

sions covered by this subchapter] may apply at the option of any employee who, prior to July 31, 1956, was separated from the service under the automatic separation provisions of the Civil Service Retirement Act [this subchapter] but whose separation would not have taken effect until after July 30, 1965, if he had been permitted to remain in the service until the expiration of any accumulated or current accrued annual leave to his credit at the time of his separation from the service. Such option shall be exercised by a writing received in the Civil Service Commission before January 1, 1959.

“(b) No increase in annuity provided by this Act or any prior provision of law shall apply in the case of any retired employee who exercises the option permitted by subsection (a) of this section.”

#### 1962 AND 1958 INCREASES IN ANNUITIES; CLARIFICATION

Pub. L. 89-17, May 1, 1965, 79 Stat. 109, provided: “That for the purposes of section 1(a) of the Act of June 25, 1958 (Public Law 85-465) [1958 Increase in Annuities note set out above], and section 1101(a) of the Act of October 11, 1962 (Public Law 87-793) [1962 Increase in Annuities note set out under this section], the words ‘entitled to receive an annuity’ shall, from and after the respective effective dates (August 1, 1958, and January 1, 1963) of the annuity increases provided by such Acts, not include any person whose annuity commencing date occurs after the effective date of the annuity increase involved.”

#### PAYMENT OF ANNUITIES TO CERTAIN UNREARRIED WIDOWS OR WIDOWERS OF EMPLOYEES RETIRED UNDER RAILROAD RETIREMENT ACT OR CANAL ZONE CODE

Section 3(b), (c) of Pub. L. 86-604, July 7, 1960, 74 Stat. 359, made section 4 of act June 25, 1958, set out in the 1958 Increase in Annuities note under this section, applicable to annuities authorized by section 2(2)(B) of act June 25, 1958, and provided that such annuities should commence Aug. 1, 1958, or on the first day of the month in which application therefor was received in the Civil Service Commission, whichever occurred later.

#### ESTIMATES OF APPROPRIATIONS FOR REIMBURSING FUND FOR AMOUNTS PAID UNDER 1958 INCREASE IN ANNUITIES

Pub. L. 91-93, title I, §105, Oct. 20, 1969, 83 Stat. 138, repealed part of Pub. L. 87-141, title I, §101, Aug. 17, 1961, 75 Stat. 345, which required the Civil Service Commission to include annually in its estimates to the Bureau of the Budget, estimates of appropriations necessary to reimburse the civil service retirement and disability fund for amounts paid out of the fund by reason of enactment of Pub. L. 85-465, set out in the 1958 Increase in Annuities note under this section, and the Bureau of the Budget to submit such estimates annually to the Congress.

#### ANNUITY OF DIRECTOR OF FBI

Pub. L. 86-734, §5, Sept. 8, 1960, 74 Stat. 868, provided that: “Any person who shall retire for age after serving at least thirty years as Director of the Federal Bureau of Investigation shall receive an annuity during the remainder of his life equal to the salary payable to him at the time of his retirement.”

#### NATIONAL GUARD TECHNICIANS

Amendment by Pub. L. 90-486 not applicable to persons employed prior to Jan. 1, 1969, whose employment was covered by the civil service retirement provisions of section 8331 et seq. of this title, see section 5(d) of Pub. L. 90-486, set out as a note under section 709 of Title 32, National Guard.

### § 8340. Cost-of-living adjustment of annuities

(a) For the purpose of this section—

(1) the term “base quarter”, as used with respect to a year, means the calendar quarter ending on September 30, of such year; and

(2) the price index for a base quarter is the arithmetical mean of such index for the 3 months comprising such quarter.

(b) Except as provided in subsection (c) of this section, effective December 1 of each year, each annuity payable from the Fund having a commencing date not later than such December 1 shall be increased by the percent change in the price index for the base quarter of such year over the price index for the base quarter of the preceding year in which an adjustment under this subsection was made, adjusted to the nearest  $\frac{1}{10}$  of 1 percent.

