

ees of the Government Accountability Office effective Oct. 13, 2000, see section 1 of Pub. L. 106-303, set out as a note under section 8336 of this title.

APPLICATION OF SUBSECTION (b)(1)(B)

Pub. L. 105-174, title III, §7001(b), 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. (b)(1)(B) of this section was to be applied as if it read as specified in Pub. L. 105-174, §7001(b), was repealed by Pub. L. 107-296, title XIII, §1313(b)(4), Nov. 25, 2002, 116 Stat. 2296.

§ 8415. Computation of basic annuity

(a) Except as otherwise provided in this section, the annuity of an employee retiring under this subchapter is 1 percent of that individual's average pay multiplied by such individual's total service.

(b) The annuity of a Member, or former Member with title to a Member annuity, retiring under this subchapter is computed under subsection (a), except that if the individual has had at least 5 years of service as a Member or Congressional employee, or any combination thereof, so much of the annuity as is computed with respect to either such type of service (or a combination thereof), not exceeding a total of 20 years, shall be computed by multiplying 1 $\frac{1}{10}$ percent of the individual's average pay by the years of such service.

(c) The annuity of a Congressional employee, or former Congressional employee, retiring under this subchapter is computed under subsection (a), except that if the individual has had at least 5 years of service as a Congressional employee or Member, or any combination thereof, so much of the annuity as is computed with respect to either such type of service (or a combination thereof), not exceeding a total of 20 years, shall be computed by multiplying 1 $\frac{1}{10}$ percent of the individual's average pay by the years of such service.

(d) Notwithstanding any other provision of law, the annuity of an individual described in subsection (b) or (c) who is a revised annuity employee or a further revised annuity employee shall be computed in the same manner as in the case of an individual described in subsection (a).

(e) The annuity of an employee retiring under subsection (d) or (e) of section 8412 or under subsection (a), (b), or (c) of section 8425 is—

(1) 1 $\frac{1}{10}$ percent of that individual's average pay multiplied by so much of such individual's total service as does not exceed 20 years; plus

(2) 1 percent of that individual's average pay multiplied by so much of such individual's total service as exceeds 20 years.

(f) The annuity of an air traffic controller or former air traffic controller retiring under section 8412(a) is computed under subsection (a), except that if the individual has at least 5 years of service in any combination as—

(1) an air traffic controller as defined by section 2109(1)(A)(i);

(2) a first level supervisor of an air traffic controller as defined by section 2109(1)(A)(i); or

(3) a second level supervisor of an air traffic controller as defined by section 2109(1)(A)(i);

so much of the annuity as is computed with respect to such type of service shall be computed

by multiplying 1 $\frac{7}{10}$ percent of the individual's average pay by the years of such service.

(g)(1) In computing an annuity under this subchapter for an employee whose service includes service performed on a part-time basis—

(A) the average pay of the employee, to the extent that it includes pay for service performed in any position on a part-time basis, shall be determined by using the annual rate of basic pay that would be payable for full-time service in the position; and

(B) the benefit so computed shall then be multiplied by a fraction equal to the ratio which the employee's actual service, as determined by prorating the employee's total service to reflect the service that was performed on a part-time basis, bears to the total service that would be creditable for the employee if all of the service had been performed on a full-time basis.

(2) For the purpose of this subsection, employment on a part-time basis shall not be considered to include employment on a temporary or intermittent basis.

(h)(1) The annuity of an employee or Member retiring under section 8412(g) or 8413(b) is computed in accordance with applicable provisions of this section, except that the annuity shall be reduced by five-twelfths of 1 percent for each full month by which the commencement date of the annuity precedes the sixty-second anniversary of the birth of the employee or Member.

(2)(A) Paragraph (1) does not apply in the case of an employee or Member retiring under section 8412(g) or 8413(b) if the employee or Member would satisfy the age and service requirements for title to an annuity under section 8412(a), (b), (d)(2), (e)(2), or (f)(2), determined as if the employee or Member had, as of the date of separation, attained the age specified in subparagraph (B).

