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September 13, 2016

Thomas J. Perona  
Chair, Fort Pierce Retirement Board  
City of Fort Pierce  
100 North U.S. Highway One  
Fort Pierce, FL 34950

RE: RETIREMENT CREDIT FOR INTERVENING MILITARY SERVICE

Dear Tom:

This responds to request by the Board, as made at its August meeting, for a formal memorandum on the subject of Code Section 13-27 (Credit for Intervening Military Service)(copy attached).

Such section allows a member who is called away from employment to a compulsory period of military service to later, upon renewing of employment, receive credit for such military service up to five (5) years. The code section conditions such credit upon ability of the member to meet four requirements: first, the member must make application for credit within one year of his or her release from Military Service. See sec. 13-27(1); second, credit is conditioned upon valid reemployment, as provided by the City's personnel regulations. See 13-27(2); third, there is repayment of any member contributions which might have been withdrawn. See 13-27(3). And fourth, the same period for which credit is now sought must not have been used to obtain or increase a benefit from another retirement program. See 13-27(4).

Section 13-27 is of course a regulation local to the City of Fort Pierce. To the extent there is any conflict with the equivalent federal provision, the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), the federal provision governs this subject. See ex. 20 CFR 1009.163(b). USERRA is designed to protect the returning service person's pension rights by putting such person in the same position as if he or she had never been called away to military service: "On reemployment, the employee is treated as not having a break in service with the employer or employers maintaining a pension plan, for purposes of participation, vesting and accrual of benefits, by reason of the period of absence from employment due to or necessitated by service in the uniformed services." 20 CFR 1002.259. At that point, "... the employee's accrued benefit will be increased for the period of service once he or she is reemployed and, if applicable, has repaid any amounts previously paid to him or her from the plan, and made any employee contributions that may be required to be made under the plan." 20 CFR 1002.261. In other words, if the employee becomes reemployed with his or her preservice

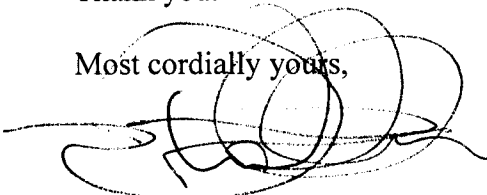
employer, the employee's pension benefit is the same as if he or she had remained continuously employed. See 20 CFR 1002.264.

But if, instead of being made whole, the employee seeks still more credit, by tacking on additional time spent in the military, then, in that case, 5 USC sec. 8332 (Creditable service) prohibits such use of military time if the retirant received credit for it toward his or her military pension entitlement. See 5 USC sec. 8332(c)(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..."). That is to say, the member may not "double-dip" by claiming credit for the same time in two different retirement systems, the military retirement system and the system to which the military person returns following active service.

Note however several exceptions to such general prohibition, the first involving service-connected disability arising from combat and a second relating to special disability situations. See 5 USC sec.8332 (c)(2)(A)(i, ii). Neither exception is included within our Code section 13-27(4). Hence, were a disabled service member to return to employment and ask for credit of military time already claimed, such disabled service member might be able to buy that time despite the general prohibition contained in sec. 13-27(4).

It is hoped the foregoing discussion is found helpful. Should there be any questions remaining on this subject, please let me know and it will be a pleasure to expand upon the topic as necessary. Thank you.

Most cordially yours,

A handwritten signature in black ink, appearing to read 'James T. Walker', written over a circular stamp or seal.

JAMES T. WALKER, ESQUIRE  
JTW/la

**Sec. 13-27. Credit for intervening military service.**

A member who left the employ of a participating employer to enter the armed forces of the United States during any period of compulsory military service, and who reenters the employ of a participating employer and again becomes a member, shall have such armed service, not to exceed a total of five (5) years, credited as participating employer service; if the following conditions are satisfied:

- (1) The member makes application within one year after release from duty under honorable conditions;
- (2) The member's reemployment is on the basis of the personnel rules and regulations of the member's participating employer;
- (3) The member pays the retirement system the amount of accumulated member contributions the member may have withdrawn, together with six (6) per cent annual compound interest from the date of withdrawal to the date of repayment. In any case of doubt as to the period of military service to be credited a member, the retirement board shall have final power to determine the period. During the period of such armed service, contributions to the retirement system shall be suspended; and
- (4) The same period of service has not been used to obtain or increase a benefit from another retirement program.

(Ord. No. K-469, § 1, 2-20-07)

# Title 20 → Chapter IX → Part 1002 → Subpart E → §1002.259

Electronic Code of Federal Regulations e-CFR

Title 20 → Chapter IX → Part 1002 → Subpart E → §1002.259

e-CFR data is current as of September 9, 2016

[Title 20 \(/Title-20/\)](#) → [Chapter IX \(/Title-20/chapterIX\)](#) → [Part 1002 \(pt20.4.1002\)](#) → [Subpart E \(sp20.4.1002.e&r=SUBPART&ty=HTML\)](#) → §1002.259

[Browse Previous \(se20.4.1002\\_1248\)](#) | [Browse Next \(se20.4.1002\\_1260\)](#)

Title 20: Employees' Benefits

PART 1002—REGULATIONS UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994 (pt20.4.1002)

Subpart E—Reemployment Rights and Benefits (sp20.4.1002.e&r=SUBPART&ty=HTML)

## §1002.259 How does USERRA protect an employee's pension benefits?


On reemployment, the employee is treated as not having a break in service with the employer or employers maintaining a pension plan, for purposes of participation, vesting and accrual of benefits, by reason of the period of absence from employment due to or necessitated by service in the uniformed services.

