

title 5, United States Code in selecting annuitants to employ in an appointive or elective position.”

ANNUAL REPORT TO CONGRESS

Pub. L. 102-190, div. A, title VI, §655(d), Dec. 5, 1991, 105 Stat. 1393, provided that:

“(1) For the purpose of this subsection, the term ‘agency in the legislative branch’ has the meaning given such term by section 5531(4) of title 5, United States Code, as amended by subsection (a).

“(2) Each agency in the legislative branch shall submit to the Speaker of the House of Representatives and the Committee on Rules and Administration of the Senate, for each calendar year, a written report on how any authority made available as a result of the enactment of this section [amending this section and sections 5531, 5532, and 8468 of this title] was used by such agency during the period covered by such report.

“(3) A report under this subsection—

“(A) shall include the number of instances in which each type of authority was exercised, the circumstances justifying the exercise of authority, and, unless previously submitted, a description of the policies and procedures governing each type of authority exercised; and

“(B) shall be submitted not later than 30 days after the end of the calendar year to which it relates.”

COMMISSION ON THE OPERATION OF THE SENATE

Pub. L. 94-252, Mar. 30, 1976, 90 Stat. 294, provided that: “On and after the date of the enactment of the joint resolution [Mar. 30, 1976], the provisions of section 8344 of title 5, United States Code, shall not apply to any individual serving as a member of the Commission on the Operation of the Senate.”

§ 8345. Payment of benefits; commencement, termination, and waiver of annuity

(a) Each annuity is stated as an annual amount, one-twelfth of which, rounded to the next lowest dollar, constitutes the monthly rate payable on the first business day of the month after the month or other period for which it has accrued.

(b)(1) Except as otherwise provided—

(A) an annuity of an employee or Member commences on the first day of the month after—

(i) separation from the service; or

(ii) pay ceases and the service and age requirements for title to annuity are met; and

(B) any other annuity payable from the Fund commences on the first day of the month after the occurrence of the event on which payment thereof is based.

(2) The annuity of—

(A) an employee involuntarily separated from service, except by removal for cause on charges of misconduct or delinquency; and

(B) an employee or Member retiring under section 8337 of this title due to a disability;

shall commence on the day after separation from the service or the day after pay ceases and the service and age or disability requirements for title to annuity are met.

(c) The annuity of a retired employee or Member terminates on the day death or other terminating event provided by this subchapter occurs. The annuity of a survivor terminates on the last day of the month before death or other terminating event occurs.

(d) An individual entitled to annuity from the Fund may decline to accept all or any part of

the annuity by a waiver signed and filed with the Office of Personnel Management. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

(e) Payment due a minor, or an individual mentally incompetent or under other legal disability, may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of the claimant or is otherwise legally vested with the care of the claimant or his estate. If a guardian or other fiduciary of the individual under legal disability has not been appointed under the law of the State of residence of the claimant, payment may be made to any person who, in the judgment of the Office, is responsible for the care of the claimant, and the payment bars recovery by any other person.

[f] Repealed. Pub. L. 99-251, title III, §305(a), Feb. 27, 1986, 100 Stat. 26.]

(g) The Office shall prescribe regulations to provide that the amount of any monthly annuity payable under this section accruing for any month and which is computed with regard to service that includes any service referred to in section 8332(b)(6) performed by an individual prior to January 1, 1969, shall be reduced by the portion of any benefits under any State retirement system to which such individual is entitled (or on proper application would be entitled) for such month which is attributable to such service performed by such individual before such date.

(h) An individual entitled to an annuity from the Fund may make allotments or assignments of amounts from his annuity for such purposes as the Office of Personnel Management in its sole discretion considers appropriate.

(i)(1) No payment shall be made from the Fund unless an application for benefits based on the service of an employee or Member is received in the Office of Personnel Management before the one hundred and fifteenth anniversary of his birth.

