

being rounded to the next higher number), not to exceed the number under subparagraph (B); and

(B) the denominator of which is 40.

(4) For the purpose of this subsection—

(A) the term “benefit computation year” has the meaning provided in section 215(b)(2)(B)(i) of the Social Security Act;

(B) the term “average total wages of all workers”, for a year, means the average of the total wages, as defined and computed under section 215(b)(3)(A)(ii)(I) of the Social Security Act for such year; and

(C) the term “service” does not include military service.

(c) An amount under this section shall, for purposes of section 8467, be treated in the same way as an amount computed under section 8415.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 533; amended Pub. L. 101-194, title V, §506(b)(10), Nov. 30, 1989, 103 Stat. 1759; Pub. L. 102-378, §2(65), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 107-296, title XIII, §1321(a)(5)(B), Nov. 25, 2002, 116 Stat. 2297.)

#### REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(3)(B) and (b)(2), (4)(A), (B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 202, 203, 214, and 215 of the Social Security Act are classified to sections 402, 403, 414, and 415, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

#### AMENDMENTS

2002—Subsec. (a)(2). Pub. L. 107-296, which directed amendment of par. (2) by striking “, except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable retirement age”, was executed by striking out “, except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable minimum retirement age” before period at end, to reflect the probable intent of Congress.

1992—Subsec. (a)(2). Pub. L. 102-378 inserted period at end.

1989—Subsec. (a)(2). Pub. L. 101-194 substituted “, except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable minimum retirement age” for period at end.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101-194, set out as a note under section 3151 of this title.

### § 8421a. Reductions on account of earnings from work performed while entitled to an annuity supplement

(a) The amount of the annuity supplement to which an individual is entitled under section

8421 for any month (determined without regard to subsection (c) of such section) shall be reduced by the amount of any excess earnings of such individual which are required to be charged to such supplement for such month, as determined under subsection (b).

(b) The amount of an individual’s excess earnings shall be charged to months as follows:

(1)(A) There shall be charged to each month of a year under subsection (a) an amount equal to the individual’s excess earnings (as determined under paragraph (2) with respect to such year), divided by the number of the individual’s supplement entitlement months for such year (as determined under paragraph (3)).

(B) Notwithstanding subparagraph (A), the amount charged to a month under subsection (a) may not exceed the amount of the annuity supplement to which the individual is entitled under section 8421 for such month (determined without regard to subsection (c) of such section).

(2) The excess earnings based on which reductions under subsection (a) shall be made with respect to an individual in a year—

(A) shall be equal to 50 percent of so much of such individual’s earnings for the immediately preceding year as exceeds the applicable exempt amount for such preceding year; but

(B) may not exceed the total amount of the annuity supplement payments to which such individual was entitled for such preceding year under section 8421 (determined without regard to subsection (c) of such section, and without regard to this section).

(3)(A) Subject to subparagraph (B), the number of an individual’s supplement entitlement months for a year shall be 12.

(B) The number determined under subparagraph (A) shall be reduced so as not to include any month after which such individual ceases to be entitled to an annuity supplement by reason of section 8421(a)(3)(B), relating to cessation of entitlement upon attaining age 62.

(4)(A) For purposes of this section, and except as provided in subparagraph (B), the “earnings” and the “applicable exempt amount” of an individual shall be determined in a manner consistent with applicable provisions of section 203 of the Social Security Act.

(B) For purposes of this section—

(i) in determining the excess earnings of any individual, only earnings attributable to periods during which such individual was entitled to an annuity supplement under section 8421 shall be considered; and

(ii) any earnings attributable to a period before attaining the applicable retirement age under section 8412(h) shall not be considered in determining the excess earnings of an individual who retires under section 8412(d) or (e), or section 8414(c).

(5) Notwithstanding paragraphs (1) through (4), the reduction required by subsection (a) shall be effective with respect to the annuity supplement payable for each month in the 12-month period beginning on the first day of the seventh month after the end of the calendar year in which the excess earnings were earned.

(c) The Office shall prescribe regulations under which this section shall be applied in the case of a reemployed annuitant.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 535; amended Pub. L. 99-556, title I, §121, Oct. 27, 1986, 100 Stat. 3134; Pub. L. 106-394, §3(a), Oct. 30, 2000, 114 Stat. 1630.)

