

1982— Subsec. (d). Pub. L. 97-253, §302(a)(1), (2), substituted "180 days" for "1 year" in provision relating to restoration of an annuitant to an earning capacity fairly comparable to the current rate of pay of the position occupied at the time of retirement, and "any calendar year" for "each of 2 succeeding calendar years".

Subsec. (h). Pub. L. 97-253, §302(a)(3), added subsec. (h).

1980— Subsec. (a). Pub. L. 96-499 provided that an employee was to be considered disabled only if the employee were found by the Office of Personnel Management to be unable to render useful and efficient service in the employee's position and was not qualified for reassignment to a vacant position in the agency at the same grade or level and provided that an employee in the Postal Service was to be considered not qualified for such reassignment if such reassignment were to a position in a different craft or were inconsistent with the terms of the appropriate collective bargaining agreement.

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

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 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.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 124(c) of Pub. L. 100-238 provided that:

"(1) IN GENERAL.— Except as provided in paragraph (2), the amendments made by this section [enacting section 8464a of this title, amending this section, renaming section 8457 of this title as section 8456, and repealing former section 8456 of this title] shall be effective as of January 1, 1987, and shall apply with respect to benefits payable based on a death or disability occurring on or after that date.

"(2) EXCEPTION.— The amendment made by subsection (a)(1)(A) [amending this section] shall take effect on the date of the enactment of this Act [Jan. 8, 1988] and shall apply with respect to benefits payable based on a death or disability occurring on or after that date."

EFFECTIVE DATE OF 1982 AMENDMENT

Section 302(c) of Pub. L. 97-253, as amended by Pub. L. 97-346, §3(i), Oct. 15, 1982, 96 Stat. 1649, provided that:

"(1) Except as provided in paragraphs (2) and (3), the amendments made by subsections (a) and (b) [amending this section and section 8347 of this title] shall take effective October 1, 1982.

"(2) The amendments made by paragraphs (1) and (2) of subsection (a) [amending this section] shall take effect with respect to income earned after December 31, 1982.

"(3) Subsection (h) of section 8337 of title 5, United States Code (as added by subsection (a)) shall apply to any technician (as defined in paragraph (1) of such subsection (h)) who is separated from employment as a technician on or after October 1, 1982. Such subsection (h) shall also apply to any technician separated from employment as a technician on or after December 31, 1979, and before October 1, 1982, if application therefor is made to the Office of Personnel Management within 12 months after the date of the enactment of this Act

[Sept. 8, 1982]. Any annuity resulting from such application shall commence as of the day after the date such application is received by the Office."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-499 effective on 90th day after Dec. 5, 1980, see section 403(c) of Pub. L. 96-499, set out as a note under section 8331 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.

§ 8338. Deferred retirement

(a) An employee who is separated from the service or transferred to a position in which he does not continue subject to this subchapter after completing 5 years of civilian service is entitled to an annuity beginning at the age of 62 years.

(b) A Member who, after December 31, 1955, is separated from the service as a Member after completing 5 years of civilian service is entitled to an annuity beginning at the age of 62 years. A Member who is separated from the service after completing 10 or more years of Member service is entitled to an annuity beginning at the age of 60 years. A Member who is separated from the service after completing 20 or more years of service, including 10 or more years of Member service, is entitled to a reduced annuity beginning at the age of 50 years.

(c) A judge of the United States Court of Appeals for the Armed Forces who is separated from the service after completing 5 years of civilian service is entitled to an annuity beginning at the age of 62 years. A judge of such court who is separated from the service after completing the term of service for which he was appointed is entitled to an annuity. If an annuity is elected before the judge becomes 60 years of age, it shall be a reduced annuity.

(d) An annuity or reduced annuity authorized by this section is computed under section 8339 of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 574; Pub. L. 90-83, §1(77), Sept. 11, 1967, 81 Stat. 214; Pub. L. 98-94, title XII, §1256(d), Sept. 24, 1983, 97 Stat. 702; Pub. L. 103-337, div. A, title IX, §924(d)(1)(A), Oct. 5, 1994, 108 Stat. 2832.)

