

posit additional sums under this section until, after a separation from the service of more than 3 calendar days, he again becomes subject to this subchapter.

(e) If a present or former employee or Member not retired dies, the voluntary contribution account is paid under section 8342(c) of this title. If all additional annuities or any right thereto based on the voluntary contribution account of a deceased employee or Member terminate before the total additional annuity paid equals the account, the difference is paid under section 8342(c) of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 580; Pub. L. 90-83, §1(82), Sept. 11, 1967, 81 Stat. 217; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 97-253, title III, §303(a)(2), Sept. 8, 1982, 96 Stat. 794.)

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. 2262.	July 31, 1956, ch. 804, §401 "Sec. 12", 70 Stat. 756. Aug. 14, 1958, Pub. L. 85-661, §1, 72 Stat. 614.

In subsection (a), the words "after July 31, 1920" are substituted for "on or after August 1, 1920". In paragraph (1), the words "payment under subsection (d) of this section" are based on "but such account shall not in any case include interest beyond date of payment" in former section 2262(d); the latter, accordingly, are omitted from subsection (d).

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. 8343(a)(1) for consistency within the subchapter and to reflect that it is the individual, rather than the position, that is subject to the subchapter.

AMENDMENTS

1982—Subsec. (a). Pub. L. 97-253 inserted "through December 31, 1984, and thereafter at the rate computed under section 8334(e) of this title."

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

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-253 effective with respect to deposits for service performed, on or after Oct. 1, 1982, and with respect to refunds for which application is received by Office of Personnel Management on or after Oct. 1, 1982, see section 303(d)(1) of Pub. L. 97-253, as amended by Pub. L. 97-346, §3(j)(1), Oct. 15, 1982, 96 Stat. 1649, set out as a note under section 8334 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.

§ 8343a. Alternative forms of annuities

(a) The Office of Personnel Management shall prescribe regulations under which any employee or Member who has a life-threatening affliction or other critical medical condition may, at the time of retiring under this subchapter (other

than under section 8337 of this title), elect annuity benefits under this section instead of any other benefits under this subchapter (including any benefits under section 8341 of this title) based on the service of the employee or Member.

(b) Subject to subsection (c), the Office shall by regulation provide for such alternative forms of annuities as the Office considers appropriate, except that among the alternatives offered shall be—

- (1) an alternative which provides for—
 - (A) payment of the lump-sum credit to the employee or Member; and
 - (B) payment of an annuity to the employee or Member for life; and

(2) in the case of an employee or Member who is married at the time of retirement, an alternative which provides for—

- (A) payment of the lump-sum credit to the employee or Member; and
- (B) payment of an annuity to the employee or Member for life, with a survivor annuity payable for the life of a surviving spouse.

(c) Each alternative provided for under subsection (b) shall, to the extent practicable, be designed such that the present value of the benefits provided under such alternative (including any lump-sum credit) is actuarially equivalent to the present value of the annuity which would otherwise be provided the employee or Member under this subchapter, as computed under subsections (a)–(i), (n), (q), (r), and (s) of section 8339.

(d) An employee or Member who, at the time of retiring under this subchapter—

- (1) is married, shall be ineligible to make an election under this section unless a waiver is made under section 8339(j)(1) of this title; or

(2) has a former spouse, shall be ineligible to make an election under this section if the former spouse is entitled to benefits under section 8341(h) or 8345(j) of this title (based on the service of the employee or Member) under the terms of a decree of divorce or annulment, or a court order or court-approved property settlement incident to any such decree, with respect to which the Office has been duly notified.

(e) An employee or Member who is married at the time of retiring under this subchapter and who makes an election under this section may, during the 18-month period beginning on the date of retirement, make the election provided for under section 8339(o) of this title, subject to the deposit requirement thereunder.