(a) Depending on the length of the employee's period of service, he or she is entitled to take from one to ninety days following service before reporting back to work or applying for reemployment (See §1002.115). This period of time must be treated as continuous service with the employer for purposes of determining participation, vesting and accrual of pension benefits under the plan.

(b) If the employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, service, he or she is entitled to report to or submit an application for reemployment at the end of the time period necessary for him or her to recover from the illness or injury. This period, which may not exceed

two years from the date the employee completed service, except in circumstances beyond his or her control, must be treated as continuous service with the employer for purposes of determining the participation, vesting and accrual of pension benefits under the plan.

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[Browse Previous \(se20.4.1002\\_1259\)](#) | [Browse Next \(se20.4.1002\\_1261\)](#)

Title 20: Employees' Benefits

[PART 1002—REGULATIONS UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994 \(pt20.4.1002\)](#)

[Subpart E—Reemployment Rights and Benefits \(sp20.4.1002.e&r=SUBPART&ty=HTML\)](#)

## §1002.260 What pension benefit plans are covered under USERRA?

(a) The Employee Retirement Income Security Act of 1974 (ERISA) defines an employee pension benefit plan as a plan that provides retirement income to employees, or defers employee income to a period extending to or beyond the termination of employment. Any such plan maintained by the employer or employers is covered under USERRA. USERRA also covers certain pension plans not covered by ERISA, such as those sponsored by a State, government entity, or church for its employees.

(b) USERRA does not cover pension benefits under the Federal Thrift Savings Plan; those benefits are covered under 5 U.S.C. 8432b.

Document: 5 USCS § 8332

**5 USCS § 8332**

**Copy Citation**

Current through PL 114-219, approved 7/29/16

**United States Code Service - Titles 1 through 54 TITLE 5. GOVERNMENT ORGANIZATION  
AND EMPLOYEES PART III. EMPLOYEES SUBPART G. INSURANCE AND  
ANNUITIES CHAPTER 83. RETIREMENT SUBCHAPTER III. CIVIL SERVICE RETIREMENT**

**§ 8332. Creditable service**

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**(a)** 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.

**(b)** The service of an employee shall be credited from the date of original employment to the date of separation on which title to annuity is based in the civilian service of the Government. Except as provided in paragraph (13) [(14)] of this subsection, credit may not be allowed for a period of separation from the service in excess of 3 calendar days. The service includes--

**(1)** employment as a substitute in the postal field service;

**(2)** service in the Pan American Sanitary Bureau;

**(3)** subject to sections 8334(c) and 8339(i) of this title [5 USCS §§ 8334(c) and 8339(i)], service performed before July 10, 1960, as an employee of a county committee established under section 590h(b) of title 16 or of a committee or an association of producers described by section 610(b) of title 7;

**(4)** service as a student-employee as defined by section 5351 of this title [5 USCS § 5351] only if he later becomes subject to this subchapter [5 USCS §§ 8331 et seq.];

**(5)** a period of satisfactory service of a volunteer or volunteer leader under chapter 34 of title 22 [22 USCS §§ 2501 et seq.] only if he later becomes subject to this subchapter [5 USCS §§ 8331 et seq.];

**(6)** employment under section 709 of title 32 or any prior corresponding provision of law;

**(7)** a period of service of a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, or a period of service of a full-time volunteer enrolled in a program of at least one year's duration under Part A, B, or C of title I of the Domestic Volunteer Service Act of 1973 only if he later becomes subject to this subchapter [5 USCS §§ 8331 et seq.];

**(8)** subject to sections 8334(c) and 8339(i) of this title [5 USCS §§ 8334(c) and 8339(i)], service performed after February 18, 1929, and before noon on January 3, 1971, as a United States Capitol Guide;

**(9)** subject to sections 8334(c) and 8339(i) of this title [5 USCS §§ 8334(c) and 8339(i)], service as a substitute teacher for the government of the District of Columbia after July 1, 1955, if such service is not credited for benefits under any other retirement system established by a law of the United States;

**(10)** periods of imprisonment of a foreign national for which compensation is provided under section 410 of the Foreign Service Act of 1980 [22 USCS § 3970], if the individual (A) was subject to this subchapter [5 USCS §§ 8331 et seq.] during employment with the Government last preceding imprisonment, or (B) is qualified for an annuity under this subchapter [5 USCS §§ 8331 et seq.] on the basis of other service of the individual;

**(11)** subject to sections 8334(c) and 8339(i) of this title [5 USCS §§ 8334(c) and 8339(i)], service in any capacity of at least 130 days (or its equivalent) per calendar year performed after July 1, 1946, for the National Committee for a Free Europe; Free Europe Committee, Incorporated; Free Europe, Incorporated; Radio Liberation Committee; Radio Liberty Committee; subdivisions of any of those organizations; Radio Free Europe/Radio Liberty, Incorporated, Radio Free Asia; the Asia Foundation; or the Armed Forces Network, Europe (AFN-E), but only if such service is not credited for benefits under any other retirement system which is established for such entities and funded in whole or in part by the Government and only if the individual later becomes subject to this subchapter [5 USCS §§ 8331 et seq.];

**(12)** service as a justice or judge of the United States, as defined by section 451 of title 28, and service as a judge of a court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States, but no credit shall be allowed for such service if the employee is entitled to a salary or an annuity under section 371, 372, or 373 of title 28;