(B) A determination under subparagraph (A) shall be based on how old the employee or Member will be as of the date on which the annuity under section 8412(g) or 8413(b) is to commence.

(i)(1) In applying subsection (a) with respect to an employee under paragraph (2), the percentage applied under such subsection shall be 1.1 percent, rather than 1 percent.

(2) This subsection applies in the case of an employee who—

(A) retires entitled to an annuity under section 8412; and

(B) at the time of the separation on which entitlement to the annuity is based, is at least 62 years of age and has completed at least 20 years of service;

but does not apply in the case of a Congressional employee, military technician (dual status), law enforcement officer, member of the Supreme Court Police, firefighter, nuclear materials courier, air traffic controller, or customs and border protection officer¹

(j) The annuity of a Member who has served in a position in the executive branch for which the rate of basic pay was reduced for the duration of the service of the Member in that position to remove the impediment to the appointment of the

¹ So in original. Probably should be followed by a period.

Member imposed by article I, section 6, clause 2 of the Constitution, shall, subject to a deposit in the Fund as provided under section 8422(g), be computed as though the rate of basic pay which would otherwise have been in effect during that period of service had been in effect.

(k)(1) For purposes of this subsection, the term “physicians comparability allowance” refers to an amount described in section 8331(3)(H).

(2) Except as otherwise provided in this subsection, no part of a physicians comparability allowance shall be treated as basic pay for purposes of any computation under this section unless, before the date of the separation on which entitlement to annuity is based, the separating individual has completed at least 15 years of service as a Government physician (whether performed before, on, or after the date of the enactment of this subsection).

(3) If the condition under paragraph (2) is met, then, any amounts received by the individual in the form of a physicians comparability allowance shall (for the purposes referred to in paragraph (2)) be treated as basic pay, but only to the extent that such amounts are attributable to service performed on or after the date of the enactment of this subsection, and only to the extent of the percentage allowable, which shall be determined as follows:

If the total amount of service performed, on or after the date of the enactment of this subsection, as a Government physician is:	Then, the percentage allowable is:
Less than 2 years	0
At least 2 but less than 4 years	25
At least 4 but less than 6 years	50
At least 6 but less than 8 years	75
At least 8 years	100.

(4) Notwithstanding any other provision of this subsection, 100 percent of all amounts received as a physicians comparability allowance shall, to the extent attributable to service performed on or after the date of the enactment of this subsection, be treated as basic pay (without regard to any of the preceding provisions of this subsection) for purposes of computing—

- (A) an annuity under section 8452; and
- (B) a survivor annuity under subchapter IV, if based on the service of an individual who dies before separating from service.

(l) The annuity of an employee retiring under this chapter with service credited under section 8411(b)(6) shall be reduced by the amount necessary to ensure that the present value of the annuity payable to the employee under this subchapter is actuarially equivalent to the present value of the annuity that would be payable to the employee under this subchapter if it were computed—

- (1) on the basis of service that does not include service credited under section 8411(b)(6); and
- (2) assuming the employee separated from service on the actual date of the separation of the employee.

The amount of the reduction shall be computed under regulations prescribed by the Office of Personnel Management for the administration of this subsection.

(m)(1) In computing an annuity under this subchapter, the total service of an employee who retires from the position of a registered nurse with the Veterans Health Administration on an immediate annuity, or dies while employed in that position leaving any survivor entitled to an annuity, includes the days of unused sick leave to the credit of that employee under a formal leave system, except that such days shall not be counted in determining average pay or annuity eligibility under this subchapter.

(2)(A) Except as provided in paragraph (1), in computing an annuity under this subchapter, the total service of an employee who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes the applicable percentage of the days of unused sick leave to his credit under a formal leave system and for which days the employee has not received payment, except that these days will not be counted in determining average pay or annuity eligibility under this subchapter. For purposes of this subsection, in the case of any such employee who is excepted from subchapter I of chapter 63 under section 6301(2)(x) through (xiii), the days of unused sick leave to his credit include any unused sick leave standing to his credit when he was excepted from such subchapter.