(Added Pub. L. 99-335, title II, §204(a), June 6, 1986, 100 Stat. 591; amended Pub. L. 101-428, §2(d)(5), Oct. 15, 1990, 104 Stat. 929; Pub. L. 101-508, title VII, §7001(a)(1), Nov. 5, 1990, 104 Stat. 1388-327; Pub. L. 103-66, title XI, §11002(a), Aug. 10, 1993, 107 Stat. 409; Pub. L. 105-61, title V, §516(a)(5), Oct. 10, 1997, 111 Stat. 1306; Pub. L. 106-553, §1(a)(2) [title III, §308(h)(5)], Dec. 21, 2000, 114 Stat. 2762, 2762A-89.)

AMENDMENTS

2000—Subsec. (c). Pub. L. 106-553 substituted "(a)–(i), (n), (q), (r), and (s)" for "(a)–(i), (n), (q), and (r)".

1997—Subsec. (c). Pub. L. 105-61, which directed the substitution of "(q), and (r) of section 8339" for "and (q)

of section 8339 of this title" in section 8334a(c), was executed by making the substitution in subsec. (c) of this section to reflect the probable intent of Congress, because there is no section 8334a in this title.

1993—Subsec. (a). Pub. L. 103-66, §11002(a)(1), substituted "any employee or Member who has a life-threatening affliction or other critical medical condition" for "an employee or Member".

Subsec. (f). Pub. L. 103-66, §11002(a)(2), struck out subsec. (f) which prohibited election of alternative form of annuity where commencement date would be after Dec. 1, 1990, with certain exceptions.

1990—Subsec. (c). Pub. L. 101-428 substituted "(a)-(i), (n), and (q)" for "(a)-(i) and (n)".

Subsec. (f). Pub. L. 101-508 added subsec. (f).

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 1993 AMENDMENT

Section 11002(d) of Pub. L. 103-66 provided that: "The amendments made by this section [amending this section and section 8420a of this title, section 4047 of Title 22, Foreign Relations and Intercourse, and section 2143 of Title 50, War and National Defense] shall become effective on October 1, 1994, and shall apply with respect to any annuity commencing on or after that date."

EFFECTIVE DATE

Section effective June 6, 1986, see section 702(b)(3) of Pub. L. 99-335, set out as a note under section 8401 of this title.

APPLICABILITY OF SECTIONS 8343a(f) AND 8420a(f) TO INDIVIDUALS CALLED TO OR PERFORMING DUTY IN CONNECTION WITH OPERATION DESERT SHIELD

Section 7001(a)(4) of Pub. L. 101-508 provided that:

"(A) In applying the provisions of section 8343a(f) or 8420a(f) of title 5, United States Code (as amended by paragraph (1)) to any individual described in subparagraph (B), the reference in such provisions to 'December 1, 1990' shall be deemed to read 'December 1, 1991'.

"(B) This paragraph applies with respect to any individual who—

"(i)(I) is a member of the Armed Forces of the United States who, before December 1, 1990, was called or ordered to active duty (other than for training) pursuant to section 672 [now 12301], 673 [now 12302], 673b [now 12304], 674 [now 12306], 675 [now 12307], or 688 of title 10, United States Code, in connection with Operation Desert Shield; or

"(II) is an employee of the Department of Defense who is certified by the Secretary of Defense to have performed, after November 30, 1990, duties essential for the support of Operation Desert Shield; and

"(ii) would have been eligible to make an election under section 8343a or 8420a of title 5, United States Code (as amended by paragraph (1)) as of November 30, 1990.

"(C) The Office of Personnel Management may prescribe such regulations as may be necessary to carry out this paragraph."