**(13)** subject to sections 8334(c) and 8339(i) of this title [5 USCS §§ 8334(c) and 8339(i)] service performed on or after December 6, 1967, and before the effective date of this paragraph as

an employee of the House Beauty Shop, only if he serves as such an employee for a period of at least five years after such effective date;

**(14)** one year of service to be credited for each year in which a Native of the Pribilof Islands performs service in the taking and curing of fur seal skins and other activities in connection with the administration of the Pribilof Islands, notwithstanding any period of separation from the service, and regardless of whether the Native who performs the service retires before, on, or after the effective date of this paragraph;

**(15)** subject to sections 8334(c) and 8339(i) of this title [5 USCS §§ 8334(c) and 8339(i)], service performed on or after January 3, 1969, and before January 4, 1973, as the Washington Representative for Guam or the Washington Representative for the Virgin Islands, only if the individual serves as a Member for a period of at least five years after January 2, 1973;

**(16)** service performed by any individual as an employee described in section 2105(c) of this title [5 USCS § 2105(c)] after June 18, 1952, and before January 1, 1966, if (A) such service involved conducting an arts and crafts, drama, music, library, service club, youth activities, sports, or recreation program (including any outdoor recreation program) for personnel of the armed forces, and (B) such individual is an employee subject to this subchapter [5 USCS §§ 8331 et seq.] on the day before the date of the enactment of the Nonappropriated Fund Instrumentalities Employees' Retirement Credit Act of 1986 [enacted Nov. 10, 1986]; and

**(17)** 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) [5 USCS § 2105(c)] that is not covered by paragraph (16) and 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.

The Office of Personnel Management shall accept the certification of the Secretary of Agriculture or his designee concerning service for the purpose of this subchapter [5 USCS §§ 8331 et seq.] of the type performed by an employee named by paragraph (3) of this subsection. The Office of Personnel Management shall accept the certification of the Secretary of Commerce or his designee concerning service for the purpose of this subchapter [5 USCS §§ 8331 et seq.] of the type performed by an employee named by paragraph (14) of this subsection. The Office of Personnel Management shall accept the certification of the Capitol Guide Board concerning service for the purpose of this subchapter [5 USCS §§ 8331 et seq.] of the type described in paragraph (8) of this subsection and performed by an employee. The Office of Personnel Management shall accept the certification the Chief Administrative Officer of the House of Representatives concerning service for the purpose of this subchapter [5 USCS §§ 8331 et seq.] of the type described in paragraph (13) of this subsection. For the purpose of paragraph (5) of this subsection--

**(A)** a volunteer and a volunteer leader are deemed receiving pay during their service at the respective rates of readjustment allowances payable under sections 2504(c) and 2505(1) of title 22; and

**(B)** the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22 [22 USCS §§ 2501 et seq.] is the period between enrollment as a volunteer or

volunteer leader and the termination of that service by the President or by death or resignation.

The Office of Personnel Management shall accept the certification of the Executive Director of the Board for International Broadcasting, and the Secretary of State with respect to the Asia Foundation and the Secretary of Defense with respect to the Armed Forces Network, Europe (AFN-E), concerning services for the purposes of this subchapter [5 USCS §§ 8331 et seq.] of the type described in paragraph (11) of this subsection. For the purpose of this subchapter [5 USCS §§ 8331 et seq.], service of the type described in paragraph (15) of this subsection shall be considered Member service. The Office of Personnel Management shall accept, for the purposes of this subchapter [5 USCS §§ 8331 et seq.], the certification of the head of a nonappropriated fund instrumentality of the United States concerning service of the type described in paragraph (16) or (17) of this subsection which was performed for such appropriated fund instrumentality. Service credited under paragraph (17) may not also be credited under any other retirement system provided for employees paid from nonappropriated funds of a nonappropriated fund instrumentality.

**(c)** (1) Except as provided in paragraphs (2) and (4) of this subsection and subsection (d) of this section--

**(A)** the service of an individual who first becomes an employee or Member before October 1, 1982, shall include credit for each period of military service performed before the date of the separation on which the entitlement to an annuity under this subchapter [5 USCS §§ 8331 et seq.] is based, subject to section 8332(j) of this title [5 USCS § 8332(j)] [subsec. (j) of this section]; and

**(B)** the service of an individual who first becomes an employee or Member on or after October 1, 1982, shall include credit for--

**(i)** each period of military service performed before January 1, 1957, and

**(ii)** each period of military service performed after December 31, 1956, and before the separation on which the entitlement to annuity under this subchapter [5 USCS §§ 8331 et seq.] is based, only if a deposit (with interest, if any) is made with respect to that period, as provided in section 8334(j) of this title [5 USCS § 8334(j)]

**(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--

**(A)** based on a service-connected disability--

**(i)** incurred in combat with an enemy of the United States; or

**(ii)** caused by an instrumentality of war and incurred in line of duty during a period of war as defined by section 301 of title 38; or

**(B)** under chapter 1223 of title 10 [10 USCS §§ 12731 et seq.] (or under chapter 67 of that title [10 USCS §§ 1331 et seq.] as in effect before the effective date of the Reserve Officer Personnel Management Act).

**(3)** (A) Notwithstanding paragraph (2) of this subsection, for purposes of computing a survivor annuity for a survivor of an employee or Member--

**(i)** who was awarded retired pay based on any period of military service, and

**(ii)** whose death occurs before separation from the service, creditable service of the deceased employee or Member shall include each period of military service includable under subparagraph (A) or (B) of paragraph (1) of this subsection, as applicable. In carrying out this subparagraph, any amount deposited under section 8334(h) of this title [5 USCS § 8334(h)] shall be taken into account.

