

## EFFECTIVE DATE OF 1972 AMENDMENT

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

## REGULATIONS

Pub. L. 107-296, title XIII, § 1313(b)(5), Nov. 25, 2002, 116 Stat. 2296, provided that: “The Office of Personnel Management may prescribe regulations to carry out this subsection [amending this section and section 8414 of this title, enacting provisions set out as notes under this section, and repealing provisions set out as notes under this section and section 8414 of this title].”

## TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the “transition period”, being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203(a) of Pub. L. 96-70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

## GOVERNMENT ACCOUNTABILITY OFFICE: VOLUNTARY EARLY RETIREMENT

Pub. L. 107-296, title XIII, § 1313(b)(3), Nov. 25, 2002, 116 Stat. 2296, provided that: “The amendments made by this subsection [amending this section and section 8414 of this title and repealing provisions set out as notes under this section and section 8414 of this title] shall not be construed to affect the authority under section 1 of Public Law 106-303 (5 U.S.C. 8336 note; 114 Stat. 1063).”

Pub. L. 106-303, § 1, Oct. 13, 2000, 114 Stat. 1063, as amended by Pub. L. 108-271, §§ 2(a), (b)(1), 8(b), July 7, 2004, 118 Stat. 811, 814, provided that:

“(a) CIVIL SERVICE RETIREMENT SYSTEM.—Effective October 13, 2000, paragraph (2) of section 8336(d) of title 5, United States Code, shall, with respect to officers and employees of the Government Accountability Office, be applied as if it had been amended to read as follows:

“(2)(A) has been employed continuously by the Government Accountability Office for at least the 31-day period immediately preceding the start of the period referred to in subparagraph (D);

“(B) is serving under an appointment that is not time limited;

“(C) has not received a notice of involuntary separation, for misconduct or unacceptable performance, with respect to which final action remains pending; and

“(D) is separated from the service voluntarily during a period with respect to which the Comptroller General determines that the application of this subsection is necessary and appropriate for the purpose of—

“(i) realigning the Government Accountability Office’s workforce in order to meet budgetary constraints or mission needs;

“(ii) correcting skill imbalances; or

“(iii) reducing high-grade, managerial, or supervisory positions;”.

“(b) FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.—Effective October 13, 2000, subparagraph (B) of section 8414(b)(1) of title 5, United States Code, shall, with respect to officers and employees of the Government Accountability Office, be applied as if it had been amended to read as follows:

“(B)(i) has been employed continuously by the Government Accountability Office for at least the 31-day period immediately preceding the start of the period referred to in clause (iv);

“(ii) is serving under an appointment that is not time limited;

“(iii) has not received a notice of involuntary separation, for misconduct or unacceptable performance, with respect to which final action remains pending; and

“(iv) is separated from the service voluntarily during a period with respect to which the Comptroller General determines that the application of this subsection is necessary and appropriate for the purpose of—

“(I) realigning the Government Accountability Office’s workforce in order to meet budgetary constraints or mission needs;

“(II) correcting skill imbalances; or

“(III) reducing high-grade, managerial, or supervisory positions;”.

“(c) NUMERICAL LIMITATION.—Not to exceed 10 percent of the Government Accountability Office’s workforce (as of the start of a fiscal year) shall be permitted to take voluntary early retirement in such fiscal year pursuant to this section.

“(d) REGULATIONS.—The Comptroller General shall prescribe any regulations necessary to carry out this section, including regulations under which an early retirement offer may be made to any employee or group of employees based on—

“(1) geographic area, organizational unit, or occupational series or level;

“(2) skills, knowledge, or performance; or

“(3) such other similar factors (or combination of factors described in this or any other paragraph of this subsection) as the Comptroller General considers necessary and appropriate in order to achieve the purpose involved.

“(e) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the Government Accountability Office workforce and not downsize the Government Accountability Office workforce.”

## APPLICATION OF SUBSECTION (d)(2)

Pub. L. 105-174, title III, § 7001(a), May 1, 1998, 112 Stat. 91, as amended by Pub. L. 106-58, title VI, § 651(a), Sept. 29, 1999, 113 Stat. 480, which provided that, effective May 1, 1998, subsec. (d)(2) of this section was to be applied as if it read as specified in Pub. L. 105-174, § 7001(a), was repealed by Pub. L. 107-296, title XIII, § 1313(b)(4), Nov. 25, 2002, 116 Stat. 2296.

## INDIAN PREFERENCE LAWS APPLICABLE TO BUREAU OF INDIAN AFFAIRS AND INDIAN HEALTH SERVICE POSITIONS

Nonapplicability of annuity provisions of subsec. (j) of this section to individuals accepting waiver of Indian preference laws with respect to personnel actions, see section 5117(c)(2) of Title 25, Indians.