HISTORICAL AND REVISION NOTES  
1966 ACT

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 2258.	July 31, 1956, ch. 804, §401 "Sec. 8", 70 Stat. 751. July 7, 1960, Pub. L. 86-604, §1(c), 74 Stat. 358. July 12, 1960, Pub. L. 86-622, §2(a), 74 Stat. 410.

In subsection (b), the words "after December 31, 1955" are substituted for "on or after January 1, 1956". The word "hereafter" is omitted as unnecessary.

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

1967 ACT

This section amends 5 U.S.C. 8338(a) for consistency within the subchapter and to reflect that it is the indi-

vidual, rather than the position, that is subject to the subchapter.

AMENDMENTS

1994- Subsec. (c). Pub. L. 103-337 substituted "Court of Appeals for the Armed Forces" for "Court of Military Appeals".

1983- Subsecs. (c), (d). Pub. L. 98-94 added subsec. (c), and redesignated former subsec. (c) as (d).

SAVINGS PROVISIONS DEFERRED ANNUITIES UNDER LAWS REPEALED BY PUB. L. 90-83

Pub. L. 90-83, §10(a), Sept. 11, 1967, 81 Stat. 222, provided that: "The right to a deferred annuity on satisfaction of the conditions attached thereto is continued notwithstanding the repeal by this Act of the law conferring the right."

§ 8339. Computation of annuity

(a) Except as otherwise provided by this section, the annuity of an employee retiring under this subchapter is-

(1)  $1\frac{1}{2}$  percent of his average pay multiplied by so much of his total service as does not exceed 5 years; plus

(2)  $1\frac{3}{4}$  percent of his average pay multiplied by so much of his total service as exceeds 5 years but does not exceed 10 years; plus

(3) 2 percent of his average pay multiplied by so much of his total service as exceeds 10 years.

However, when it results in a larger annuity, 1 percent of his average pay plus \$25 is substituted for the percentage specified by paragraph (1), (2), or (3) of this subsection, or any combination thereof.

(b) The annuity of a Congressional employee, or former Congressional employee, retiring under this subchapter is computed under subsection (a) of this section, except, if he has had-

(1) at least 5 years' service as a Congressional employee or Member or any combination thereof; and

(2) deductions withheld from his pay or has made deposit covering his last 5 years of civilian service;

his annuity is computed with respect to his service as a Congressional employee, his military service not exceeding 5 years, and any Member service, by multiplying  $2\frac{1}{2}$  percent of his average pay by the years of that service.

(c) The annuity of a Member, or former Member with title to Member annuity, retiring under this subchapter is computed under subsection (a) of this section, except, if he has had at least 5 years' service as a Member or Congressional employee or any combination thereof, his annuity is computed with respect to-

(1) his service as a Member and so much of his military service as is creditable for the purpose of this paragraph; and

(2) his Congressional employee service;

by multiplying  $2\frac{1}{2}$  percent of his average pay by the years of that service.

(d) (1) The annuity of an employee retiring under section 8335(b) or 8336(c) of this title is-

(A)  $2\frac{1}{2}$  percent of his average pay multiplied by so much of his total service as does not exceed 20 years; plus

(B) 2 percent of his average pay multiplied by so much of his total service as exceeds 20 years.

(2) The annuity of an employee retiring under this subchapter who was employed by the Panama Canal Company or Canal Zone Government on September 30, 1979, is computed with respect to the period of continuous Panama Canal service from that date, disregarding any break in service of not more than 3 days, by adding-

(A)  $2\frac{1}{2}$  percent of the employee's average pay multiplied by so much of that service as does not exceed 20 years; plus

(B) 2 percent of the employee's average pay multiplied by so much of that service as exceeds 20 years.

(3) The annuity of an employee retiring under this subchapter who is employed by the Panama Canal Commission at any time during the period beginning October 1, 1990, and ending December 31, 1999, is computed, with respect to any period of service with the Panama Canal Commission, by adding-

(A)  $2\frac{1}{2}$  percent of the employee's average pay multiplied by so much of that service as does not exceed 20 years; plus

(B) 2 percent of the employee's average pay multiplied by so much of that service as exceeds 20 years.

(4) (A) In the case of an employee who has service as a law enforcement officer or firefighter to which paragraph (2) of this subsection applies, the annuity of that employee is increased by \$8 for each full month of that service which is performed in the Republic of Panama.