**(B)** A survivor annuity computed based on an amount which, under authority of subparagraph (A), takes into consideration any period of military service shall be reduced by the amount of any survivor's benefits--

**(i)** payable to a survivor (other than a child) under a retirement system for members of the uniformed services;

**(ii)** if, or to the extent that, such benefits are based on such period of military service.

**(C)** The Office of Personnel Management shall prescribe regulations to carry out this paragraph, including regulations under which--

**(i)** a survivor may elect not to be covered by this paragraph; and

**(ii)** this paragraph shall be carried out in any case which involves a former spouse.

**(4)** If, after January 1, 1997, an employee or Member waives retired pay that is subject to a court order for which there has been effective service on the Secretary concerned for purposes of section 1408 of title 10, the military service on which the retired pay is based may be credited as service for purposes of this subchapter [5 USCS §§ 8331 et seq.] only if the employee or Member authorizes the Director to deduct and withhold from the annuity payable to the employee or Member under this subchapter [5 USCS §§ 8331 et seq.] an amount equal to the amount that, if the annuity payment was instead a payment of the employee's or Member's retired pay, would have been deducted and withheld and paid to the former spouse covered by the court order under such section 1408 [5 USCS § 1408]. The amount deducted and withheld under this paragraph shall be paid to that former spouse. The period of civil service employment by the employee or Member shall not be taken into consideration in determining the amount of the deductions and withholding or the amount of the payment to the former spouse. The Director of the Office of Personnel Management shall prescribe regulations to carry out this paragraph.

**(d)** For the purpose of section 8339(c)(1) of this title [5 USCS § 8339(c)(1)], a Member--

**(1)** shall be allowed credit only for periods of military service not exceeding 5 years, plus military service performed by the Member on leaving his office, for the purpose of performing military service, during a war or national emergency proclaimed by the President or declared by Congress and before his final separation from service as Member; and

**(2)** may not receive credit for military service for which credit is allowed for purpose of retired pay under other statute.

**(e)** This subchapter [5 USCS §§ 8331 et seq.] does not affect the right of an employee or Member to retired pay, pension, or compensation in addition to an annuity payable under this subchapter [5 USCS §§ 8331 et seq.].

**(f)** Credit shall be allowed for leaves of absence without pay granted an employee while performing military service or while receiving benefits under subchapter I of chapter 81 of this title [5 USCS §§ 8101 et seq.]. An employee or former employee who returns to duty after a period of separation is deemed, for the purpose of this subsection, to have been in a leave of absence without pay for that part of the period in which he was receiving benefits under subchapter I of chapter 81 of this title [5 USCS §§ 8101 et seq.] or any earlier statute on which such subchapter [5 USCS §§ 101 et seq.] is based. Except for a substitute in the postal field service and service described in paragraph (14) of subsection (b) of this section, [,] credit may not be allowed for so much of other leaves of absence without pay as exceeds 6 months in the aggregate in a calendar year.

**(g)** An employee who during the period of a war, or of a national emergency as proclaimed by the President or declared by Congress, leaves his position to enter the military service is deemed, for the purpose of this subchapter [5 USCS §§ 8331 et seq.], as not separated from his civilian position because of that military service, unless he applies for and receives a lump-sum credit under this subchapter [5 USCS §§ 8331 et seq.]. However, the employee is deemed as not retaining his civilian position after December 31, 1956, or after the expiration of 5 years of that military service, whichever is later.

**(h)** An employee who--

**(1)** has at least 5 years' Member service; and

**(2)** serves as a Member at any time after August 2, 1946;

may not be allowed credit for service which is used in the computation of an annuity under section 8339(c) of this title [5 USCS § 8339(c)].

**(i)** An individual who qualifies as an employee under section 8331(1)(E) of this title [5 USCS § 8331(1)(E)] is entitled to credit for his service as a United States Commissioner, which is not credited for the purpose of this subchapter [5 USCS §§ 8331 et seq.] for service performed by him in a capacity other than Commissioner, on the basis of--

(1) 1/313 of a year for each day on which he performed service as a Commissioner before July 1, 1945; and

(2) 1/260 of a year for each day on which he performed service as a Commissioner after June 30, 1945.

Credit for service performed as Commissioner may not exceed 313 days in a year before July 1, 1945, or 260 days in a year after June 30, 1945. For the purpose of this subchapter [5 USCS §§ 8331 et seq.], the employment and pay of a Commissioner is deemed on a daily basis when actually employed.

