Aug. 15, 1994, 108 Stat. 1486; Pub. L. 104-106, div. A, title X, §1043(a)(1), Feb. 10, 1996, 110 Stat. 434; Pub. L. 107-107, div. A, title XI, §1131(a), Dec. 28, 2001, 115 Stat. 1242.)

#### HISTORICAL AND REVISION NOTES 1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)-(f) .....	5 U.S.C. 2266 (less (f)).	July 31, 1956, ch. 804, §401 "Sec. 16 (less (f))", 70 Stat. 758.
(g)-(k) .....	5 U.S.C. 2252(e), (f) (words after semicolon), (h) (1).	July 31, 1956, ch. 804, §401 "Sec. 2(e), (f) (words after semicolon)", 70 Stat. 745. July 1, 1960, Pub. L. 86-568, §115(b)(1) "(h) (1)", 74 Stat. 302.

In subsection (a), the words "to carry out this subchapter" are substituted for "for the purpose of carrying the provisions of this chapter into full force and effect".

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

#### 1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8347(l) .....	5 App.: 2252(f).	Sept. 26, 1966, Pub. L. 89-604, §1(c), 80 Stat. 847.

#### Editorial Notes

##### REFERENCES IN TEXT

Section 201(c) of the Central Intelligence Agency Retirement Act, referred to in subsec. (n)(4)(A), is classified to section 2011(c) of Title 50, War and National Defense.

##### AMENDMENTS

2001—Subsec. (q)(1). Pub. L. 107-107, §1131(a)(1), inserted "and" after semicolon in subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: "has 5 or more years of civilian service creditable under this subchapter; and".

Subsec. (q)(2)(B). Pub. L. 107-107, §1131(a)(2), struck out "vested" before "participant in a retirement system" and struck out ", as the term 'vested participant' is defined by such system" before semicolon at end.

1996—Subsec. (q)(1). Pub. L. 104-106, §1043(a)(1)(A), struck out "of the Department of Defense or the Coast Guard" after "an employee" in introductory provisions and substituted "1 year" for "3 days" in subpar. (C).

Subsec. (q)(2)(C). Pub. L. 104-106, §1043(a)(1)(B), substituted "1 year" for "3 days" and struck out "in the

Department of Defense or the Coast Guard, respectively," after "to a position".

1994—Subsec. (m)(3). Pub. L. 103-296 substituted "Commissioner of Social Security" for "Secretary of Health and Human Services".

1992—Subsec. (n)(4)(A). Pub. L. 102-496 substituted "the Central Intelligence Agency Retirement Act" for "the Central Intelligence Agency Retirement Act of 1964 for Certain Employees".

Subsec. (p). Pub. L. 102-378, §2(64)(A), redesignated subsec. (p), relating to employees of Department of Defense and Coast Guard, as (q).

Subsec. (q). Pub. L. 102-378, §2(64)(A), redesignated subsec. (p), relating to employees of Department of Defense and Coast Guard, as (q).

Subsec. (q)(1)(A), (2)(A). Pub. L. 102-378, §2(64)(B), amended subpars. (A) generally. Prior to amendment, subpars. (A) read as follows: "has not previously made or had an opportunity to make an election under this subsection;".

1991—Subsec. (m)(2). Pub. L. 102-54 substituted "Secretary" for "Administrator".

1990—Subsec. (p). Pub. L. 101-508 added subsec. (p) relating to elections by employees of Department of Defense, Coast Guard, or a nonappropriated fund instrumentality of Department of Defense or Coast Guard.

Pub. L. 101-474 added subsec. (p) relating to Director of Administrative Office of United States Courts.

1988—Subsec. (o). Pub. L. 100-238 added subsec. (o).

1986—Subsec. (n). Pub. L. 99-335 added subsec. (n).

1982—Subsec. (m)(3), (4). Pub. L. 97-253 added pars. (3) and (4).

1980—Subsec. (c). Pub. L. 96-500, §1(a), substituted "Except to the extent provided under subsection (d) of this section, the decisions of the Office concerning" for "The decisions of the Office concerning".

