

[title VI, §629(a)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-362, provided that: “Hereafter, service performed during the period January 1, 1984, through December 31, 1986, which would, if performed after that period, be considered service as a law enforcement officer, as defined in section 8401(17)(A)(i)(II) and (B) of title 5, United States Code, shall be deemed service as a law enforcement officer for the purposes of chapter 84 of such title.”

[Pub. L. 104-208, div. A, title I, §101(f) [title VI, §629(b)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-362, provided that: “The amendment made by subsection (a) [amending section 640 of Pub. L. 104-52, set out above] shall take effect as if included in Public Law 104-52 on the date of its enactment [Nov. 19, 1995].”]

#### CONGRESSIONAL DECLARATION OF PURPOSE

Pub. L. 99-335, title I, §100A, June 6, 1986, 100 Stat. 516, provided that: “The purposes of this Act [see Short Title note above] are—

- “(1) to establish a Federal employees’ retirement plan which is coordinated with title II of the Social Security Act [42 U.S.C. 401 et seq.];
- “(2) to ensure a fully funded and financially sound retirement benefits plan for Federal employees;
- “(3) to enhance portability of retirement assets earned as an employee of the Federal Government;
- “(4) to provide options for Federal employees with respect to retirement planning;
- “(5) to assist in building a quality career work force in the Federal Government;
- “(6) to encourage Federal employees to increase personal savings for retirement; and
- “(7) to extend financial protection from disability to additional Federal employees and to increase such protection for eligible Federal employees.”

#### USE OF NORMAL-COST PERCENTAGE

Pub. L. 99-335, title III, §307, June 6, 1986, 100 Stat. 607, as amended by Pub. L. 100-366, §1, July 13, 1988, 102 Stat. 826, provided that: “Notwithstanding any other provision of law, the normal-cost percentage (as defined by section 8401(23) of title 5, United States Code, as added by this Act) of the Federal Employees’ Retirement System shall be used to value the cost of such System to the Civil Service Retirement and Disability Fund for all purposes in which the cost of the System is required to be determined by the Federal Government. For any comparisons between the cost of performing commercial activities under the contract with commercial sources and the cost of performing such activities using Government facilities and personnel, the cost of the System shall include the cost of such System to the Civil Service Retirement and Disability Fund as specified in the preceding sentence, the cost of the thrift savings plan under subchapter III of chapter 84 of title 5, United States Code, and the cost of social security.”

#### FIRST COST-OF-LIVING ADJUSTMENT

Pub. L. 99-335, title VII, §702(c), June 6, 1986, 100 Stat. 631, provided that:

“(1) For purposes of the first adjustment under subsection (b) of section 8462 of title 5, United States Code (as added by section 101 of this Act), the base quarter ending on September 30, 1986, shall be considered to have been the base quarter for a year in which an adjustment under such subsection was made.

“(2) As used in paragraph (1), the term ‘base quarter’ has the meaning provided by section 8462(a)(1) of title 5, United States Code (as added by section 101 of this Act).”

#### § 8402. Federal Employees’ Retirement System; exclusions

(a) The provisions of this chapter comprise the Federal Employees’ Retirement System.

(b) The provisions of this chapter shall not apply with respect to—

(1) any individual who has performed service of a type described in subparagraph (C), (D), (E), or (F) of section 210(a)(5) of the Social Security Act continuously since December 31, 1983 (determined in accordance with the provisions of section 210(a)(5)(B) of the Social Security Act, relating to continuity of employment); or

(2)(A) any employee or Member who has separated from the service after—

(i) having been subject to—

(I) subchapter III of chapter 83 of this title;

(II) subchapter I of chapter 8 of title I of the Foreign Service Act of 1980; or

(III) the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act; and

(ii) having completed—

(I) at least 5 years of civilian service creditable under subchapter III of chapter 83 of this title;

(II) at least 5 years of civilian service creditable under subchapter I of chapter 8 of title I of the Foreign Service Act of 1980; or