(c) Eligibility for an annuity increase under this section is governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase, except as follows:

(1) The first increase (if any) made under subsection (b) of this section to an annuity which is payable from the Fund to an employee or Member who retires, to the widow, widower, or former spouse,<sup>1</sup> of a deceased employee or Member, or to the widow, widower, former spouse, or insurable interest designee of a deceased annuitant whose annuity has not been increased under this subsection or subsection (b) of this section, shall be equal to the product (adjusted to the nearest  $\frac{1}{10}$  of 1 percent) of—

(A)  $\frac{1}{12}$  of the applicable percent change computed under subsection (b) of this section, multiplied by

(B) the number of months (not to exceed 12 months, counting any portion of a month as a month)—

(i) for which the annuity was payable from the Fund before the effective date of the increase, or

(ii) in the case of a widow, widower, former spouse, or insurable interest designee of a deceased annuitant whose annuity has not been so increased, since the annuity was first payable to the deceased annuitant.

(2) Effective from its commencing date, an annuity payable from the Fund to an annuitant's survivor (except a child entitled under section 8341(e) of this title), which annuity commences the day after the death of the annuitant and after the effective date of the first increase under this section, shall be increased by the total percent increase the annuitant was receiving under this section at death. However, the increase in a survivor annuity authorized by section 8 of the Act of May 29, 1930, as amended to July 6, 1950, shall be computed as if the annuity commencing date had been the effective date of the first increase under this section.

(3) For the purpose of computing the annuity of a child under section 8341(e) of this title that commences after October 31, 1969, the items \$900, \$1,080, \$2,700, and \$3,240 appearing in section 8341(e) of this title shall be increased by the total percent increases allowed and in force under this section on or after such day and, in case of a deceased annuitant, the items 60 percent and 75 percent appearing in

<sup>1</sup> So in original. The comma probably should not appear.

section 8341(e) of this title shall be increased by the total percent allowed and in force to the annuitant under this section on or after such day.

(d) This section does not authorize an increase in an additional annuity purchased at retirement by voluntary contributions.

(e) The monthly installment of annuity after adjustment under this section shall be rounded to the next lowest dollar. However, the monthly installment shall after adjustment reflect an increase of at least \$1.

(f) Effective September 1, 1966, or on the commencing date of annuity, whichever is later, the annuity of each surviving spouse whose entitlement to annuity payable from the Fund resulted from the death of—

(1) an employee or Member before October 11, 1962; or

(2) a retired employee or Member whose retirement was based on a separation from service before October 11, 1962;

is increased by 10 percent.

(g)(1) An annuity shall not be increased by reason of any adjustment under this section to an amount which exceeds the greater of—

(A) the maximum pay payable for GS-15 30 days before the effective date of the adjustment under this section; or

(B) the final pay (or average pay, if higher) of the employee or Member with respect to whom the annuity is paid, increased by the overall annual average percentage adjustments (compounded) in rates of pay of the General Schedule under subchapter I of chapter 53 of this title during the period—

(i) beginning on the date the annuity commenced (or, in the case of a survivor of the retired employee or Member, the date the employee's or Member's annuity commenced), and

(ii) ending on the effective date of the adjustment under this section.