Subsec. (d). Pub. L. 96-500, §1(b), designated existing provisions as par. (1), made such par. (1) subject to the provisions of par. (2), and added par. (2).

Subsec. (m). Pub. L. 96-499 added subsec. (m).

1979—Subsec. (h). Pub. L. 96-54 substituted "Mayor" for "Commissioner".

1978—Subsecs. (a) to (c). Pub. L. 95-454, §906(a)(2), (3), substituted "Office of Personnel Management" and "Office" for "Civil Service Commission" and "Commission", respectively.

Subsec. (d). Pub. L. 95-454, §906(a)(9), substituted "Merit Systems Protection Board" for "Commission", and "Board" for "Commission".

Subsecs. (e), (f). Pub. L. 95-454, §906(a)(3), substituted "Office" for "Commission" wherever appearing.

Subsec. (g). Pub. L. 95-454, §906(a)(3), (c)(2)(F), substituted "Office" for "Commission" wherever appearing, and "3401" for "3391".

Pub. L. 95-437 inserted provision prohibiting the Commission from excluding any employee who occupies a position on a part-time career employment basis, as defined in section 3391(2) of this title.

Subsec. (h). Pub. L. 95-454, §906(a)(3), substituted "Office" for "Commission".

1968—Subsec. (h). Pub. L. 90-623 substituted "Commissioner" for "Commissioners".

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 3001 of Title 50, War and National Defense.

## EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendments by Pub. L. 104-106, see Regulations; Effective Date of 1996 Amendment note below.

## EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

## EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102-496 effective on first day of fourth month beginning after Oct. 24, 1992, see section 805 of Pub. L. 102-496, set out as an Effective Date note under section 2001 of Title 50, War and National Defense.

Amendment by section 2(64) of Pub. L. 102-378 effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102-378, set out as a note under section 6303 of this title.

## EFFECTIVE DATE OF 1990 AMENDMENT

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

## EFFECTIVE DATE OF 1986 AMENDMENT

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

## EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-253 effective Oct. 1, 1982, see section 302(c)(1) of Pub. L. 97-253, as amended by section 3(i) of Pub. L. 97-346, set out as a note under section 8337 of this title.

## EFFECTIVE DATE OF 1980 AMENDMENTS

Section 2 of Pub. L. 96-500 provided that: “The amendments made by the first section of this Act [amending this section] shall apply with respect to determinations made by the Office of Personnel Management on or after the first day of the first month beginning after the date of the enactment of this Act [Dec. 5, 1980].”

Amendment by Pub. L. 96-499 effective Dec. 5, 1980, see section 404(c) of Pub. L. 96-499, set out as a note under section 8339 of this title.

## EFFECTIVE DATE OF 1979 AMENDMENT

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

## EFFECTIVE DATE OF 1978 AMENDMENT

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

## EFFECTIVE DATE OF 1968 AMENDMENT

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

## REGULATIONS; EFFECTIVE DATE OF 1996 AMENDMENT

Section 1043(b), (c) of Pub. L. 104-106 provided that:

“(b) REGULATIONS.—Not later than 6 months after the date of the enactment of this Act [Feb. 10, 1996], the Office of Personnel Management (and each of the other administrative authorities, within the meaning of subsection (c)(2)(C)(iii)) shall prescribe any regulations (or make any modifications in existing regulations) necessary to carry out this section [amending this section and sections 3502 and 8461 of this title and enacting provisions set out as a note under section 3502 of this title] and the amendments made by this section, including regulations to provide for the notification of individuals who may be affected by the enactment of this section. All regulations (and modifications to regulations) under the preceding sentence shall take effect on the same date.

## “(c) APPLICABILITY; RELATED PROVISIONS.—

“(1) PROSPECTIVE RULES.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 3502 and 8461 of this title] shall apply with respect to moves occurring on or after the effective date of the regulations under subsection (b). Moves occurring on or after the date of the enactment of this Act [Feb. 10, 1996] and before the effective date of such regulations shall be subject to applicable provisions of title 5, United States Code, disregarding the amendments made by this section, except that any individual making an election pursuant to this sentence shall be ineligible to make an election otherwise allowable under paragraph (2).