(III) at least 5 years of civilian service (other than any service performed in the employ of a Federal Reserve Bank) creditable under the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act,

determined without regard to any deposit or redeposit requirement under either such subchapter or under such benefit structure, or any requirement that the individual become subject to either such subchapter or to such benefit structure after performing the service involved; or

(B) any employee having at least 5 years of civilian service performed before January 1, 1987, creditable under subchapter III of chapter 83 of this title (determined without regard to any deposit or redeposit requirement under such subchapter, any requirement that the individual become subject to such subchapter after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual’s desire to become subject to such subchapter);

except to the extent provided for under subsection (d) of this section or title III of the Federal Employees’ Retirement System Act of 1986 pursuant to an election under such title to become subject to this chapter.

(c)(1) The Office may exclude from the operation of this chapter an employee or group of employees in or under an Executive agency, the United States Postal Service, or the Postal Regulatory Commission, whose employment is tem-

porary or intermittent, except an employee whose employment is part-time career employment (as defined in section 3401(2)).

(2) The Architect of the Capitol may exclude from the operation of this chapter an employee under the Office of the Architect of the Capitol whose employment is temporary or of uncertain duration.

(3) The Librarian of Congress may exclude from the operation of this chapter an employee under the Library of Congress whose employment is temporary or of uncertain duration.

(4) The Director or Acting Director of the Botanic Garden may exclude from the operation of this chapter an employee under the Botanic Garden whose employment is temporary or of uncertain duration.

(5) The Chief Administrative Officer of the House of Representatives and the Secretary of the Senate each may exclude from the operation of this chapter a Congressional employee—

(A) whose employment is temporary or intermittent; and

(B) who is paid by such Chief Administrative Officer or Secretary, as the case may be.

(6) The Director of the Office of Technology Assessment may exclude from the operation of this chapter an employee under the Office of Technology Assessment whose employment is temporary or intermittent.

(7) The Director of the Congressional Budget Office may exclude from the operation of this chapter an employee under the Congressional Budget Office whose employment is temporary or intermittent.

(8) The Director of the Administrative Office of the United States Courts may exclude from the operation of this chapter an employee of the Administrative Office of the United States Courts, the Federal Judicial Center, or a court named by section 610 of title 28, whose employment is temporary or of uncertain duration.

(9) The Joint Committee on Judicial Administration in the District of Columbia may exclude from the operation of this chapter an employee of the District of Columbia Courts whose employment is temporary or of uncertain duration.

(d) Paragraph (2) of subsection (b) shall not apply to an individual who—

(1) becomes subject to—

(A) subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 (relating to the Foreign Service Pension System) pursuant to an election; or

(B) the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984, participate, which benefit structure is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act (and any redesignated or successor version of such benefit structure, if so identified in writing by the Board of Governors of the Federal Reserve System for purposes of this chapter); and

(2) subsequently enters a position in which, but for paragraph (2) of subsection (b), such individual would be subject to this chapter.

(e) A bankruptcy judge or magistrate judge who is covered by section 377 of title 28 or sec-

tion 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 shall be excluded from the operation of this chapter, other than subchapters III and VII of such chapter, if the judge or magistrate judge notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such election, the judge or magistrate judge shall be entitled to a lump-sum credit under section 8424 of this title.

(f) A judge who is covered by section 7296 of title 38 shall be excluded from the operation of this chapter if the judge notifies the Director of the Office of Personnel Management of an election of a retirement annuity under that section. Upon such election, the judge shall be entitled to a lump-sum credit under section 8424 of this title.