(2) For the purposes of paragraph (1) of this subsection, "pay" means the rate of salary or basic pay as payable under any provision of law, including any provision of law limiting the expenditure of appropriated funds.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 576; Pub. L. 90-83, §1(79), Sept. 11, 1967, 81 Stat. 215; Pub. L. 91-93, title II, §204, Oct. 20, 1969, 83 Stat. 139; Pub. L. 93-136, §1, Oct. 24, 1973, 87 Stat. 490; Pub. L. 94-126, §2(b), Nov. 12, 1975, 89 Stat. 679; Pub. L. 94-183, §2(35), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 94-440, title XIII, §1306(a), (c)(1), Oct. 1, 1976, 90 Stat. 1462; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-499, title IV, §401(a), Dec. 5, 1980, 94 Stat. 2605; Pub. L. 97-35, title XVII, §1702(a), (b), Aug. 13, 1981, 95 Stat. 754; Pub. L. 97-253, title III, §§304(a), 309(a), Sept. 8, 1982, 96 Stat. 795, 798; Pub. L. 98-270, title II, §201(a), Apr. 18, 1984, 98 Stat. 157; Pub. L. 98-369, div. B, title II, §2201(b), July 18, 1984, 98 Stat. 1058; Pub. L. 99-251, title II, §204, Feb. 27, 1986, 100 Stat. 25.)

HISTORICAL AND REVISION NOTES  
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2268.	July 31, 1956, ch. 804, §401 "Sec. 18"; added Oct. 11, 1962, Pub. L. 87-793, §1102(b) (less so much as redesignated §18 as 19), 76 Stat. 869.

In subsection (a), the words "After January 1, 1964" and "other than 1964" and subsection (a)(1) of former section 2268, are omitted as executed.

In subsection (b), the words "subsection (a) of this section" are substituted for "subsection (a)(1) or (a)(2) of this section" since subsection (a)(1) has been omitted as executed.

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>
8340(a) .....	5 App.: 2268(a), (f).	Sept. 27, 1965, Pub. L. 89-205, §1(c), 79 Stat. 840.
8340(b) .....	5 App.: 2268(b).	Nov. 1, 1965, Pub. L. 89-314, §1, 79 Stat. 1162.
8340(c) .....	5 App.: 2268(c).	July 18, 1966, Pub. L. 89-504, §507, 80 Stat. 302.
8340(d) .....	5 App.: 2268(d).	
8340(e) .....	5 App.: 2268(e).	
8340(f) .....	5 App.: 2268(g).	

In subsection (a), the words "Effective December 1, 1965 \* \* \* before December 2, 1965," are substituted for "Effective the first day of the third month which begins after the date of enactment of this amendment \* \* \* not later than such effective date." In clause (1), the words "month of July 1965" are substituted for "month latest published on date of enactment of this amendment" for clarity and since the July 1965 price index was the price index for the month latest published on September 27, 1965, the date of enactment of the amendment. The word "base" is inserted before "month of July 1965" for clarity and on authority of the second sentence of 5 U.S.C. App. 2268(a) which provided: "The month used in determining the increase based on the per centum rise in the price index under this subsection shall be the base month for determining the per centum change in the price index until the next succeeding increase occurs." In view of the foregoing and of the definition of "base month" in 5 U.S.C. 8331(16), the quoted sentence is omitted as executed and unnecessary. In clause (2), the words "before October 2, 1956," are substituted for "on or before October 1, 1956." In the second sentence, which is based on 5 App. U.S.C. 2268(f), the words "before January 1, 1966," are substituted for "not later than December 31, 1965." In clause (B), the words "Act of June 25, 1958 (72 Stat. 219)" are substituted for "Public Law 85-465" to conform to the style of title 5, United States Code.

In the first sentence of subsection (b), the words "after the first increase under this section," following "Each month," are omitted as executed and unnecessary.

In subsection (f), the words "September 1, 1966," are substituted for "the first day of the second month after the enactment of this subsection."

REFERENCES IN TEXT

Section 8 of the Act of May 29, 1930, as amended to July 6, 1950, referred to in subsec. (c)(2), is the predecessor of section 8338 of this title.

The General Schedule, referred to in subsec. (g)(1)(B), is set out under section 5332 of this title.

AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 99-251 substituted "widower, or former spouse," for first reference to "or

widower", and "widower, former spouse, or insurable interest designee" for second and third references to "or widower".