## INDIVIDUALS ENTITLED TO ANNUITY PAYMENTS FOR PERIOD PRIOR TO OCTOBER 1, 1979

Section 1241(b)(2) of Pub. L. 96-70 provided that: “Effective October 1, 1979, any individual who, but for paragraph (1) of this subsection [set out as an Effective Date of 1979 Amendment note above], would have been entitled to one or more annuity payments pursuant to the amendments made by this section [amending this section] for periods before October 1, 1979, shall be entitled, to such extent or in such amounts as are provided in advance in appropriation Acts, to a lump sum payment equal to the total amount of all such annuity payments.”

## § 8336a. Phased retirement

(a) For the purposes of this section—

(1) the term “composite retirement annuity” means the annuity computed when a phased retiree attains full retirement status;

(2) the term “full retirement status” means that a phased retiree has ceased employment and is entitled, upon application, to a composite retirement annuity;

(3) the term “phased employment” means the less-than-full-time employment of a phased retiree;

(4) the term “phased retiree” means a retirement-eligible employee who—

(A) makes an election under subsection (b); and

(B) has not entered full retirement status;

(5) the term “phased retirement annuity” means the annuity payable under this section before full retirement;

(6) the term “phased retirement percentage” means the percentage which, when added to the working percentage for a phased retiree, produces a sum of 100 percent;

(7) the term “phased retirement period” means the period beginning on the date on which an individual becomes entitled to receive a phased retirement annuity and ending on the date on which the individual dies or separates from phased employment;

(8) the term “phased retirement status” means that a phased retiree is concurrently employed in phased employment and eligible to receive a phased retirement annuity;

(9) the term “retirement-eligible employee”—

(A) means an individual who, if the individual separated from the service, would meet the requirements for retirement under subsection (a) or (b) of section 8336; but

(B) does not include an employee described in section 8335 after the date on which the employee is required to be separated from the service by reason of such section; and

(10) the term “working percentage” means the percentage of full-time employment equal to the quotient obtained by dividing—

(A) the number of hours per pay period to be worked by a phased retiree, as scheduled in accordance with subsection (b)(2); by

(B) the number of hours per pay period to be worked by an employee serving in a comparable position on a full-time basis.

(b)(1) With the concurrence of the head of the employing agency, and under regulations promulgated by the Director, a retirement-eligible employee who has been employed on a full-time basis for not less than the 3-year period ending on the date on which the retirement-eligible employee makes an election under this subsection may elect to enter phased retirement status.

(2)(A) Subject to subparagraph (B), at the time of entering phased retirement status, a phased retiree shall be appointed to a position for which the working percentage is 50 percent.

(B) The Director may, by regulation, provide for working percentages different from the percentage specified under subparagraph (A), which shall be not less than 20 percent and not more than 80 percent.

(C) The working percentage for a phased retiree may not be changed during the phased retiree’s phased retirement period.

(D)(i) Not less than 20 percent of the hours to be worked by a phased retiree shall consist of mentoring.

(ii) The Director may, by regulation, provide for exceptions to the requirement under clause (i).

(iii) Clause (i) shall not apply to a phased retiree serving in the United States Postal Service. Nothing in this clause shall prevent the application of clause (i) or (ii) with respect to a phased retiree serving in the Postal Regulatory Commission.

(3) A phased retiree—

(A) may not be employed in more than one position at any time; and

(B) may transfer to another position in the same or a different agency, only if the transfer does not result in a change in the working percentage.

(4) A retirement-eligible employee may make not more than one election under this subsection during the retirement-eligible employee’s lifetime.

(5) A retirement-eligible employee who makes an election under this subsection may not make an election under section 8343a.

(c)(1) Except as otherwise provided under this subsection, the phased retirement annuity for a phased retiree is the product obtained by multiplying—

(A) the amount of an annuity computed under section 8339 that would have been payable to the phased retiree if, on the date on which the phased retiree enters phased retirement status, the phased retiree had separated from service and retired under section 8336(a) or (b); by

(B) the phased retirement percentage for the phased retiree.

(2) A phased retirement annuity shall be paid in addition to the basic pay for the position to which a phased retiree is appointed during phased employment.

(3) A phased retirement annuity shall be adjusted in accordance with section 8340.

(4)(A) A phased retirement annuity shall not be subject to reduction for any form of survivor annuity, shall not serve as the basis of the computation of any survivor annuity, and shall not be subject to any court order requiring a survivor annuity to be provided to any individual.

(B) A phased retirement annuity shall be subject to a court order providing for division, allotment, assignment, execution, levy, attachment, garnishment, or other legal process on the same basis as other annuities.

(5) Any reduction of a phased retirement annuity based on an election under section 8334(d)(2) shall be applied to the phased retirement annuity after computation under paragraph (1).

(6)(A) Any deposit, or election of an actuarial annuity reduction in lieu of a deposit, for military service or for creditable civilian service for which retirement deductions were not made or refunded shall be made by a retirement-eligible employee at or before the time the retirement-eligible employee enters phased retirement status. No such deposit may be made, or actuarial adjustment in lieu thereof elected, at the time a phased retiree enters full retirement status.