REFERENCES IN TEXT

Section 203 of the Social Security Act, referred to in subsec. (b)(4)(A), is classified to section 403 of Title 42, The Public Health and Welfare.

AMENDMENTS

2000—Subsec. (b)(5). Pub. L. 106-394 added par. (5).  
 1986—Subsecs. (c), (d). Pub. L. 99-556 redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: “If, after an individual ceases to be entitled to an annuity supplement under section 8421 by reason of subsection (a)(3)(B) of such section, any portion of the individual’s excess earnings remains outstanding, an amount not to exceed 25 percent of the amount otherwise payable to such individual under this chapter for each month shall be deducted from such monthly payment until the full amount of that outstanding portion has been accounted for. To the extent practicable, reductions under this subsection shall be made by a level percentage.”

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-394, §3(b), Oct. 30, 2000, 114 Stat. 1630, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to reductions required to be made in calendar years beginning after the date of the enactment of this Act [Oct. 30, 2000].”

**§ 8422. Deductions from pay; contributions for other service**

(a)(1) The employing agency shall deduct and withhold from basic pay of each employee and Member a percentage of basic pay determined in accordance with paragraph (2).

(2) The percentage to be deducted and withheld from basic pay for any pay period shall be equal to—

(A) the applicable percentage under paragraph (3), minus

(B) the percentage then in effect under section 3101(a) of the Internal Revenue Code of 1986 (relating to rate of tax for old-age, survivors, and disability insurance).

(3) The applicable percentage under this paragraph for civilian service shall be as follows:

Employee .....	7 .....	January 1, 1987, to December 31, 1998.
	7.25 .....	January 1, 1999, to December 31, 1999.
	7.4 .....	January 1, 2000, to December 31, 2000.
	7 .....	After December 31, 2000.
Congressional employee.	7.5 .....	January 1, 1987, to December 31, 1998.
	7.75 .....	January 1, 1999, to December 31, 1999.
	7.9 .....	January 1, 2000, to December 31, 2000.
	7.5 .....	After December 31, 2000.
Member .....	7.5 .....	January 1, 1987, to December 31, 1998.
	7.75 .....	January 1, 1999, to December 31, 1999.
	7.9 .....	January 1, 2000, to December 31, 2000.
	8 .....	January 1, 2001, to December 31, 2002.

	7.5 .....	After December 31, 2002.
Law enforcement officer, firefighter, member of the Capitol Police, member of the Supreme Court Police, or air traffic controller.	7.5 .....	January 1, 1987, to December 31, 1998.
	7.75 .....	January 1, 1999, to December 31, 1999.
	7.9 .....	January 1, 2000, to December 31, 2000.
	7.5 .....	After December 31, 2000.
Nuclear materials courier.	7 .....	January 1, 1987, to October 16, 1998.
	7.5 .....	October 17, 1998, to December 31, 1998.
	7.75 .....	January 1, 1999, to December 31, 1999.
	7.9 .....	January 1, 2000, to December 31, 2000.
	7.5 .....	After December 31, 2000.
Customs and border protection officer.	7.5 .....	After June 29, 2008.

(b) Each employee or Member is deemed to consent and agree to the deductions under subsection (a). Notwithstanding any law or regulation affecting the pay of an employee or Member, payment less such deductions is a full and complete discharge and acquittance of all claims and demands for regular services during the period covered by the payment, except the right to any benefits under this subchapter, or under subchapter IV or V of this chapter, based on the service of the employee or Member.

(c) The amounts deducted and withheld under this section shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Secretary of the Treasury may prescribe.

(d)(1) Under such regulations as the Office may prescribe, amounts deducted under subsection (a) shall be entered on individual retirement records.

(2) Deposit may not be required for days of unused sick leave credited under section 8415(k).<sup>1</sup>

(e)(1)(A) Except as provided in subparagraph (B), and subject to paragraph (6), each employee or Member who has performed military service before the date of the separation on which the entitlement to any annuity under this subchapter, or subchapter V of this chapter, is based may pay, in accordance with such regulations as the Office shall issue, to the agency by which the employee is employed, or, in the case of a Member or a Congressional employee, to the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives, as appropriate, an amount equal to 3 percent of the amount of the basic pay paid under section 204 of title 37 to the employee or Member for each period of military service after December 1956. The amount of such payments shall be based on such evidence of basic pay for military service as the employee or Member may provide, or if the Office determines sufficient evidence has not been so provided to adequately determine basic pay for military service, such payment shall be based on estimates of such basic pay provided to the Office under paragraph (4).