1984—Subsec. (a). Pub. L. 98-270 substituted provisions defining term "base quarter" as meaning the calendar quarter ending Sept. 30 of a year and providing that the price index for a base quarter is the arithmetical mean of such index for the three months comprising such quarter for former provisions which had directed that, effective Dec. 1, 1965, each annuity payable from the Fund having a commencing date before Dec. 2, 1965, was increased by (1) the percent rise in the price index, adjusted to the nearest  $\frac{1}{10}$  of 1 percent, determined by the Office of Personnel Management on the basis of the annual average price index for calendar year 1962 and the price index for the base month of July 1965; plus (2)  $6\frac{1}{2}$  percent if the commencing date (or in the case of the survivor of a deceased annuitant the commencing date of the annuity of the retired employee) occurred before Oct. 2, 1956, or  $1\frac{1}{2}$  percent if the commencing date (or in the case of the survivor of a deceased annuitant the commencing date of the annuity of the retired employee) occurred after Oct. 1, 1956, that each annuity payable from the Fund (other than the immediate annuity of an annuitant's survivor or of a child entitled under section 8341(e) of this title) having a commencing date after Dec. 1, 1965, but before Jan. 1, 1966, was increased from its commencing date as if the annuity commencing date were Dec. 1, 1965, and that each survivor annuity authorized by (A) section 8 of the Act of May 29, 1930, as amended to July 6, 1950, or (B) section 2 of the Act of June 25, 1958 (72 Stat. 219), was increased by any additional amount required to make the total increase under this subsection equal to the smaller of 15 percent or \$10 a month.

Subsec. (b). Pub. L. 98-270 substituted "Except as provided in subsection (c) of this section, effective December 1 of each year, each annuity payable from the Fund having a commencing date not later than such December 1 shall be increased by the percent change in the price index for the base quarter of such year over the price index for the base quarter of the preceding year in which an adjustment under this subsection was made, adjusted to the nearest  $\frac{1}{10}$  of 1 percent" for "Except as provided in subsection (c) of this section, effective March 1 of each year each annuity payable from the Fund having a commencing date not later than such March 1 shall be increased by the percent change in the price index published for December of the preceding year over the price index published for December of the year prior to the preceding year, adjusted to the nearest  $\frac{1}{10}$  of 1 percent".

Subsec. (c)(1)(A). Pub. L. 98-369, § 2201(b)(1), substituted "computed" for "computer".

Subsec. (c)(2)(B). Pub. L. 98-369, § 2201(b)(2), substituted "not to exceed 12 months, counting" for "counting".

1982—Subsec. (e). Pub. L. 97-253, § 304(a), substituted "rounded to the next lowest" for "fixed at the nearest".

Subsec. (g). Pub. L. 97-253, § 309(a), added subsec. (g).  
1981—Subsec. (b). Pub. L. 97-35, § 1702(a), substituted provisions that except as provided in subsec. (c), the annuities payable from the Fund having a commencing date not later than March 1 of each year shall be increased by the percent change in the price index published for December of the preceding year over the price index published for December of the year prior to the preceding year, adjusted to the nearest  $\frac{1}{10}$  of 1 percent, for provisions requiring the Office to determine on Jan. 1 and July 1 of each year the percent change in the price index based on the data for a six month period and to adjust the annuities in March and September of each year according to specified formula when there is a rise in the price index.

Subsec. (c)(1). Pub. L. 97-35, § 1702(b), in opening provision inserted reference to the widow or widower of a deceased annuitant whose annuity has not been increased under this subsection or subsection (b) of this section, in par. (A) substituted " $\frac{1}{12}$ " for " $\frac{1}{6}$ ", and in

subpar. (B) designated existing provisions as item (i) and added item (ii).