(2) Notwithstanding paragraph (1) of this subsection, after the death of an employee, Member, or annuitant, no benefit based on his service shall be paid from the Fund unless an application therefor is received in the Office of Personnel Management within 30 years after the death or other event which gives rise to title to the benefit.

(j)(1) Payments under this subchapter which would otherwise be made to an employee, Member, or annuitant based on service of that individual shall be paid (in whole or in part) by the Office to another person if and to the extent expressly provided for in the terms of—

(A) any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation; or

(B) any court order or other similar process in the nature of garnishment for the enforcement of a judgment rendered against such employee, Member, or annuitant, for physically, sexually, or emotionally abusing a child.

In the event that the Office is served with more than 1 decree, order, or other legal process with

respect to the same moneys due or payable to any individual, such moneys shall be available to satisfy such processes on a first-come, first-served basis, with any such process being satisfied out of such moneys as remain after the satisfaction of all such processes which have been previously served.

(2) Paragraph (1) shall only apply to payments made by the Office under this subchapter after the date of receipt in the Office of written notice of such decree, order, other legal process, or agreement, and such additional information and documentation as the Office may prescribe.

(3) For the purpose of this subsection—

(A) the term “court” means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court;

(B) the term “judgment rendered for physically, sexually, or emotionally abusing a child” means any legal claim perfected through a final enforceable judgment, which claim is based in whole or in part upon the physical, sexual, or emotional abuse of a child, whether or not that abuse is accompanied by other actionable wrongdoing, such as sexual exploitation or gross negligence; and

(C) the term “child” means an individual under 18 years of age.

(k)(1) The Office shall, in accordance with this subsection, enter into an agreement with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Office shall withhold State income tax in the case of the monthly annuity of any annuitant who voluntarily requests, in writing, such withholding. The amounts withheld during any calendar quarter shall be held in the Fund and disbursed to the States during the month following that calendar quarter.

(2) An annuitant may have in effect at any time only one request for withholding under this subsection, and an annuitant may not have more than two such requests in effect during any one calendar year.

(3) Subject to paragraph (2) of this subsection, an annuitant may change the State designated by that annuitant for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with such change. An annuitant also may revoke any request of that annuitant for withholding. Any change in the State designated or revocation is effective on the first day of the month after the month in which the request or the revocation is processed by the Office, but in no event later than on the first day of the second month beginning after the day on which such request or revocation is received by the Office.

(4) This subsection does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of this subsection. The Office may not accept pay from a State for services performed in withholding State income taxes from annuities. Any amount erroneously withheld from an an-

nuitant and paid to a State by the Office shall be repaid by the State in accordance with regulations issued by the Office.

(5) For the purpose of this subsection, “State” means a State, the District of Columbia, or any territory or possession of the United States.

(l) Transfers of contributions and deposits authorized by section 408(a)(3) of the Foreign Service Act of 1980 shall be deemed to be a complete and final payment of benefits under this chapter.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 582; Pub. L. 93-273, §1, Apr. 26, 1974, 88 Stat. 93; Pub. L. 94-126, §1(c), Nov. 12, 1975, 89 Stat. 679; Pub. L. 94-166, §1, Dec. 23, 1975, 89 Stat. 1002; Pub. L. 94-183, §1, Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95-366, §1(a), Sept. 15, 1978, 92 Stat. 600; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 97-35, title XVII, §1705(a), Aug. 13, 1981, 95 Stat. 758; Pub. L. 97-253, title III, §§304(b), 305(a), Sept. 8, 1982, 96 Stat. 795; Pub. L. 98-615, §2(6), Nov. 8, 1984, 98 Stat. 3202; Pub. L. 99-251, title III, §305(a), Feb. 27, 1986, 100 Stat. 26; Pub. L. 101-246, title I, §141(b), Feb. 16, 1990, 104 Stat. 35; Pub. L. 103-358, §2(a), Oct. 14, 1994, 108 Stat. 3420.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2264.	July 31, 1956, ch. 804, §401 “Sec. 14”, 70 Stat. 757. Sept. 6, 1960, Pub. L. 86-713, §1(b), 74 Stat. 814.