(g) A judge of the United States Court of Federal Claims who is covered by section 178 of title 28 shall be excluded from the operation of this chapter, other than subchapters III and VII of such chapter, if the judge notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such election, the judge shall be entitled to a lump-sum credit under section 8424 of this title.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 521; amended Pub. L. 99-556, title I, §116, Oct. 27, 1986, 100 Stat. 3134; Pub. L. 100-238, title I, §130, Jan. 8, 1988, 101 Stat. 1759; Pub. L. 100-659, §6(c), Nov. 15, 1988, 102 Stat. 3919; Pub. L. 101-94, title I, §102(b), Aug. 16, 1989, 103 Stat. 626; Pub. L. 101-474, §5(p), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101-650, title III, §§306(e)(3), 321, Dec. 1, 1990, 104 Stat. 5112, 5117; Pub. L. 102-40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 102-198, §7(d), Dec. 9, 1991, 105 Stat. 1625; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104-53, title I, §115, Nov. 19, 1995, 109 Stat. 527; Pub. L. 104-186, title II, §215(13), Aug. 20, 1996, 110 Stat. 1746; Pub. L. 105-274, §6(a), Oct. 21, 1998, 112 Stat. 2424; Pub. L. 106-168, title II, §202(b), Dec. 12, 1999, 113 Stat. 1818; Pub. L. 109-435, title VI, §604(b), Dec. 20, 2006, 120 Stat. 3241.)

### Editorial Notes

#### REFERENCES IN TEXT

Section 210(a)(5) of the Social Security Act, referred to in subsec. (b)(1), is classified to section 410(a)(5) of Title 42, The Public Health and Welfare.

The Federal Employees' Retirement System Act of 1986, referred to in subsec. (b), is Pub. L. 99-335, June 6, 1986, 100 Stat. 514. Title III of the Federal Employees' Retirement System Act of 1986 amended sections 3121 and 6103 of Title 26, Internal Revenue Code, section 1005 of Title 39, Postal Service, and section 410 of Title 42, enacted provisions set out as notes under sections 8331, 8401, 8432, and 8472 of this title and section 6103 of Title 26, and amended provisions set out as a note under section 8331 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8401 of this title and Tables.

The Foreign Service Act of 1980, referred to in subsecs. (b)(2)(A)(i)(II), (ii)(II) and (d)(1)(A), is Pub. L. 96-465, Oct. 17, 1980, 94 Stat. 2071. Subchapters I and II of chapter 8 of title I of the Act are classified generally to parts I (§401 et seq.) and II (§4071 et seq.), respectively, of subchapter VIII of chapter 52 of Title 22, For-

eign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

Section 10 of the Federal Reserve Act, referred to in subsecs. (b)(2)(A)(i)(III), (ii)(III) and (d)(1)(B), is section 10 of act Dec. 23, 1913, ch. 6, 38 Stat. 260. For classification of section 10 to the Code, see Codification note set out under section 241 of Title 12, Banks and Banking, and Tables.

Section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, referred to in subsec. (e), is section 2(c) of Pub. L. 100-659, which is set out as a note under section 377 of Title 28, Judiciary and Judicial Procedure.

#### AMENDMENTS

2006—Subsec. (c)(1). Pub. L. 109-435 substituted “Postal Regulatory Commission” for “Postal Rate Commission”.

1999—Subsec. (b)(2)(A). Pub. L. 106-168, §202(b)(1), added subpar. (A) and struck out former subpar. (A) which read as follows: “any employee or Member who has separated from the service after—

“(i) having been subject to subchapter III of chapter 83 of this title, or subchapter I of chapter 8 of the Foreign Service Act of 1980; and

“(ii) having completed at least 5 years of civilian service creditable under subchapter III of chapter 83 of this title, or at least 5 years of civilian service creditable under subchapter I of the Foreign Service Act of 1980 (determined without regard to any deposit or redeposit requirement under either such subchapter, or any requirement that the individual become subject to either such subchapter after performing the service involved); or”.

Subsec. (d). Pub. L. 106-168, §202(b)(2), amended subsec. (d) generally. Prior to amendment, text read as follows: “Paragraph (2) of subsection (b) shall not apply to an individual who becomes subject to subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 (relating to the Foreign Service Pension System) pursuant to an election and who subsequently enters a position in which, but for such paragraph (2), he would be subject to this chapter.”