(j)

(1) Notwithstanding any other provision of this section, military service, except military service covered by military leave with pay from a civilian position, performed by an individual after December 1956, the period of an individual's services as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, the period of an individual's service as a full-time volunteer enrolled in a program of at least 1 year's duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973 [42 USCS §§ 4951 et seq., 4971 et seq., or 4991 et seq.], and the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22 [22 USCS §§ 2501 et seq.], shall be excluded in determining the aggregate period of service on which an annuity payable under this subchapter [5 USCS §§ 8331 et seq.] to the individual or to his spouse, former spouse or child is based, if the individual, spouse, former spouse or child is entitled, or would on proper application be entitled, at the time of that determination, to monthly old-age or survivors benefits under section 402 of title 42 based on the individual's wages and self-employment income. If the military service or service as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, as a full-time volunteer enrolled in a program of at least 1 year's duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973 [42 USCS §§ 4951 et seq., 4971 et seq., or 4991 et seq.], or as a volunteer or volunteer leader under chapter 34 of title 22 [22 USCS §§ 2501 et seq.] is not excluded by the preceding sentence, but on becoming 62 years of age, the individual or spouse, former spouse [individual, spouse, or former spouse] becomes entitled, or would on proper application be entitled, to the described benefits, the Office of Personnel Management shall redetermine the aggregate period of service on which the annuity is based, effective as of the first day of the month in which he or she becomes 62 years of age, so as to exclude that service. The Secretary of Health, Education, and Welfare, on request of the Office, shall inform the Office whether or not the individual, spouse, former spouse, or child is entitled at any named time to the described benefits. For the purpose of this subsection, the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22 [22 USCS §§ 2501 et seq.] is the period between enrollment as a volunteer or volunteer leader and termination of that service by the President or by death or resignation, and the period of an individual's service as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964 or under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973 [42 USCS §§

4951 et seq., 4971 et seq., or 4991 et seq.] is the period between enrollment as a volunteer and termination of that service by the Director of the Office of Economic Opportunity or the Chief Executive Officer of the Corporation for National and Community Service, as appropriate, or by death or resignation.

**(2)** The provisions of paragraph (1) of this subsection relating to credit for military service shall not apply to--

**(A)** any period of military service of an employee or Member with respect to which the employee or Member has made a deposit with interest, if any, under section 8334(j) of this title [5 USCS § 8334(j)]; or

**(B)** the service of any employee or Member described in section 8332(c)(1)(B) of this title [5 USCS § 8332(c)(1)(B)] [subsec. (c)(1)(B) of this section].

**(3)** The provisions of paragraph (1) relating to credit for service as a volunteer or volunteer leader under the Economic Opportunity Act of 1964, part A, B, or C of title I of the Domestic Volunteer Service Act of 1973 [42 USCS §§ 4951 et seq., 4971 et seq., or 4991 et seq.], or the Peace Corps Act shall not apply to any period of service as a volunteer or volunteer leader of an employee or Member with respect to which the employee or Member has made the deposit with interest, if any, required by section 8334(l) [5 USCS § 8334(1)].

**(k)**

**(1)** An employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) of this title [5 USCS § 8331(1)], within 60 days after entering on that leave without pay, may file with his employing agency an election to receive full retirement credit for his periods of that leave without pay and arrange to pay currently into the Fund, through his employing agency, amounts equal to the retirement deductions and agency contributions that would be applicable if he were in pay status. If the election and all payments provided by this paragraph are not made, the employee may not receive credit for the periods of leave without pay occurring after July 17, 1966, notwithstanding the third sentence of subsection (f) of this section. For the purpose of the preceding sentence, "employee" includes an employee who was on approved leave without pay and serving as a full-time officer or employee of such an organization on July 18, 1966, and who filed a similar election before September 17, 1966.

**(2)** An employee may deposit with interest an amount equal to retirement deductions representing any period or periods of approved leave without pay while serving, before July 18, 1966, as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) of this title [5 USCS § 8331(1)]. An employee who makes the deposit shall be allowed full retirement credit for the period or periods of leave without pay. If the

employee dies, a survivor as defined by section 8331(10) of this title [5 USCS § 8331(10)] may make the deposit. If the deposit is not made in full, retirement credit shall be allowed in accordance with the second sentence of subsection (f) of this section.

**(1)** (1) Any employee or Member who--

**(A)** is of Japanese ancestry; and

**(B)** while a citizen of the United States or an alien lawfully admitted to the United States for permanent residence, was interned or otherwise detained at any time during World War II in any camp, installation, or other facility in the United States, or in any territory or possession of the United States, under any policy or program of the United States respecting individuals of Japanese ancestry which was established during World War II in the interests of national security pursuant to--

**(i)** Executive Order Numbered 9066 [unclassified], dated February 19, 1942;

**(ii)** section 67 of the Act entitled "An Act to provide a government for the Territory of Hawaii", approved April 30, 1900 (chapter 339, Fifty-sixth Congress; 31 Stat. 153) [former 48 USCS § 532];

**(iii)** Executive Order Numbered 9489, dated October 18, 1944 [unclassified];

**(iv)** sections 4067 through 4070 of the Revised Statutes of the United States [50 USCS §§ 21-24]; or

**(v)** any other statute, rule, regulation, or order; or

**(C)** is of Aleut ancestry and while a citizen of the United States was interned or otherwise detained in, or relocated to any camp, installation, or other facility in the Territory of Alaska which was established during World War II for the purpose of the internment, detention, or relocation of Aleuts pursuant to any statute, rule, regulation, or order;

shall be allowed credit (as civilian service) for any period during which such employee or Member was so interned or otherwise detained after such employee became 18 years of age.

**(2)** For the purpose of this subsection, "World War II" means the period beginning on December 7, 1941, and ending on December 31, 1946.