(B) For purposes of subparagraph (A), the term “applicable percentage” means—

- (i) 50 percent in the case of an annuity, entitlement to which is based on a death or other separation occurring during the period beginning on the date of enactment of this paragraph and ending on December 31, 2013; and
- (ii) 100 percent in the case of an annuity, entitlement to which is based on a death or other separation occurring after December 31, 2013.

(n) In the case of any annuity computation under this section that includes, in the aggregate, at least 2 months of credit under section 8411(d) for any period while receiving benefits under subchapter I of chapter 81, the percentage otherwise applicable under this section for that period so credited shall be increased by 1 percentage point.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 527; amended Pub. L. 99-556, title I, §105(b)(2), Oct. 27, 1986, 100 Stat. 3132; Pub. L. 103-283, title III, §307(b)(2), July 22, 1994, 108 Stat. 1442; Pub. L. 105-61, title V, §516(a)(7), Oct. 10, 1997, 111 Stat. 1306; Pub. L. 105-261, div. C, title XXXI, §3154(h), Oct. 17, 1998, 112 Stat. 2255; Pub. L. 106-65, div. A, title V, §522(c)(1), Oct. 5, 1999, 113 Stat. 597; Pub. L. 106-553, §1(a)(2) [title III, §308(c)(2)], Dec. 21, 2000, 114 Stat. 2762, 2762A-87; Pub. L. 106-571, §3(c)(1), Dec. 28, 2000, 114 Stat. 3055; Pub. L. 107-107, div. A, title XI, §1132(b)(3), Dec. 28, 2001, 115 Stat. 1244; Pub. L. 107-135, title I, §122(a), Jan. 23, 2002, 115 Stat. 2451; Pub. L. 108-92, §1(a), Oct. 3, 2003, 117 Stat. 1160; Pub. L. 108-176, title II, §226(b)(1), Dec. 12, 2003, 117 Stat. 2530; Pub. L. 110-161, div. E, title V, §535(b)(3), Dec. 26, 2007, 121 Stat. 2076; Pub. L. 111-84, div. A, title XIX, §1901(a), Oct. 28, 2009, 123 Stat. 2615; Pub. L. 112-96, title V, §5001(c)(1), Feb. 22, 2012, 126 Stat. 199; Pub. L. 113-67, div. A, title IV, §401(d), Dec. 26, 2013, 127 Stat. 1185; Pub.

L. 114-190, title II, §2304(a), July 15, 2016, 130 Stat. 640.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (k), is the date of enactment of Pub. L. 106-571, which was approved Dec. 28, 2000.

The date of enactment of this paragraph, referred to in subsec. (m)(2)(B)(i), is the date of enactment of Pub. L. 111-84, which was approved Oct. 28, 2009.

AMENDMENTS

2016—Subsec. (f). Pub. L. 114-190 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “The annuity of an air traffic controller or former air traffic controller retiring under section 8412(a) is computed under subsection (a), except that if the individual has had at least 5 years of service as an air traffic controller as defined by section 2109(1)(A)(i), so much of the annuity as is computed with respect to such type of service shall be computed by multiplying 1 $\frac{1}{10}$ percent of the individual’s average pay by the years of such service.”

2013—Subsec. (d). Pub. L. 113-67 inserted “or a further revised annuity employee” after “a revised annuity employee”.

2012—Subsecs. (d) to (n). Pub. L. 112-96 added subsec. (d) and redesignated former subsecs. (d) to (m) as (e) to (n), respectively.

2009—Subsecs. (k) to (m). Pub. L. 111-84 redesignated subsec. (k), relating to inclusion of unused sick leave in computing an annuity of a registered nurse with the Veterans Health Administration, as (l), designated existing provisions as par. (1), added par. (2), and redesignated former subsec. (l) as (m).

2007—Subsec. (h)(2). Pub. L. 110-161 substituted “air traffic controller, or customs and border protection officer” for “or air traffic controller.” in concluding provisions.