## “(2) RETROACTIVE RULES.—

“(A) IN GENERAL.—The regulations under subsection (b) shall include provisions for the application of sections 8347(q) and 8461(n) of title 5, United States Code, as amended by this section, with respect to any individual who, at any time after December 31, 1965, and before the effective date of such regulations, moved between positions in circumstances that would have qualified such individual to make an election under the provisions of such section 8347(q) or 8461(n), as so amended, if such provisions had then been in effect.

“(B) DEADLINE; RELATED PROVISIONS.—An election pursuant to this paragraph—

“(i) shall be made within 1 year after the effective date of the regulations under subsection (b), and

“(ii) shall have the same force and effect as if it had been timely made at the time of the move, except that no such election may be made by any individual—

“(I) who has previously made, or had an opportunity to make, an election under section 8347(q) or 8461(n) of title 5, United States Code (as in effect before being amended by this section); however, this subclause shall not be considered to render an individual ineligible, based on an opportunity arising out of a move occurring during the period described in the second sentence of paragraph (1), if no election has in fact been made by such individual based on such move;

“(II) who has not, since the move on which eligibility for the election is based, remained continuously subject (disregarding any break in service of less than 3 days) to CSRS or FERS or both seriatim (if the move was from a NAFI position) or any retirement system (or 2 or more such systems seriatim) established for employees described in section 2105(c) of such title (if the move was to a NAFI position); or

“(III) if such election would be based on a move to the Civil Service Retirement System from a retirement system established for employees described in section 2105(c) of such title.

## “(C) TRANSFERS OF CONTRIBUTIONS.—

“(i) IN GENERAL.—If an individual makes an election under this paragraph to be transferred back to a retirement system in which such individual previously participated (in this section referred to as the ‘previous system’), all individual

contributions (including interest) and Government contributions to the retirement system in which such individual is then currently participating (in this section referred to as the 'current system'), excluding those made to the Thrift Savings Plan or any other defined contribution plan, which are attributable to periods of service performed since the move on which the election is based, shall be paid to the fund, account, or other repository for contributions made under the previous system. For purposes of this section, the term 'current system' shall be considered also to include any retirement system (besides the one in which the individual is participating at the time of making the election) in which such individual previously participated since the move on which the election is based.

“(ii) CONDITION SUBSEQUENT RELATING TO REPAYMENT OF LUMP-SUM CREDIT.—In the case of an individual who has received such individual's lump-sum credit (within the meaning of section 8401(19) of title 5, United States Code, or a similar payment) from such individual's previous system, the payment described in clause (i) shall not be made (and the election to which it relates shall be ineffective) unless such lump-sum credit is redeposited or otherwise paid at such time and in such manner as shall be required under applicable regulations. Regulations to carry out this clause shall include provisions for the computation of interest (consistent with section 8334(e)(2) and (3) of title 5, United States Code), if no provisions for such computation otherwise exist.

“(iii) CONDITION SUBSEQUENT RELATING TO DEFICIENCY IN PAYMENTS RELATIVE TO AMOUNTS NEEDED TO ENSURE THAT BENEFITS ARE FULLY FUNDED.—

“(I) IN GENERAL.—Except as provided in subclause (II), the payment described in clause (i) shall not be made (and the election to which it relates shall be ineffective) if the actuarial present value of the future benefits that would be payable under the previous system with respect to service performed by such individual after the move on which the election under this paragraph is based and before the effective date of the election, exceeds the total amounts required to be transferred to the previous system under the preceding provisions of this subparagraph with respect to such service, as determined by the authority administering such previous system (in this section referred to as the 'administrative authority').

“(II) PAYMENT OF DEFICIENCY.—A determination of a deficiency under this clause shall not render an election ineffective if the individual pays or arranges to pay, at a time and in a manner satisfactory to such administrative authority, the full amount of the deficiency described in subclause (I).