PARTIAL DEFERRED PAYMENT OF LUMP-SUM CREDIT FOR CERTAIN INDIVIDUALS ELECTING ALTERNATIVE FORMS OF ANNUITIES

Pub. L. 101-239, title IV, §4005, Dec. 19, 1989, 103 Stat. 2135, as amended by Pub. L. 101-508, title VII, §7001(a)(2)(A)-(C)(i), Nov. 5, 1990, 104 Stat. 1388-328, provided that:

"(a) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in subsection (c), any lump-sum credit payable to an employee or Member pursuant to the election of an alternative form of annuity by such employee or Member under section 8343a or section 8420a of title 5, United States Code, shall be paid in accordance with the schedule under subsection (b) (instead of the schedule which would otherwise apply), if the commencement date of the annuity payable to such employee or Member occurs after December 2, 1989, and before December 2, 1990.

"(b) SCHEDULE OF PAYMENTS.—The schedule of payment of any lump-sum credit subject to this section is as follows:

"(1) 50 percent of the lump-sum credit shall be payable on the date on which, but for the enactment of this section, the full amount of the lump-sum credit would otherwise be payable.

"(2) The remainder of the lump-sum credit shall be payable on the date which occurs 12 months after the date on which the payment described in paragraph (1) is paid.

An amount payable in accordance with paragraph (2) shall be payable with interest, computed using the rate under section 8334(e)(3) of title 5, United States Code.

"(c) EXCEPTIONS.—The Office of Personnel Management shall prescribe regulations to provide that, unless the individual involved indicates otherwise by written notice to the Office (submitted at such time and in such manner as the regulations may require), this section shall not apply—

"(1) in the case of any individual who is separated from Government service involuntarily, other than for cause on charges of misconduct or delinquency; and

"(2) in the case of any individual as to whom the application of this section would be against equity and good conscience, due to a life-threatening affliction or other critical medical condition affecting such individual.

"(d) ANNUITY BENEFITS NOT AFFECTED.—Nothing in this section shall affect the commencement date, the amount, or any other aspect of any annuity benefits payable under section 8343a or section 8420a of title 5, United States Code.

"(e) DEFINITIONS.—For purposes of this section, the terms 'lump-sum credit', 'employee', and 'Member' each has the meaning given such term by section 8331 or section 8401 of title 5, United States Code, as appropriate.

"(f) CONTINUED APPLICABILITY.—The preceding provisions of this section (disregarding the provision in subsection (a) limiting this section's applicability to annuities commencing before the date specified in such provision) shall also apply in the case of any employee or Member whose election of an alternative form of annuity would not have been allowable under section 8343a(f) or 8420a(f) of title 5, United States Code (as the case may be), but for—

"(1) paragraph (2)(A) thereof; or

"(2) section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101-508, set out as a note above]."

[Section 7001(a)(2)(C)(ii) of Pub. L. 101-508 provided that: "The amendments made by clause (i) [amending section 4005 of Pub. L. 101-239 and section 6001 of Pub. L. 100-203, set out as notes above and below] shall not apply in any case in which the first half of the lump-sum payment involved was paid before the beginning of

the 11-month period which ends on the date of the enactment of this Act [Nov. 5, 1990].”]

Similar provisions were contained in the following acts:

Pub. L. 101-227, § 2, Dec. 12, 1989, 103 Stat. 1943, which was repealed by Pub. L. 101-508, title VII, § 7001(a)(2)(D), Nov. 5, 1990, 104 Stat. 1388-328.

Pub. L. 100-203, title VI, § 6001, Dec. 22, 1987, 101 Stat. 1330-275, as amended by Pub. L. 101-103, § 6, Sept. 30, 1989, 103 Stat. 672; Pub. L. 101-508, title VII, § 7001(a)(2)(C)(i), Nov. 5, 1990, 104 Stat. 1388-328.