**(m)** (1) Upon application to the Office of Personnel Management, any individual who is an employee on the date of the enactment of this subsection [enacted Dec. 12, 1980], and who has on such date or thereafter acquires 5 years or more of creditable civilian service under this section (exclusive of service for which credit is allowed under this subsection) shall be allowed credit (as service as a Congressional employee) for service before the date of the enactment of this subsection [enacted Dec. 12, 1980] while employed by the Democratic Senatorial Campaign Committee, the Republican

Senatorial Campaign Committee, the Democratic National Congressional Committee, or the Republican National Congressional Committee, if--

**(A)** such employee has at least 4 years and 6 months of service on such committees as of December 12, 1980; and

**(B)** such employee makes a deposit to the Fund in an amount equal to the amount which would be required under section 8334(c) of this title [5 USCS § 8334(c)] if such service were service as a Congressional employee.

**(2)** Upon application to the Office of Personnel Management, any individual who was an employee on the date of the enactment of this paragraph, and who has on such date or thereafter acquires 5 years or more of creditable civilian service under this section (exclusive of service for which credit is allowed under this subsection) shall be allowed credit (as service as a Congressional employee) for service before December 31, 1990, while employed by the Democratic Senatorial Campaign Committee, the Republican Senatorial Campaign Committee, the Democratic National Congressional Committee, or the Republican National Congressional Committee, if--

**(A)** such employee has at least 4 years and 6 months of service on such committees as of December 31, 1990; and

**(B)** such employee makes a deposit to the Fund in an amount equal to the amount which would be required under section 8334(c) if such service were service as a Congressional employee.

**(3)** The Office shall accept the certification of the President of the Senate (or his designee) or the Speaker of the House (or his designee), as the case may be, concerning the service of, and the amount of compensation received by, an employee with respect to which credit is to be sought under this subsection.

**(4)** An individual receiving credit for service for any period under this subsection shall not be granted credit for such service under the provisions of the Social Security Act.

**(n)** Any employee who--

**(1)** served in a position in which the employee was excluded from coverage under this subchapter [5 USCS §§ 8331 et seq.] because the employee was covered under a retirement system established under section 10 of the Federal Reserve Act; and

**(2)** transferred without a break in service to a position to which the employee was appointed by the President, with the advice and consent of the Senate, and in which position the employee is subject to this subchapter [5 USCS §§ 8331 et seq.],

shall be treated for all purposes of this subchapter [5 USCS §§ 8331 et seq.] as if any service that would have been creditable under the retirement system established under section 10 of the Federal Reserve Act was service performed while subject to this subchapter [5 USCS §§ 8331 et seq.] if any employee and employer deductions, contributions or rights with respect to the employee's service are transferred from such retirement system to the Fund.

**(o)**

**(1)** Notwithstanding any other provision of this subchapter [5 USCS §§ 8331 et seq.], the service of an individual finally convicted of an offense described in paragraph (2) shall not be taken into account for purposes of this subchapter [5 USCS §§ 8331 et seq.], except that this sentence applies only to service rendered as a Member (irrespective of when rendered). Any such individual (or other person determined under section 8342(c) [5 USCS § 8342(c)], if applicable) shall be entitled to be paid so much of such individual's lump-sum credit as is attributable to service to which the preceding sentence applies.

**(2)** (A) An offense described in this paragraph is any offense described in subparagraph (B) for which the following apply:

**(i)** Every act or omission of the individual (referred to in paragraph (1)) that is needed to satisfy the elements of the offense occurs while the individual is a Member, the President, the Vice President, or an elected official of a State or local government.

**(ii)** Every act or omission of the individual that is needed to satisfy the elements of the offense directly relates to the performance of the individual's official duties as a Member, the President, the Vice President, or an elected official of a State or local government.

**(iii)** The offense--

**(I)** is committed after the date of enactment of this subsection [enacted Sept. 14, 2007] and--

(aa) is described under subparagraph (B)(i), (iv), (xvi), (xix), (xxiii), (xxiv), or (xxvi); or

(bb) is described under subparagraph (B)(xxix), (xxx), or (xxxi), but only with respect to an offense described under subparagraph (B)(i), (iv), (xvi), (xix), (xxiii), (xxiv), or (xxvi); or

**(II)** is committed after the date of enactment of the STOCK Act [enacted April 4, 2012] and--

(aa) is described under subparagraph (B)(ii), (iii), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvii), (xviii), (xx), (xxi), (xxii), (xxv), (xxvii), or (xxviii); or

(bb) is described under subparagraph (B)(xxix), (xxx), or (xxxi), but only with respect to an offense described under subparagraph (B)(ii), (iii), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvii), (xviii), (xx), (xxi), (xxii), (xxv), (xxvii), or (xxviii).

**(B)** An offense described in this subparagraph is only the following, and only to the extent that the offense is a felony:

**(i)** An offense under section 201 of title 18 [18 USCS § 201] (relating to bribery of public officials and witnesses).

**(ii)** An offense under section 203 of title 18 [18 USCS § 203] (relating to compensation to Member of Congress, officers, and others in matters affecting the Government).

**(iii)** An offense under section 204 of title 18 [18 USCS § 204] (relating to practice in the United States Court of Federal Claims or the United States Court of Appeals for the Federal Circuit by Member of Congress).

**(iv)** An offense under section 219 of title 18 [18 USCS § 219] (relating to officers and employees acting as agents of foreign principals).

**(v)** An offense under section 286 of title 18 [18 USCS § 286] (relating to conspiracy to defraud the Government with respect to claims).

**(vi)** An offense under section 287 of title 18 [18 USCS § 287] (relating to false, fictitious or fraudulent claims).

**(vii)** An offense under section 597 of title 18 [18 USCS § 597] (relating to expenditures to influence voting).

**(viii)** An offense under section 599 of title 18 [18 USCS § 599] (relating to promise of appointment by candidate).

**(ix)** An offense under section 602 of title 18 [18 USCS § 602] (relating to solicitation of political contributions).

**(x)** An offense under section 606 of title 18 [18 USCS § 606] (relating to intimidation to secure political contributions).