(B) Notwithstanding subparagraph (A), if a phased retiree does not make such a deposit and dies in service as a phased retiree, a survivor of the phased retiree shall have the same right to make such deposit as would have been available

had the employee not entered phased retirement status and died in service.

(C) If a phased retiree makes an election for an actuarial annuity reduction under section 8334(d)(2) and dies in service as a phased retiree, the amount of any deposit upon which such actuarial reduction shall have been based shall be deemed to have been fully paid.

(7) A phased retirement annuity shall commence on the date on which a phased retiree enters phased employment.

(8) No unused sick leave credit may be used in the computation of the phased retirement annuity.

(d) All basic pay not in excess of the full-time rate of pay for the position to which a phased retiree is appointed shall be deemed to be basic pay for purposes of section 8334.

(e) Under such procedures as the Director may prescribe, a phased retiree may elect to enter full retirement status at any time. Upon making such an election, a phased retiree shall be entitled to a composite retirement annuity.

(f)(1) Except as provided otherwise under this subsection, a composite retirement annuity is a single annuity computed under regulations prescribed by the Director, equal to the sum of—

(A) the amount of the phased retirement annuity as of the date of full retirement, before any reduction based on an election under section 8334(d)(2), and including any adjustments made under section 8340; and

(B) the product obtained by multiplying—

(i) the amount of an annuity computed under section 8339 that would have been payable at the time of full retirement if the individual had not elected a phased retirement and as if the individual was employed on a full-time basis in the position occupied during the phased retirement period and before any reduction for survivor annuity or reduction based on an election under section 8334(d)(2); by

(ii) the working percentage.

(2) After computing a composite retirement annuity under paragraph (1), the Director shall adjust the amount of the annuity for any applicable reductions for a survivor annuity and any previously elected actuarial reduction under section 8334(d)(2).

(3) A composite retirement annuity shall be adjusted in accordance with section 8340, except that subsection (c)(1) of that section shall not apply.

(4) In computing a composite retirement annuity under paragraph (1)(B)(i), the unused sick leave to the credit of a phased retiree at the time of entry into full retirement status shall be adjusted by dividing the number of hours of unused sick leave by the working percentage.

(g)(1) Under such procedures and conditions as the Director may provide, and with the concurrence of the head of the employing agency, a phased retiree may elect to terminate phased retirement status and return to a full-time work schedule.

(2) Upon entering a full-time work schedule based upon an election under paragraph (1), the phased retirement annuity of a phased retiree shall terminate.

(3) After the termination of a phased retirement annuity under this subsection, the individ-

ual's rights under this subchapter shall be determined based on the law in effect at the time of any subsequent separation from service. For purposes of this subchapter or chapter 84, at time of the subsequent separation from service, the phased retirement period shall be treated as if it had been a period of part-time employment with the work schedule described in subsection (b)(2).

(h) For purposes of section 8341—

(1) the death of a phased retiree shall be deemed to be the death in service of an employee; and

(2) the phased retirement period shall be deemed to have been a period of part-time employment with the work schedule described in subsection (b)(2).

(i) Employment of a phased retiree shall not be deemed to be part-time career employment, as defined in section 3401(2).

(j) A phased retiree is not eligible to apply for an annuity under section 8337.

(k) For purposes of section 8341(h)(4), retirement shall be deemed to occur on the date on which a phased retiree enters into full retirement status.

(l) For purposes of sections 8343 and 8351, and subchapter III of chapter 84, a phased retiree shall be deemed to be an employee.

(m) A phased retiree is not subject to section 8344.

(n) For purposes of chapter 87, a phased retiree shall be deemed to be receiving basic pay at the rate of a full-time employee in the position to which the phased retiree is appointed.

(Added Pub. L. 112-141, div. F, title I, §100121(a)(2), July 6, 2012, 126 Stat. 907.)

#### EFFECTIVE DATE

Section effective on Nov. 6, 2014, see section 100121(d) of Pub. L. 112-141, set out as an Effective Date of 2012 Amendment note under section 8331 of this title.

#### § 8337. Disability retirement

(a) An employee who completes 5 years of civilian service and has become disabled shall be retired on the employee's own application or on application by the employee's agency. Any employee shall be considered to be disabled only if the employee is found by the Office of Personnel Management to be unable, because of disease or injury, to render useful and efficient service in the employee's position and is not qualified for reassignment, under procedures prescribed by the Office, to a vacant position which is in the agency at the same grade or level and in which the employee would be able to render useful and efficient service. For the purpose of the preceding sentence, an employee of the United States Postal Service shall be considered not qualified for a reassignment described in that sentence if the reassignment is to a position in a different craft or is inconsistent with the terms of a collective bargaining agreement covering the employee. A judge of the United States Court of Appeals for the Armed Forces who completes 5 years of civilian service and who is found by the Office to be disabled for useful and efficient service as a judge of such court or who is removed for mental or physical disability under