2003—Subsecs. (e) to (h). Pub. L. 108-176, §226(b)(1), added subsec. (e) and redesignated former subsecs. (e) to (g) as (f) to (h), respectively. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 108-176, §226(b)(1)(A), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Pub. L. 108-176, §226(b)(1)(A), which directed the re-designation of the second subsec. (i) as (l), could not be executed because of the redesignation of the second subsec. (i) as (k) by Pub. L. 108-92, §1(a)(1). See below.

Pub. L. 108-92, §1(a)(1), redesignated second subsec. (i), relating to inclusion of unused sick leave in computing an annuity of a registered nurse with the Veterans Health Administration, as (k).

Subsec. (j). Pub. L. 108-176, §226(b)(1)(A), redesignated subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 108-176, §226(b)(1)(A), redesignated subsec. (j) as (k).

Pub. L. 108-92, §1(a)(1), redesignated second subsec. (i), relating to inclusion of unused sick leave in computing an annuity of a registered nurse with the Veterans Health Administration, as (k).

Subsec.(l). Pub. L. 108-92, §1(a)(2), added subsec. (l).

2002—Subsec. (i). Pub. L. 107-135 added subsec. (i) relating to inclusion of unused sick leave in computing an annuity of a registered nurse with the Veterans Health Administration.

2001—Subsec. (j). Pub. L. 107-107 added subsec. (j).

2000—Subsec. (g). Pub. L. 106-553 inserted “member of the Supreme Court Police,” after “law enforcement officer,” in concluding provisions.

Subsec. (i). Pub. L. 106-571 added subsec. (i).

1999—Subsec. (g)(2). Pub. L. 106-65 substituted “military technician (dual status)” for “military reserve technician” in concluding provisions.

1998—Subsec. (g)(2). Pub. L. 105-261 inserted “nuclear materials courier,” after “firefighter,” in concluding provisions.

1997—Subsec. (h). Pub. L. 105-61 added subsec. (h).

1994—Subsec. (d). Pub. L. 103-283 substituted “(a), (b), or (c)” for “(a) or (b)”.

1986—Subsec. (f)(2). Pub. L. 99-556 inserted “8412(g) or” in subpars. (A) and (B).

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114-190, title II, §2304(b), July 15, 2016, 130 Stat. 640, provided that: “The amendment made by subsection (a) [amending this section] shall be deemed to be effective on December 12, 2003.”

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-84, div. A, title XIX, §1901(c), Oct. 28, 2009, 123 Stat. 2615, provided that: “The amendments made by this section [amending this section and section 8422 of this title] shall apply with respect to any annuity, entitlement to which is based on a death or other separation from service occurring on or after the date of enactment of this Act [Oct. 28, 2009].”

EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110-161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110-161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2003 AMENDMENTS

Amendment by Pub. L. 108-176 effective on 60th day after Dec. 12, 2003, and applicable with respect to any annuity entitlement based on an individual’s separation from service occurring on or after such effective date, and any service performed by any such individual before, on, or after such effective date, subject to special rule relating to deposit requirement, see section 226(c) of Pub. L. 108-176, set out as a note under section 8401 of this title.

Pub. L. 108-92, §2, Oct. 3, 2003, 117 Stat. 1160, provided that: “The amendments made by this Act [amending this section and section 8422 of this title] shall apply with respect to any annuity entitlement to which is based on a separation from service occurring on or after the date of enactment of this Act [Oct. 3, 2003].”

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-135, title I, §122(c), Jan. 23, 2002, 115 Stat. 2451, provided that: “The amendments made by this section [amending this section and section 8422 of this title] shall take effect 60 days after the date of the enactment of this Act [Jan. 23, 2002] and shall apply to individuals who separate from service on or after that effective date.”

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-107 applicable only to separations from service as an employee of the United States on or after Dec. 28, 2001, see section 1132(c) of Pub. L. 107-107, set out as a note under section 8332 of this title.

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 1998 AMENDMENT

Amendment by Pub. L. 105-261 effective at the beginning of the first pay period that begins after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105-261, set out as a 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 ef-

fective 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.