**(xi)** An offense under section 607 of title 18 [18 USCS § 607] (relating to place of solicitation).

**(xii)** An offense under section 641 of title 18 [18 USCS § 641] (relating to public money, property or records).

**(xiii)** An offense under section 666 of title 18 [18 USCS § 666] (relating to theft or bribery concerning programs receiving Federal funds).

**(xiv)** An offense under section 1001 of title 18 [18 USCS § 1001] (relating to statements or entries generally).

- (xv)** An offense under section 1341 of title 18 [18 USCS § 1341] (relating to frauds and swindles, including as part of a scheme to deprive citizens of honest services thereby).
- (xvi)** An offense under section 1343 of title 18 [18 USCS § 1343] (relating to fraud by wire, radio, or television, including as part of a scheme to deprive citizens of honest services thereby).
- (xvii)** An offense under section 1503 of title 18 [18 USCS § 1503] (relating to influencing or injuring officer or juror).
- (xviii)** An offense under section 1505 of title 18 [18 USCS § 1505] (relating to obstruction of proceedings before departments, agencies, and committees).
- (xix)** An offense under section 1512 of title 18 [18 USCS § 1512] (relating to tampering with a witness, victim, or an informant).
- (xx)** An offense under section 1951 of title 18 [18 USCS § 1951] (relating to interference with commerce by threats of violence).
- (xxi)** An offense under section 1952 of title 18 [18 USCS § 1952] (relating to interstate and foreign travel or transportation in aid of racketeering enterprises).
- (xxii)** An offense under section 1956 of title 18 [18 USCS § 1956] (relating to laundering of monetary instruments).
- (xxiii)** An offense under section 1957 of title 18 [18 USCS § 1957] (relating to engaging in monetary transactions in property derived from specified unlawful activity).
- (xxiv)** An offense under chapter 96 of title 18 [18 USCS §§ 1961 et seq.] (relating to racketeer influenced and corrupt organizations).
- (xxv)** An offense under section 7201 of the Internal Revenue Code of 1986 [26 USCS § 7201] (relating to attempt to evade or defeat tax).
- (xxvi)** An offense under section 104(a) of the Foreign Corrupt Practices Act of 1977 [15 USCS § 78dd-2(a)] (relating to prohibited foreign trade practices by domestic concerns).
- (xxvii)** An offense under section 10(b) of the Securities Exchange Act of 1934 [15 USCS § 78j(b)] (relating to fraud, manipulation, or insider trading of securities).

**(xxviii)** An offense under section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) (relating to fraud, manipulation, or insider trading of commodities).

**(xxix)** An offense under section 371 of title 18 [18 USCS § 371] (relating to conspiracy to commit offense or to defraud United States), to the extent of any conspiracy to commit an act which constitutes--

**(I)** an offense under clause (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii), (xviii), (xix), (xx), (xxi), (xxii), (xxiii), (xxiv), (xxv), (xxvi), (xxvii), or (xxviii); or

**(II)** an offense under section 207 of title 18 [18 USCS § 207] (relating to restrictions on former officers, employees, and elected officials of the executive and legislative branches).

**(xxx)** Perjury committed under section 1621 of title 18 [18 USCS § 1621] in falsely denying the commission of an act which constitutes--

**(I)** an offense under clause (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii), (xviii), (xix), (xx), (xxi), (xxii), (xxiii), (xxiv), (xxv), (xxvi), (xxvii), or (xxviii); or

**(II)** an offense under clause (xxix), to the extent provided in such clause.

**(xxxi)** Subornation of perjury committed under section 1622 of title 18 [18 USCS § 1622] in connection with the false denial or false testimony of another individual as specified in clause (xxx).

**(3)** An individual convicted of an offense described in paragraph (2) shall not, after the date of the final conviction, be eligible to participate in the retirement system under this subchapter or chapter 84 [5 USCS §§ 8331 et seq. or 8401 et seq.] while serving as a Member.

**(4)** The Office of Personnel Management shall prescribe any regulations necessary to carry out this subsection. Such regulations shall include--

**(A)** provisions under which interest on any lump-sum payment under the second sentence of paragraph (1) shall be limited in a manner similar to that specified in the last sentence of section 8316(b) [5 USCS § 8316(b)]; and

**(B)** provisions under which the Office may provide for--

**(i)** the payment, to the spouse or children of any individual referred to in the first sentence of paragraph (1), of any amounts which (but for this clause) would otherwise have been nonpayable by reason of such first sentence, subject to paragraph (5); and

(ii) an appropriate adjustment in the amount of any lump-sum payment under the second sentence of paragraph (1) to reflect the application of clause (i).

(5) Regulations to carry out clause (i) of paragraph (4)(B) shall include provisions to ensure that the authority to make any payment to the spouse or children of an individual under such clause shall be available only to the extent that the application of such clause is considered necessary and appropriate taking into account the totality of the circumstances, including the financial needs of the spouse or children, whether the spouse or children participated in an offense described in paragraph (2) of which such individual was finally convicted, and what measures, if any, may be necessary to ensure that the convicted individual does not benefit from any such payment.