1998—Subsec. (c)(9). Pub. L. 105-274 added par. (9).

1996—Subsec. (c)(5). Pub. L. 104-186 substituted “Chief Administrative Officer” for “Clerk” in introductory provisions and subpar. (B).

1995—Subsec. (c)(7), (8). Pub. L. 104-53 added par. (7) and redesignated former par. (7) as (8).

1992—Subsec. (g). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

1991—Subsec. (f). Pub. L. 102-40 substituted “section 7296 of title 38” for “section 4096 of title 38”.

Subsec. (g). Pub. L. 102-198 inserted a comma after “such chapter”.

1990—Subsec. (c)(7). Pub. L. 101-474 added par. (7).

Subsec. (g). Pub. L. 101-650 added subsec. (g).

1989—Subsec. (f). Pub. L. 101-94 added subsec. (f).

1988—Subsec. (b)(2). Pub. L. 100-238, §130(1), inserted “subsection (d) of this section or” before “title III” in concluding provisions.

Subsec. (d). Pub. L. 100-238, §130(2), added subsec. (d).

Subsec. (e). Pub. L. 100-659 added subsec. (e).

1986—Subsec. (c)(5), (6). Pub. L. 99-556 added pars. (5) and (6).

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

Words “magistrate judge” substituted for “magistrate” wherever appearing in subsec. (e) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

##### EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-168, title II, §202(d), Dec. 12, 1999, 113 Stat. 1819, provided that:

“(1) IN GENERAL.—Subject to succeeding provisions of this subsection, this section [amending this section and section 8411 of this title and enacting provisions set out as a note under this section] and the amendments made by this section shall take effect on the date of the enactment of this Act [Dec. 12, 1999].

“(2) PROVISIONS RELATING TO CREDITABILITY AND CERTAIN FORMER EMPLOYEES.—The amendments made by subsection (a) [amending section 8411 of this title] and the provisions of subsection (c) [set out as a note below] shall apply only to individuals who separate from service subject to chapter 84 of title 5, United States Code, on or after the date of the enactment of this Act [Dec. 12, 1999].

“(3) PROVISIONS RELATING TO EXCLUSION FROM CHAPTER.—The amendments made by subsection (b) [amending this section] shall not apply to any former employee of the Board of Governors of the Federal Reserve System who, subsequent to his or her last period of service as an employee of the Board of Governors of the Federal Reserve System and prior to the date of the enactment of this Act [Dec. 12, 1999], became subject to subchapter III of chapter 83 or chapter 84 of title 5, United States Code, under the law in effect at the time of the individual’s appointment.”

##### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-274, §10, Oct. 21, 1998, 112 Stat. 2429, provided that: “Except as otherwise specifically provided, this Act [amending this section and enacting provisions set out as a note under section 8401 of this title] and the amendments made by this Act shall take effect as if included in the enactment of title XI of the Balanced Budget Act of 1997 [Pub. L. 105-33].”

##### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

##### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-650 applicable to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after Dec. 1, 1990, see section 306(f) of Pub. L. 101-650, set out as a note under section 8331 of this title.

##### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-659 effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrate judges who retire on or after Nov. 15, 1988, with exception for judges and magistrate judges retiring on or after July 31, 1987, see section 9 of Pub. L. 100-659, as amended, set out as an Effective Date note under section 377 of Title 28, Judiciary and Judicial Procedure.

##### PROVISIONS RELATING TO CERTAIN FORMER EMPLOYEES

Pub. L. 106-168, title II, §202(c), Dec. 12, 1999, 113 Stat. 1819, provided that: “A former employee of the Board of Governors of the Federal Reserve System who—

“(1) has at least 5 years of civilian service (other than any service performed in the employ of a Federal Reserve Bank) creditable under the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act [Act Dec. 23, 1913, ch. 6, see Codification note set out under 12 U.S.C. 241];

“(2) was subsequently employed subject to the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984, participate, which benefit structure is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act (and any redesignated or successor version of such

benefit structure, if so identified in writing by the Board of Governors of the Federal Reserve System for purposes of chapter 84 of title 5, United States Code); and

“(3) after service described in paragraph (2), becomes subject to and thereafter entitled to benefits under chapter 84 of title 5, United States Code, shall, for purposes of section 302 of the Federal Employees’ Retirement System Act of 1986 [Pub. L. 99-335] (100 Stat. 601; 5 U.S.C. 8331 note) be considered to have become subject to chapter 84 of title 5, United States Code, pursuant to an election under section 301 of such Act [5 U.S.C. 8331 note].”