(B) In the case of an employee retiring under this subchapter who-

(i) was employed as a law enforcement officer or firefighter by the Panama Canal Company or Canal Zone Government at any time during the period beginning March 31, 1979, and ending September 30, 1979; and

(ii) does not meet the age and service requirements of section 8336(c) of this title;

the annuity of that employee is increased by \$12 for each full month of that service which occurred before October 1, 1979.

(C) An annuity increase under this paragraph does not apply with respect to service performed after completion of 20 years of service (or any combination of service) as a law enforcement officer or firefighter.

(5) For the purpose of this subsection-

(A) "Panama Canal service" means-

(i) service as an employee of the Panama Canal Commission; or

(ii) service at a permanent duty station in the Canal Zone or Republic of Panama as an employee of an Executive agency conducting operations in the Canal Zone or Republic of Panama; and

(B) "Executive agency" includes the Smithsonian Institution.

(6) The annuity of an employee retiring under section 8336(j) of this title is computed under subsection (a) of this section, except that with respect to service on or after December 21, 1972, the employee's annuity is-

(A)  $2\frac{1}{2}$  percent of the employee's average pay multiplied by so much of the employee's service on or after that date as does not exceed 20 years; plus

Code, is entitled to payment of the balance, if any, on the death of—

- (1) An employee or Member;
- (2) A separated employee or Member who has not retired;
- (3) A retiree, unless a survivor benefit is payable based on an election under § 831.407; or
- (4) A person receiving a survivor annuity based on voluntary contributions.

§ 831.407 Purchase of additional annuity.

(a) At the time of retirement CSRS (or under FERS, if transferred from CSRS), a person may use the balance of a voluntary contribution account to purchase one of the following types of additional annuity:

- (1) Annuity without survivor benefit; or
  - (2) Reduced annuity payable during the life of the employee or Member with one-half of the reduced annuity to be payable after his or her death to a person, named at time of retirement, during the life of the named person.
- (b) Any natural person may be designated as survivor under paragraph (a) (2) of this section.
- (c) If the applicant for retirement elects an annuity without survivor benefit, each \$100 credited to his or her voluntary contribution account, including interest, purchases an additional annuity at the rate of \$7 per year, plus 20 cents for each full year, if any, he or she is over age 55 at date of retirement.
- (d) If the applicant for retirement elects an annuity with survivor benefit, each \$100 credited to his or her voluntary contribution account, including interest, purchases an additional annuity at the rate of \$7 per year, plus 20 cents for each full year, if any, he or she is over age 55 at date of retirement, multiplied by the following percentage:

- (1) Ninety percent of such amount if the named person is the same age or older than the applicant for retirement, or is less than 5 years younger than the applicant for retirement;
- (2) Eighty-five percent if the named person is 5 but less than 10 years younger;

- (3) Eighty percent if the named person is 10 but less than 15 years younger;
- (4) Seventy-five percent if the named person is 15 but less than 20 years younger;
- (5) Seventy percent if the named person is 20 but less than 25 years younger;
- (6) Sixty-five percent if the named person is 25 but less than 30 years younger; and
- (7) Sixty percent if the named person is 30 or more years younger.

### Subpart E— Eligibility for Retirement

§ 831.501 Time for filing applications.

Employees or Members who are eligible for retirement must file a retirement application with their agency. Former employees or Members who are eligible for retirement must file a retirement application with OPM. The application should not be filed more than 60 days before becoming eligible for benefits. If the application is for disability retirement, the applicant and the employing agency should refer to subpart L of this part.

[58 FR 49179, Sept. 22, 1993]

§ 831.502 Automatic separation; exemption.

(a) When an employee meets the requirements for age retirement on any day within a month, he is subject to automatic separation at the end of that month. The department or agency shall notify the employee of the automatic separation at least 60 days in advance of the separation. If the department or agency fails through error to give timely notice, the employee may not be separated without his consent until the end of the month in which the notice expires.

(b) The head of the agency, when in his or her judgment the public interest so requires, may exempt a law enforcement officer, firefighter, nuclear materials courier, or customs and border protection officer from automatic separation until that employee becomes 60 years of age.

(c) The Secretary of Transportation and the Secretary of Defense, under