1980—Subsec. (c)(1). Pub. L. 96-499, substituted formula for computing the first increase to be made under subsec. (b) of this section to an annuity which is payable from the Fund to an employee or Member who retires, to the widow or widower of a deceased employee or Member for provisions that an annuity, except a deferred annuity under section 8338 of this title or any other provision of law, payable from the Fund to an employee or Member who retires, or to the widow or widower of a deceased employee or Member and having a commencing date after the effective date of the then last preceding annuity increase under subsec. (b) of this section shall not be less than the annuity which would have been payable if the commencing date of such annuity had been the effective date of the then last preceding annuity increase under subsec. (b) of this section and that employees or deceased employees were to be deemed, for purposes of section 8339(m) of this title to have to their credit, on the effective date of the last preceding increase under subsec. (b), unused sick leave equal to that unused sick leave to his credit on the date of separation from service.

1978—Subsecs. (a)(1), (b)(1). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission" and "Office" for "Commission".

1976—Subsec. (b). Pub. L. 94-440, § 1306(a), struck out "1 percent plus" after "shall be increased by".

Pub. L. 94-440, § 1306(c)(1), substituted provisions requiring that Commission shall determine percent change in price index on Jan. 1 and July 1 of each year and effective Mar. 1 or Sept. 1, each annuity payable from Fund shall be increased by the computed percent change in the price index adjusted to the nearest  $\frac{1}{10}$  of 1 percent, for provisions requiring that Commission shall determine percent change in price index on a monthly basis and effective the first day of the third month that begins after the price index change equals a rise of 3 percent for 3 consecutive months over the prior price index, each annuity payable from Fund shall be increased by the highest rise in the price index over those months adjusted to the nearest  $\frac{1}{10}$  of 1 percent.

1975—Subsec. (c)(1). Pub. L. 94-126 substituted reference to "section 8339(m) of this title" for "section 8339(n) of this title".

Subsec. (c)(3). Pub. L. 94-183 substituted "after October 31, 1969" for "on or after the first day of the first month that begins on or after the date of enactment of the Civil Service Retirement Amendments of 1969".

1973—Subsec. (c). Pub. L. 93-136 redesignated existing pars. (1) and (2) as pars. (2) and (3) and added par. (1).

1969—Subsec. (b). Pub. L. 91-93, § 204(a), increased the annuity payable from the Fund by 1 percent.

Subsec. (c)(2). Pub. L. 91-93, § 204(b), increased the minimum survivor annuity for children of a deceased Federal employee, substituting dollar and percentage references to \$900, \$1,080, \$2,700, \$3,240, and 60 and 75 percent for prior references to \$600, \$720, \$1,800, \$2,160 and 40 and 50 percent respectively, such new increases to commence on or after the first day of the first month that begins on or after Oct. 20, 1969, the date of enactment of the Civil Service Retirement Amendments of 1969, whereas prior provisions were for computation of a child's annuity commencing after effective date of first increase under this section based on employee annuity that commenced after Oct. 1, 1956, or was payable at death.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-270, title II, § 201(b), Apr. 18, 1984, 98 Stat. 157, provided that:

"(1) The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 18, 1984], except that no adjustment under section 8340(b) of title 5, United States Code (as amended by such subsection), shall be made during the period beginning on the date of the enactment of this Act and ending November 30, 1984.

"(2)(A) For purposes of the first adjustment under section 8340(b) of title 5, United States Code (as amend-

ed by subsection (a)), the base quarter ending September 30, 1983, shall be considered to have been a base quarter in which an adjustment under such section (as so amended) was made.

“(B) As used in subparagraph (A), the term ‘base quarter’ has the meaning given such term by section 8340(a)(1) of title 5, United States Code (as amended by subsection (a)).”

#### EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-253, title III, §304(c), Sept. 8, 1982, 96 Stat. 795, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 8345 of this title] shall apply with respect to any annuity commencing on or after October 1, 1982, and with respect to any adjustment or redetermination of any annuity made on or after such date”.