#### § 8403. Relationship to the Social Security Act

Except as otherwise provided in this chapter, the benefits payable under the System are in addition to the benefits payable under the Social Security Act.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 522.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

#### SUBCHAPTER II—BASIC ANNUITY

#### § 8410. Eligibility for annuity

Notwithstanding any other provision of this chapter, an employee or Member must complete at least 5 years of civilian service creditable under section 8411 in order to be eligible for an annuity under this subchapter.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 522.)

#### § 8411. Creditable service

(a)(1) The total service of an employee or Member is the full years and twelfth parts thereof, excluding from the aggregate the fractional part of a month, if any.

(2) Credit may not be allowed for a period of separation from the service in excess of 3 calendar days.

(b) For the purpose of this chapter, creditable service of an employee or Member includes—

(1) employment as an employee, and any service as a Member (including the period from the date of the beginning of the term for which elected or appointed to the date of taking office as a Member), after December 31, 1986;

(2) except as provided in subsection (f), service with respect to which deductions and withholdings under section 204(a)(1) of the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 have been made;

(3) except as provided in subsection (f) or (h), any civilian service (performed before January 1, 1989, other than any service under paragraph (1) or (2)) which, but for the amendments made by subsections (a)(4) and (b) of section 202 of the Federal Employees’ Retirement System

Act of 1986, would be creditable under subchapter III of chapter 83 of this title (determined without regard to any deposit or re-deposit requirement under such subchapter, any requirement that the individual become subject to such subchapter after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual’s desire to become subject to such subchapter);

(4) a period of service (other than any service under any other paragraph of this subsection and other than any military service) that was creditable under the Foreign Service Pension System described in subchapter II of chapter 8<sup>1</sup> of the Foreign Service Act of 1980, if the employee or Member waives credit for such service under the Foreign Service Pension System and makes a payment to the Fund equal to the amount that would have been deducted from pay under section 8422(a) had the employee been subject to this chapter during such period of service (together with interest on such amount computed under paragraphs (2) and (3) of section 8334(e));

(5) a period of service (other than any service under any other paragraph of this subsection, any military service, and any service performed in the employ of a Federal Reserve Bank) that was creditable under the Bank Plan (as defined in subsection (i)), if the employee waives credit for such service under the Bank Plan and makes a payment to the Fund equal to the amount that would have been deducted from pay under section 8422(a) had the employee been subject to this chapter during such period of service (together with interest on such amount computed under paragraphs (2) and (3) of section 8334(e)); and

(6) service performed by any individual as an employee paid from nonappropriated funds of an instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) that is not otherwise creditable, if the individual elects (in accordance with regulations prescribed by the Office) to have such service credited under this paragraph.

Paragraph (5) shall not apply in the case of any employee as to whom subsection (g) (or, to the extent subchapter III of chapter 83 is involved, section 8332(n)) otherwise applies.

(c)(1) Except as provided in paragraphs (2), (3), and (5), an employee or Member shall be allowed credit for—

(A) each period of military service performed before January 1, 1957; and

(B) each period of military service performed after December 31, 1956, and before the separation on which title to annuity is based, if a deposit (including interest, if any) is made with respect to such period in accordance with section 8422(e).

(2) If an employee or Member is awarded retired pay based on any period of military service, the service of the employee or Member may not include credit for such period of military service unless the retired pay is awarded—

<sup>1</sup> See References in Text note below.