In subsection (b), the second sentence of former section 2264(b) is omitted as included in the second sentence of the revised subsection. The words “after September 5, 1960” are substituted for “on or after September 6, 1960”.

In subsection (c), the first sentence of former section 2264(c) is omitted as covered by the remainder of the subsection. The words “on or after September 6, 1960” are omitted as obsolete.

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

REFERENCES IN TEXT

Section 408(a)(3) of the Foreign Service Act of 1980, referred to in subsec. (l), is classified to section 3968(a)(3) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1994—Subsec. (j)(1). Pub. L. 103-358, §2(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Payments under this subchapter which would otherwise be made to an employee, Member, or annuitant based upon his service shall be paid (in whole or in part) by the Office to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.”

Subsec. (j)(2). Pub. L. 103-358, §2(a)(2), inserted “other legal process,” after “order.”

Subsec. (j)(3). Pub. L. 103-358, §2(a)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “As used in this subsection, ‘court’ means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.”

1990—Subsec. (l). Pub. L. 101-246 added subsec. (l).

1986—Subsec. (f). Pub. L. 99-251 struck out subsec. (f) which provided minimum monthly rates of annuity payable under subsec. (a) with certain exceptions.

1984—Subsec. (f)(4). Pub. L. 98-615, §2(6)(A), added par. (4).

Subsec. (j)(3). Pub. L. 98-615, §2(6)(B), inserted reference to the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and any Indian court.

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

Subsec. (b). Pub. L. 97-253, §305(a), substituted provisions that an annuity of an employee or Member commences on the first day of the month after separation from service or pay ceases and the service and age requirements for title to annuity are met, that any other annuity payable from the Fund commences on the first day of the month after the occurrence of the event on which the payment thereof is based, and that the annuity of an employee involuntarily separated from service or of an employee or Member retiring due to a disability shall commence on the day after separation from the service or the day after pay ceases and the service and age or disability requirements for title to annuity are met for provisions that the annuity of an employee or Member would commence on the day after he was separated from the service, or on the day after his pay ceased and he met the service and the age or disability requirements for title to annuity and that an annuity payable from the Fund allowed after September 5, 1960, would commence on the day after the occurrence of the event on which payment thereof was based.

1981—Subsec. (k). Pub. L. 97-35 added subsec. (k).

1978—Subsecs. (d), (e). Pub. L. 95-454, §906(a)(2), (3), substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission”.

Subsec. (g). Pub. L. 95-454, §906(a)(3), substituted “Office” for “Commission” in the subsec. (g) added by Pub. L. 94-126.

Pub. L. 95-366 redesignated as subsec. (h) the subsec. (g) added by Pub. L. 94-166.

Subsec. (h). Pub. L. 95-454, §906(a)(2), substituted “Office of Personnel Management” for “Civil Service Commission”.

Pub. L. 95-366 redesignated former subsec. (g), added by Pub. L. 94-166, as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 95-454, §906(a)(2), substituted “Office of Personnel Management” for “Civil Service Commission” wherever appearing.

Pub. L. 95-366 redesignated former subsec. (h) as (i).

Subsec. (j). Pub. L. 95-454, §906(a)(3), substituted “Office” for “Commission” wherever appearing.

Pub. L. 95-366 added subsec. (j).

1975—Subsec. (g). Pub. L. 94-166 added subsec. (g) authorizing allotment or assignment of amounts from annuities.

Pub. L. 94-126 added subsec. (g) relating to the crediting of National Guard technician service in connection with civil service retirement.

Subsec. (h). Pub. L. 94-183 added subsec. (h).