PROCEDURES REQUIRED

Pub. L. 114-190, title II, §2304(c), July 15, 2016, 130 Stat. 640, provided that: "The Director of the Office of Personnel Management shall establish such procedures as are necessary to provide for—

"(1) notification to each annuitant affected by the amendments made by this section [amending this section];

"(2) recalculation of the benefits of affected annuitants;

"(3) an adjustment to applicable monthly benefit amounts pursuant to such recalculation, to begin as soon as is practicable; and

"(4) a lump-sum payment to each affected annuitant equal to the additional total benefit amount that such annuitant would have received had the amendment made by subsection (a) been in effect on December 12, 2003."

CLARIFICATION RELATING TO CONSIDERATION OF PRE-1987 SERVICE AS AN AIR TRAFFIC CONTROLLER FOR RETIREMENT PURPOSES

See section 2 of Pub. L. 100-92, set out as a note under section 8332 of this title.

§ 8416. Survivor reduction for a current spouse

(a)(1) If an employee or Member is married at the time of retiring under this chapter, the reduction described in section 8419(a) shall be made unless the employee or Member and the spouse jointly waive, by written election, any right which the spouse may have to a survivor annuity under section 8442 based on the service of such employee or Member. A waiver under this paragraph shall be filed with the Office under procedures prescribed by the Office.

(2) Notwithstanding paragraph (1), an employee or Member who is married at the time of retiring under this chapter may waive the annuity for a surviving spouse without the spouse's consent if the employee or Member establishes to the satisfaction of the Office (in accordance with regulations prescribed by the Office)—

(A) that the spouse's whereabouts cannot be determined; or

(B) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's consent would otherwise be inappropriate.

(3) Except as provided in subsection (d), a waiver made under this subsection shall be irrevocable.

(b)(1) Upon remarriage, a retired employee or Member who was married at the time of retirement (including an employee or Member whose annuity was not reduced to provide a survivor annuity for the employee's or Member's spouse or former spouse as of the time of retirement) may irrevocably elect during such marriage, in a signed writing received by the Office within 2 years after such remarriage or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8445 (or of the last such surviving former spouse, if there was more than one), a reduction in the employee's or Member's annuity under section 8419(a) for the purpose of providing an annuity

for such employee's or Member's spouse in the event such spouse survives the employee or Member.

(2) The election and reduction shall be effective the first day of the second month after the election is received by the Office, but not less than 9 months after the date of the remarriage.

(3) An election to provide a survivor annuity to an individual under this subsection—

(A) shall prospectively void any election made by the employee or Member under section 8420 with respect to such individual; or

(B) shall, if an election was made by the employee or Member under section 8420 with respect to a different individual, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subsection.

(4) Any election under this subsection made by an employee or Member on behalf of an individual after the retirement of such employee or Member shall not be effective if—

(A) the employee or Member was married to such individual at the time of retirement; and

(B) the annuity rights of such individual based on the service of such employee or Member were then waived under subsection (a).

(c)(1) An employee or Member who is unmarried at the time of retiring under this chapter and who later marries may irrevocably elect, in a signed writing received by the Office within 2 years after such employee or Member marries or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8445 (or of the last such surviving former spouse, if there was more than one), a reduction in the current annuity of the retired employee or Member, in accordance with section 8419(a).

(2) The election and reduction shall take effect the first day of the first month beginning 9 months after the date of marriage. Any such election to provide a survivor annuity for an individual—

(A) shall prospectively void any election made by the employee or Member under section 8420 with respect to such individual; or

(B) shall, if an election was made by the employee or Member under section 8420 with respect to a different individual, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subsection.

(d)(1) An employee or Member—

(A) who is married on the date of retiring under this chapter, and

(B) with respect to whose spouse a waiver under subsection (a) has been made,

may, during the 18-month period beginning on such date, elect to have a reduction made under section 8419 in order to provide a survivor annuity under section 8442 for such spouse.

(2)(A) An election under this subsection shall not be effective unless the amount described in subparagraph (B) is deposited into the Fund before the expiration of the 18-month period referred to in paragraph (1).