Pub. L. 97-253, title III, §309(b), Sept. 8, 1982, 96 Stat. 799, provided that: “The amendment made by subsection (a) of this section [amending this section] shall not cause any annuity to be reduced below the rate that is payable on the date of the enactment of this Act [Sept. 8, 1982], but shall apply to any adjustment occurring on or after such date of enactment under section 8340 of title 5, United States Code, to any annuity payable from the Civil Service Retirement and Disability Fund, whether such annuity has a commencing date before, on, or after the date of enactment of this Act.”

#### EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-35, title XVII, §1702(c), Aug. 13, 1981, 95 Stat. 754, provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 13, 1981] and shall apply to annuities which commence before, on, or after such date.”

#### EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-499, title IV, §401(b), Dec. 5, 1980, 94 Stat. 2605, provided that:

“(1) The amendment made by subsection (a)(1) [amending this section] shall apply with respect to annuities commencing after the 45th day after the date of the enactment of this Act [Dec. 5, 1980].

“(2) The amendment made by subsection (a)(2) [amending this section] shall take effect with respect to any annuity increase which takes effect after the date of the enactment of this Act [Dec. 5, 1980].”

#### 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 1976 AMENDMENT

Pub. L. 94-440, title XIII, §1306(b), Oct. 1, 1976, 90 Stat. 1462, provided that: “The amendment made by subsection (a) [amending this section] shall apply to any increase in annuities after the date of enactment of this Act [Oct. 1, 1976].”

Pub. L. 94-440, §1306(c)(2), Oct. 1, 1976, 90 Stat. 1462, provided that: “The amendment made by subsection (1) [amending this section] shall apply to any increase in annuities after the date of enactment of this Act [Oct. 1, 1976], except that with respect to the first date after the date of enactment of this Act on which the Commission is to determine a percent change, such percent change shall be determined by computing the change in the price index published for the month immediately preceding such first date over the price index for the last month prior to the date of enactment of this Act for which the price index showed a percent rise forming the basis for a cost-of-living annuity increase under section 8340(b) of title 5, United States Code [subsec. (b) of this section], as in effect immediately prior to the date of the enactment of this Act [Oct. 1, 1976].”

#### EFFECTIVE DATE OF 1973 AMENDMENT

Pub. L. 93-136, §2, Oct. 24, 1973, 87 Stat. 490, provided that: “The amendments made by this Act [amending

this section] shall apply only with respect to annuities which commence on or after July 2, 1973.”

#### EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-93, title II, §207(b), Oct. 20, 1969, 83 Stat. 140, provided that: “The amendments made by section 204(a) of this Act to section 8340 of title 5, United States Code, shall apply only to annuity increases which become effective under such section 8340 after the date of enactment of this Act [Oct. 20, 1969].”

#### DELAY IN COST-OF-LIVING ADJUSTMENTS DURING FISCAL YEARS 1994, 1995, AND 1996

Pub. L. 103-66, title XI, §11001, Aug. 10, 1993, 107 Stat. 408, provided that:

“(a) APPLICABILITY.—This section shall apply with respect to any cost-of-living increase scheduled to take effect, during fiscal year 1994, 1995, or 1996, under—

“(1) section 8340(b) or 8462(b) of title 5, United States Code;

“(2) section 826 or 858 of the Foreign Service Act of 1980 [22 U.S.C. 4066, 4071g]; or

“(3) section 291 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2131), as set forth in section 802 of the CIARDS Technical Corrections Act of 1992 (Public Law 102-496; 106 Stat. 3196).

“(b) DELAY IN EFFECTIVE DATE OF ADJUSTMENTS.—A cost-of-living increase described in subsection (a) shall not take effect until the first day of the third calendar month after the date such increase would otherwise take effect.

“(c) RULE OF CONSTRUCTION.—Nothing in this section shall be considered to affect any determination relating to eligibility for an annuity increase or the amount of the first increase in an annuity under section 8340(b) 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. 153.]

“(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 ac-

cordance 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