1974—Subsec. (f). Pub. L. 93-273 added subsec. (f).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 3 of Pub. L. 103-358 provided that: “The amendments made by this Act [amending this section and sections 8437 and 8467 of this title] shall take effect on the date of enactment of this Act [Oct. 14, 1994], and shall apply with respect to any decree, order, or other legal process, or notice of agreement received by the Office of Personnel Management or the Executive Director of the Federal Retirement Thrift Investment Board on or after such date of enactment.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions and specific applicability

provisions, see section 4(a)(1), (5)(D) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 304(b) of Pub. L. 97-253 applicable with respect to any annuity commencing on or after Oct. 1, 1982, and with respect to any adjustment or redetermination of any annuity made on or after such date, see section 304(c) of Pub. L. 97-253, set out as a note under section 8340 of this title.

Section 305(b) of Pub. L. 97-253, as amended by Pub. L. 97-377, title I, §124, Dec. 21, 1982, 96 Stat. 1913, provided that: “The amendment made by subsection (a) [amending this section] shall apply to annuities which commence on or after October 1, 1982, except for those individuals who serve three days or less in the month of retirement.”

EFFECTIVE DATE OF 1981 AMENDMENT

Section 1705(b) of Pub. L. 97-35 provided that: “The amendment made by subsection (a) [amending this section] shall take effect October 1, 1981.”

EFFECTIVE DATE OF 1978 AMENDMENTS

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.

Section 2 of Pub. L. 95-366 provided that: “The amendments made by the first section of this Act [amending this section and section 8346 of this title] shall only apply to payments made from the Civil Service Retirement and Disability Fund after the date of the enactment of this Act [Sept. 15, 1978].”

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-126 effective as of Jan. 1, 1969, applicable to a person who, on Nov. 12, 1975, is receiving or is entitled to receive benefits under any Federal retirement system and requests in writing the application of the amendment to him by the office administering his retirement system, and additional benefits to commence Dec. 1, 1975, see section 3 of Pub. L. 94-126, set out as a note under section 8334 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 3 of Pub. L. 93-273 provided that: “This Act [amending this section and enacting provisions set out as notes under this section and sections 8339 and 8341 of this title] shall become effective on the date of enactment [Apr. 26, 1974]. Annuity increases under this Act shall apply to annuities which commence before, on, or after the date of enactment of this Act, but no increase in annuity shall be paid for any period prior to the first day of the first month which begins on or after the ninetieth day after the date of enactment of this Act, or the date on which the annuity commences, whichever is later.”

MINIMUM ANNUITY UNDER CIVIL SERVICE RETIREMENT AND DISABILITY SYSTEM

Section 305(b)–(d) of Pub. L. 99-251 provided that:

“(b) SAVINGS PROVISION.—An annuity payable from the Civil Service Retirement and Disability Fund as of the day before the date of enactment of this Act [Feb. 27, 1986] shall not be reduced—

“(1) by reason of the repeal of section 8345(f) of title 5, United States Code; or

“(2) if or to the extent that the reduction is to be made for the purpose of eliminating an overpayment resulting from the manner in which such section 8345(f) has been administered by the Office of Personnel Management.

“(c) RATIFICATION OF ERRONEOUS PAYMENTS.—Any individual to whom an overpayment of an annuity has been made from the Civil Service Retirement and Disability Fund before the date of enactment of this Act [Feb. 27, 1986] shall be deemed to have been entitled to

that overpayment if and to the extent that such overpayment resulted from the manner in which the Office of Personnel Management has administered section 8345(f) of title 5, United States Code.

“(d) ADJUSTMENTS OF CERTAIN REDUCTIONS.—(1) Effective for any month after the date of enactment of this Act [Feb. 27, 1986], the amount of any annuity which—

“(A) is payable from the Civil Service Retirement and Disability Fund; and

“(B) was reduced after June 30, 1985, and before the date of enactment of this Act, to eliminate any overpayment resulting from the manner in which the Office of Personnel Management administered section 8345(f) of title 5, United States Code, shall not be less than the amount which would have been payable as of such date of enactment if the reduction described in clause (B) had not been made.

“(2)(A) The Office shall make a lump-sum payment to each individual receiving an annuity to which paragraph (1) applies.