“(D) ALTERNATIVE ELECTION FOR AN INDIVIDUAL THEN PARTICIPATING IN FERS.—

“(i) APPLICABILITY.—This subparagraph applies with respect to any individual who—

“(I) is then currently participating in FERS; and

“(II) would then otherwise be eligible to make an election under subparagraphs (A) through (C) of this paragraph, determined disregarding the matter in subclause (I) of subparagraph (B) before the first semicolon therein.

“(ii) ELECTION.—An individual described in clause (i) may, instead of making an election for which such individual is otherwise eligible under this paragraph, elect to have all prior qualifying NAFI service of such individual treated as creditable service for purposes of any annuity under FERS payable out of the Civil Service Retirement and Disability Fund.

“(iii) QUALIFYING NAFI SERVICE.—For purposes of this subparagraph, the term 'qualifying NAFI

service' means any service which, but for this subparagraph, would be creditable for purposes of any retirement system established for employees described in section 2105(c) of title 5, United States Code.

“(iv) SERVICE CEASES TO BE CREDITABLE FOR NAFI RETIREMENT SYSTEM PURPOSES.—Any qualifying NAFI service that becomes creditable for FERS purposes by virtue of an election made under this subparagraph shall not be creditable for purposes of any retirement system referred to in clause (iii).

“(v) CONDITIONS.—An election under this subparagraph shall be subject to requirements, similar to those set forth in subparagraph (C), to ensure that—

“(I) appropriate transfers of individual and Government contributions are made to the Civil Service Retirement and Disability Fund; and

“(II) the actuarial present value of future benefits under FERS attributable to service made creditable by such election is fully funded.

“(E) ALTERNATIVE ELECTION FOR AN INDIVIDUAL THEN PARTICIPATING IN A NAFI RETIREMENT SYSTEM.—

“(i) APPLICABILITY.—This subparagraph applies with respect to any individual who—

“(I) is then currently participating in any retirement system established for employees described in section 2105(c) of title 5, United States Code (in this subparagraph referred to as a 'NAFI retirement system'); and

“(II) would then otherwise be eligible to make an election under subparagraphs (A) through (C) of this paragraph (determined disregarding the matter in subclause (I) of subparagraph (B) before the first semicolon therein) based on a move from FERS.

“(ii) ELECTION.—An individual described in clause (i) may, instead of making an election for which such individual is otherwise eligible under this paragraph, elect to have all prior qualifying FERS service of such individual treated as creditable service for purposes of determining eligibility for benefits under a NAFI retirement system, but not for purposes of computing the amount of any such benefits except as provided in clause (v)(II).

“(iii) QUALIFYING FERS SERVICE.—For purposes of this subparagraph, the term 'qualifying FERS service' means any service which, but for this subparagraph, would be creditable for purposes of the Federal Employees' Retirement System.

“(iv) SERVICE CEASES TO BE CREDITABLE FOR PURPOSES OF FERS.—Any qualifying FERS service that becomes creditable for NAFI purposes by virtue of an election made under this subparagraph shall not be creditable for purposes of the Federal Employees' Retirement System.

“(v) FUNDING REQUIREMENTS.—

“(I) IN GENERAL.—Except as provided in subclause (II), nothing in this section or in any other provision of law or any other authority shall be considered to require any payment or transfer of monies in order for an election under this subparagraph to be effective.

“(II) CONTRIBUTION REQUIRED ONLY IF INDIVIDUAL ELECTS TO HAVE SERVICE MADE CREDITABLE FOR COMPUTATION PURPOSES AS WELL.—Under regulations prescribed by the appropriate administrative authority, an individual making an election under this subparagraph may further elect to have the qualifying FERS service made creditable for computation purposes under a NAFI retirement system, but only if the individual pays or arranges to pay, at a time and in a manner satisfactory to such administrative authority, the amount necessary to fully fund the actuarial present value of future benefits under the NAFI retirement system attributable to the qualifying FERS service.