§ 8344. Annuities and pay on reemployment

(a) If an annuitant receiving annuity from the Fund, except—

(1) a disability annuitant whose annuity is terminated because of his recovery or restoration of earning capacity;

(2) an annuitant whose annuity, based on an involuntary separation (other than an automatic separation or an involuntary separation for cause on charges of misconduct or delinquency), is terminated under subsection (b) of this section;

(3) an annuitant whose annuity is terminated under subsection (c) of this section; or

(4) a Member receiving annuity from the Fund;

becomes employed in an appointive or elective position, his service on and after the date he is so employed is covered by this subchapter. Deductions for the Fund may not be withheld from his pay unless the individual elects to have such deductions withheld under subparagraph (A). An amount equal to the annuity allocable to the period of actual employment shall be deducted from his pay, except for lump-sum leave payment purposes under section 5551 of this title. The amounts so deducted shall be deposited in the Treasury of the United States to the credit of the Fund. If the annuitant serves on a full-time basis, except as President, for at least 1 year, or on a part-time basis for periods equivalent to at least 1 year of full-time service, in employment not excluding him from coverage under section 8331(1)(i) or (ii) of this title—

(A) deductions for the Fund may be withheld from his pay (if the employee so elects), and his annuity on termination of employment is increased by an annuity computed under section 8339(a), (b), (d), (e), (h), (i), (n), (q), (r), and (s) as may apply based on the period of employment and the basic pay, before deduction, averaged during that employment; and

(B) his lump-sum credit may not be reduced by annuity paid during that employment.

If the annuitant is receiving a reduced annuity as provided in section 8339(j) or section 8339(k)(2) of this title, the increase in annuity payable under subparagraph (A) of this subsection is reduced by 10 percent and the survivor annuity payable under section 8341(b) of this title is increased by 55 percent of the increase in annuity payable under such subparagraph (A), unless, at the time of claiming the increase payable under such subparagraph (A), the annuitant notifies the Office of Personnel Management in writing that he does not desire the survivor annuity to be increased. If the annuitant dies while still reemployed, the survivor annuity payable is increased as though the reemployment had other-

wise terminated. If the described employment of the annuitant continues for at least 5 years, or the equivalent of 5 years in the case of part-time employment, he may elect, instead of the benefit provided by subparagraph (A) of this subsection, to deposit in the Fund (to the extent deposits or deductions have not otherwise been made) an amount computed under section 8334(c) of this title covering that employment and have his rights redetermined under this subchapter. If the annuitant dies while still reemployed and the described employment had continued for at least 5 years, or the equivalent of 5 years in the case of part-time employment, the person entitled to survivor annuity under section 8341(b) of this title may elect to deposit in the Fund and have his rights redetermined under this subchapter.

(b) If an annuitant, other than a Member receiving an annuity from the Fund, whose annuity is based on an involuntary separation (other than an automatic separation or an involuntary separation for cause or charges on misconduct or delinquency) is reemployed in a position in which he is subject to this subchapter, payment of the annuity terminates on reemployment.

(c) If an annuitant, other than a Member receiving an annuity from the Fund, is appointed by the President to a position in which he is subject to this subchapter, or is elected as a Member, payment of the annuity terminates on reemployment. Upon separation from such position, an individual whose annuity is so terminated is entitled to have his rights redetermined under this subchapter, except that the amount of the annuity resulting from such redetermination shall be at least equal to the amount of the terminated annuity plus any increases under section 8340 of this title occurring after the termination and before the commencement of the redetermined annuity.

(d) If a Member receiving annuity from the Fund becomes employed in an appointive or elective position, annuity payments are discontinued during the employment and resumed on termination of the employment in the amount equal to the sum of the amount of the annuity the member was receiving immediately before the commencement of the employment and the amount of the increases which would have been made in the amount of the annuity under section 8340 of this title during the period of the employment if the annuity had been payable during that period, except that—

(1) the retired Member or Member separated with title to immediate or deferred annuity, who serves at any time after separation as a Member in an appointive position in which he is subject to this subchapter, is entitled, if he so elects, to have his Member annuity computed or recomputed as if the service had been performed before his separation as a Member and the annuity as so computed or recomputed is effective—

(A) the day Member annuity commences;

or

(B) the day after the date of separation from the appointive position;

whichever is later;

(2) if the retired Member becomes employed after December 31, 1958, in an appointive position on an intermittent-service basis—