(B) In any case where military service interrupts creditable civilian service under this subchapter and reemployment pursuant to chapter 43 of title 38 occurs on or after August 1, 1990, the deposit payable under this paragraph may

<sup>1</sup> See References in Text note below.

Year of Birth	Reduction (percent)
1937 and before .....	20
1938 .....	20 <sup>5</sup> / <sub>6</sub>
1939 .....	21 <sup>2</sup> / <sub>3</sub>
1940 .....	22 <sup>1</sup> / <sub>2</sub>
1941 .....	23 <sup>1</sup> / <sub>3</sub>
1942 .....	24 <sup>1</sup> / <sub>6</sub>
1943–54 .....	25
1955 .....	25 <sup>5</sup> / <sub>6</sub>
1956 .....	26 <sup>2</sup> / <sub>3</sub>
1957 .....	27 <sup>1</sup> / <sub>2</sub>
1958 .....	28 <sup>1</sup> / <sub>3</sub>
1959 .....	29 <sup>1</sup> / <sub>6</sub>
1960 and later .....	30

(2) In computing the primary insurance amount—

(i) The number of elapsed years used to compute the number of benefit computation years does not include the years beginning with the year in which the annuity supplement commences;

(ii) For an employee or Member who retires under §§ 842.205, 842.206, 842.209, or 842.211 before reaching the minimum retirement age, wages in calendar years beginning after the date of separation on which the retirement is based, are deemed to be zero.

(iii) Only basic pay for full calendar years of service creditable under FERS is taken into account in computing the retiree's wages for a benefit computation year;

(iv) For a benefit computation year after age 21 during which the retiree did not perform a full calendar year of service creditable under FERS the retiree's wages are deemed to equal the product of—

(A) The National Average Wage Index (as determined by the Commissioner of the Social Security Administration) corresponding to that year, multiplied by

(B) A fraction—

(1) The numerator of which is the retiree's basic pay for his or her first full year of service creditable under FERS; and

(2) The denominator of which is the National Average Wage Index (as determined by the Commissioner of the Social Security Administration) corresponding to the retiree's first full year of service creditable under FERS.

[52 FR 4479, Feb. 11, 1987, as amended at 69 FR 69806, Dec. 1, 2004]

### § 842.505 Reduction in annuity supplement because of excess earnings.

(a)(1) Except as provided in paragraphs (a)(2) and (b) of this section, the annuity supplement payable under § 842.504 is reduced by excess earnings in the test year, divided by twelve.

(2) Any annuity supplement payable during the year in which an individual loses entitlement to the annuity supplement by reason of § 842.503(c) is reduced by excess earnings in the test year divided by the number of months for which the annuity supplement is payable.

(b) Any reduction in the annuity supplement during a month because of excess earnings may not exceed the amount of annuity supplement payable during that month.

(c) Earnings and estimated earnings for each test year will be furnished by retirees in a form prescribed by OPM.

(d) Failure to furnish earnings and estimated earnings in the form or at the times prescribed by OPM is cause to suspend payment of the supplement until the annuitant establishes to the satisfaction of OPM that he/she continues to be eligible for the supplement.

(e) The reductions described in paragraphs (a) and (b) of this section are not subject to the due process procedures described in 5 U.S.C. 8461(e).

## Subpart F—Survivor Elections

SOURCE: 52 FR 2061, Jan. 16, 1987, unless otherwise noted.

### § 842.601 Purpose.

This subpart explains the survivor annuity elections available under FERS for retirees, and retiring employees and Members, and the actions that they must take to provide these survivor annuities.

### § 842.602 Definitions.

In this subpart—

*Current spouse* means a living person who is married to the employee, Member, or retiree at the time of the employee's, Member's, or retiree's death.

*Current spouse annuity* means a recurring benefit under FERS that is payable (after the employee's, Member's or