“(B) The lump-sum payment made to any individual under this paragraph shall be equal to the excess of—

“(i) the total amount of the annuity payments which would have been made to the individual for the period beginning with the first month in which the reduction described in paragraph (1)(B) was made and ending on the last day of the month in which this Act is enacted if the reduction had not been made, over

“(ii) the total amount of the annuity payments which have been paid to such individual for that period.”

AVAILABILITY OF THE CIVIL SERVICE RETIREMENT AND DISABILITY FUND FOR EXPENSES INCURRED BY THE OFFICE OF PERSONNEL MANAGEMENT

Section 1705(c) of Pub. L. 97-35 provided that: “The Civil Service Retirement and Disability Fund is available for expenses incurred by the Office of Personnel Management in the initial implementation of the amendments made by this section [amending this section].”

MONTHLY RATE OF MINIMUM ANNUITY

Section 2(c) of Pub. L. 93-273 provided that: “The monthly rate of an annuity resulting from an increase under this section [enacting provisions set out as notes under sections 8339 and 8341 of this title] shall be considered as the monthly rate of annuity payable under section 8345(a) of title 5, United States Code [subsec. (a) of this section], for purposes of computing the minimum annuity under section 8345(f) of title 5 [subsec. (f) of this section], as added by the first section of this Act.”

§ 8346. Exemption from legal process; recovery of payments

(a) The money mentioned by this subchapter is not assignable, either in law or equity, except under the provisions of subsections (h) and (j) of section 8345 of this title, or subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal laws.

(b) Recovery of payments under this subchapter may not be made from an individual when, in the judgment of the Office of Personnel Management, the individual is without fault and recovery would be against equity and good conscience. Withholding or recovery of money mentioned by this subchapter on account of a certification or payment made by a former employee of the United States in the discharge of his official duties may be made only if the head of the agency on behalf of which the certification or payment was made certifies to the Office that the certification or payment involved fraud on the part of the former employee.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 583; Pub. L. 94-166, § 2, Dec. 23, 1975, 89 Stat. 1002; Pub. L. 95-366, § 1(b), Sept. 15, 1978, 92 Stat. 600; Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2265.	July 31, 1956, ch. 804, § 401 “Sec. 15”, 70 Stat. 758.

In subsection (b), the words “Notwithstanding any other provision of law” are omitted as unnecessary. The second word of the second sentence “or” is substituted for “of” to correct a printing error.

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

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-366 substituted references to subsections (h) and (j) of section 8345 for reference to subsec. (g) of section 8345.

Subsec. (b). Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively.

1975—Subsec. (a). Pub. L. 94-166 inserted “except under the provisions of section 8345(g) of this title,” after “equity”, and “, except as otherwise may be provided by Federal laws” after “process”.

EFFECTIVE DATE OF 1978 AMENDMENTS

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.

Amendment by Pub. L. 95-366 applicable to payments made from Civil Service Retirement and Disability Fund after Sept. 15, 1978, see section 2 of Pub. L. 95-366, set out as a note under section 8345 of this title.

§ 8347. Administration; regulations

(a) The Office of Personnel Management shall administer this subchapter. Except as otherwise specifically provided herein, the Office shall perform, or cause to be performed, such acts and prescribe such regulations as are necessary and proper to carry out this subchapter.

(b) Applications under this subchapter shall be in such form as the Office prescribes. Agencies shall support the applications by such certificates as the Office considers necessary to the determination of the rights of applicants. The Office shall adjudicate all claims under this subchapter.

(c) The Office shall determine questions of disability and dependency arising under this subchapter. Except to the extent provided under subsection (d) of this section, the decisions of the Office concerning these matters are final and conclusive and are not subject to review. The Office may direct at any time such medical or other examinations as it considers necessary to determine the facts concerning disability or dependency of an individual receiving or applying for annuity under this subchapter. The Office may suspend or deny annuity for failure to submit to examination.

(d)(1) Subject to paragraph (2) of this subsection, an administrative action or order affecting the rights or interests of an individual or of the United States under this subchapter may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.