(6) For purposes of this subsection--

(A) the terms "finally convicted" and "final conviction" refer to a conviction (i) which has not been appealed and is no longer appealable because the time for taking an appeal has expired, or (ii) which has been appealed and the appeals process for which is completed;

(B) the term "Member" has the meaning given such term by section 2106 [5 USCS § 2106], notwithstanding section 8331(2) [5 USCS § 8331(2)]; and

(C) the term "child" has the meaning given such term by section 8341 [5 USCS § 8341].

## History

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(Sept. 6, 1966, P.L. 89-554, § 1, 80 Stat. 567; Sept. 11, 1967, P.L. 90-83, § 1(73), 81 Stat. 214; Aug. 13, 1968, P.L. 90-486, § 5(a), 82 Stat. 757; Dec. 30, 1969, P.L. 91-177, Title I, § 112(a), 83 Stat. 831; Oct. 26, 1970, P.L. 91-510, Title IV, Part 4, § 442(b), 84 Stat. 1191; Jan. 8, 1971, P.L. 91-658, § 1, 84 Stat. 1961; May 16, 1972, P.L. 92-297, § 7(1), 86 Stat. 144; Oct. 2, 1972, P.L. 92-454, § 1, 86 Stat. 760; Oct. 1, 1973, P.L. 93-113, Title VI, § 602, 87 Stat. 417; Dec. 31, 1975, P.L. 94-183, § 2(32), (33), (39), 89 Stat. 1058, 1059; Sept. 22, 1978, P.L. 95-382, § 1(a), 92 Stat. 727; Oct. 13, 1978, P.L. 95-454, Title IX, § 906(a)(2), (3), 92 Stat. 1224; Aug. 14, 1979, P.L. 96-54, § 2(a)(48), 93 Stat. 384; Oct. 17, 1980, P.L. 96-465, Title II, Ch 3, § 2313, 94 Stat. 2167; Dec. 12, 1980, P.L. 96-523, § 4(a), 94 Stat. 3040; April 2, 1982, P.L. 97-164, Title II, Part D, § 207(a), 96 Stat. 54; Sept. 8, 1982, P.L. 97-253, Title III, Subtitle A, § 306(b), (c), 96 Stat. 795, 796; Oct. 15, 1982, P.L. 97-346, § 3(a), (b), 96 Stat. 1647; July 14, 1983, P.L. 98-51, Title I § 111(2), 97 Stat. 269; Nov. 2, 1966, P.L. 89-702, Title II, § 209(a)-(e), as added Oct. 14, 1983, P.L. 98-129, § 2, 97 Stat. 843; July 18, 1984, P.L. 98-369, Division B, Title II, § 2208(a), 98 Stat. 1060; Feb. 27, 1986, P.L. 99-251, Title II, § 202, 100 Stat. 23; June 6, 1986, P.L. 99-335, Title II, § 207(g), 100 Stat. 595; Oct. 27, 1986, P.L. 99-556, Title V, § 502(a), 100 Stat. 3140; Nov. 10, 1986, P.L. 99-638, § 2(b)(2), 100 Stat. 3536; Dec. 22, 1987, P.L. 100-204, Title V, §

503, 101 Stat. 1383; Nov. 6, 1990, P.L. 101-530, § 1, 104 Stat. 2338; Dec. 19, 1991, P.L. 102-242, Title IV, Subtitle L, § 466(a), 105 Stat. 2384; Oct. 2, 1992, P.L. 102-378, § 2(58), 106 Stat. 1354; Sept. 21, 1993, P.L. 103-82, Title III, Subtitle B, Ch 3, § 371(a)(1), Title IV, § 405(b), 107 Stat. 909, 920; Oct. 5, 1994, P.L. 103-337, Div A, Title XVI, Subtitle D, § 1677(a)(3), 108 Stat. 3019; Aug. 20, 1996, P.L. 104-186, Title II, § 215(11), 110 Stat. 1746; Sept. 23, 1996, P.L. 104-201, Div A, Title VI, Subtitle D, § 637(a), 110 Stat. 2580; Act Sept. 29, 1999, P.L. 106-57, Title III, § 312, 113 Stat. 428; Dec. 21, 2000, P.L. 106-554, § 1(a)(4), 114 Stat. 2763; Dec. 28, 2001, P.L. 107-107, Div A, Title XI, Subtitle D, § 1132(a)(1), 115 Stat. 1242; Sept. 14, 2007, P.L. 110-81, Title IV, § 401(a), 121 Stat. 754.)

(As amended April 4, 2012, P.L. 112-105, § 15(a)(1), (b), 126 Stat. 301.)

**Prior law and revision:**

1966 Act

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Revised Statutes and

Derivation      U.S. Code      Statutes at Large

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.....	5 U.S.C. 2253 (less (f) and (g)).	July 31, 1956, ch. 804, Sec. 401 "Sec. 3 (less (f) and (g))", 70 Stat. 745. Aug. 1, 1956, ch. 837, Sec. 409, 70 Stat. 877. June 17, 1957, Pub. L. 85-56, Sec. 2201(2), 71 Stat. 157. Sept. 2, 1958, Pub. L. 85-857, Sec. 13(c), 72 Stat. 1264. Sept. 21, 1959, Pub. L. 86-306, Sec. 1, 73 Stat. 583. Sept. 22, 1961, Pub. L. 87-293, Sec. 21, 75 Stat. 623.
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.....	5 U.S.C. 2252(g) (2d sentence).	July 31, 1956, ch. 804, Sec. 401 "Sec. 2(g) (2d sentence)", 70 Stat. 745.
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