“(3) INFORMATION.—The regulations under subsection (b) shall include provisions under which any individual—

“(A) shall, upon request, be provided information or assistance in determining whether such individual is eligible to make an election under paragraph (2) and, if so, the exact amount of any payment which would be required of such individual in connection with any such election; and

“(B) may seek any other information or assistance relating to any such election.”

#### TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the report required by subsec. (f) of this section is listed on page 187), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

#### TRANSFER OF FUNCTIONS

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

#### TREATMENT OF INDIVIDUALS ELECTING TO REMAIN SUBJECT TO THEIR FORMER RETIREMENT SYSTEM

For provisions relating to the deductions and contributions required with respect to individuals electing under section 8347(q) or 8461(n) of this title to remain covered under subchapter III of chapter 83 of this title, chapter 84 of this title, or a retirement system for employees described in section 2105(c) of this title, see section 7202(n) of Pub. L. 101-508, set out as a note under section 2105 of this title.

### § 8348. Civil Service Retirement and Disability Fund

(a) There is a Civil Service Retirement and Disability Fund. The Fund—

(1) is appropriated for the payment of—

(A) benefits as provided by this subchapter or by the provisions of chapter 84 of this title which relate to benefits payable out of the Fund; and

(B) administrative expenses incurred by the Office of Personnel Management in placing in effect each annuity adjustment granted under section 8340 or 8462 of this title, in administering survivor annuities and elections providing therefor under sections 8339 and 8341 of this title or subchapters II and IV of chapter 84 of this title, in administering alternative forms of annuities under sections 8343a and 8420a (and related provisions of law), in making an allotment or assignment made by an individual under section 8345(h) or 8465(b) of this title, in administering fraud prevention under sections 8345, 8345a, 8466, and 8466a of this title, and in withholding taxes pursuant to section 3405 of title 26 or section 8345(k) or 8469 of this title;

(2) is made available, subject to such annual limitation as the Congress may prescribe, for any expenses incurred by the Office in connection with the administration of this chapter, chapter 84 of this title, and other retirement and annuity statutes; and

(3) is made available, subject to such annual limitation as the Congress may prescribe, for any expenses incurred by the Merit Systems Protection Board in the administration of appeals authorized under sections 8347(d) and 8461(e) of this title.

(b) The Secretary of the Treasury may accept and credit to the Fund money received in the form of a donation, gift, legacy, or bequest, or otherwise contributed for the benefit of civil-service employees generally.

(c) The Secretary shall immediately invest in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

(d) The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are extended to authorize the issuance at par of public-debt obligations for purchase by the Fund. The obligations issued for purchase by the Fund shall have maturities fixed with due regard for the needs of the Fund and bear interest at a rate equal to the average market yield computed as of the end of the calendar month next preceding the date of the issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of that calendar month. If the average market yield is not a multiple of  $\frac{1}{8}$  of 1 percent, the rate of interest on the obligations shall be the multiple of  $\frac{1}{8}$  of 1 percent nearest the average market yield.

(e) The Secretary may purchase other interest-bearing obligations of the United States, or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price only if he determines that the purchases are in the public interest.

(f) Any statute which authorizes—

(1) new or liberalized benefits payable from the Fund, including annuity increases other than under section 8340 of this title;

(2) extension of the coverage of this subchapter to new groups of employees; or

(3) increases in pay on which benefits are computed;

is deemed to authorize appropriations to the Fund to finance the unfunded liability created by that statute, in 30 equal annual installments with interest computed at the rate used in the then most recent valuation of the Civil Service Retirement System and with the first payment thereof due as of the end of the fiscal year in which each new or liberalized benefit, extension of coverage, or increase in pay is effective.

(g) At the end of each fiscal year, the Office shall notify the Secretary of the Treasury of the amount equivalent to (1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and (2) that portion of disbursement for annuities for that year which the Office estimates is attributable to credit allowed for military service, less an amount determined by the Office to be appropriate to reflect the value of the deposits made to the credit of the Fund under section 8334(j) of this title. Be-