

be actuarially equivalent in value to such annuity, as calculated upon such tables of mortality as may from time to time be prescribed for this purpose by the Secretary of State.

(C) If a former spouse predeceases the participant or remarries before attaining age 60 (or, in the case of a spouse, the spouse does not qualify as a former spouse upon dissolution of the marriage)—

(i) if an annuity reduction or salary allotment under subparagraph (A) is in effect for that spouse or former spouse, the annuity shall be recomputed and paid as if it had not been reduced or the salary allotment terminated, as the case may be, and

(ii) any amount accruing to the Fund under subparagraph (A) shall be refunded, but only to the extent that such amount may have exceeded the actuarial cost of providing benefits under this subsection for the period such benefits were provided, as determined under regulations prescribed by the Secretary of State.

(D) Under regulations prescribed by the Secretary of State, an annuity shall be recomputed (or salary allotment terminated or adjusted), and a refund provided (if appropriate), in a manner comparable to that provided under subparagraph (C), in order to reflect a termination or reduction of future benefits under this subsection for a spouse in the event a former spouse of the participant dies or remarries before attaining age 60 and an increased annuity is provided for that spouse in accordance with this part.

(4) An annuity payable under this subsection to a spouse or former spouse shall commence on the day after the participant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60.

(5) Section 4066 of this title shall not apply to any annuity under this subsection, unless authorized under regulations prescribed by the Secretary of State.

(Pub. L. 96-465, title I, § 814, Oct. 17, 1980, 94 Stat. 2113; Pub. L. 97-241, title I, § 125(2), Aug. 24, 1982, 96 Stat. 282; Pub. L. 99-335, title IV, §§ 402(a)(2), (3), 404(b), June 6, 1986, 100 Stat. 609, 610; Pub. L. 100-238, title II, § 217(a), (b), (c)(2), Jan. 8, 1988, 101 Stat. 1775.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100-238, § 217(a), which directed the amendment of par. (1) by inserting “if such former spouse was married to the participant for at least 10 years during service of the participant which is creditable under this subchapter with at least 5 of such years occurring while the participant was a member of the Foreign Service and” after “annuity”, was executed by inserting the new language after “annuity” in introductory provisions, as the probable intent of Congress.

Subsec. (a)(4). Pub. L. 100-238, § 217(b), substituted “24” for “12”.

Subsec. (d). Pub. L. 100-238, § 217(c)(2), struck out subsec. (d) which read as follows: “Section 4046(l) of this title shall not apply—

“(1) to any annuity payable under subsection (a) or (b) of this section to any former spouse if the amount of that annuity varies by reason of a spousal agreement or court order under section 4060(b)(1) of this title, or an election under section 4046(b)(1)(B) of this

title, from the amount which would be calculated under subsection (a)(1) or (b)(1) of this section, as the case may be, in the absence of such spousal agreement, court order, or election; and

“(2) to any annuity payable under subsection (c) of this section.”

1986—Subsec. (a)(1). Pub. L. 99-335, § 404(b)(1), inserted provision defining “creditable service” as service creditable under part I or II of this subchapter.

Subsec. (a)(3), (5)(A), (6)(A). Pub. L. 99-335, § 402(a)(2), substituted “part” for “subchapter”.

Subsec. (b)(1). Pub. L. 99-335, § 404(b)(2), inserted provision defining “creditable service” as service creditable under part I or II of this subchapter.

Subsec. (b)(3). Pub. L. 99-335, § 402(a)(3), inserted “under this part” after “payable from the Fund”.

Subsec. (c)(3)(D). Pub. L. 99-335, § 402(a)(2), substituted “part” for “subchapter”.

1982—Subsec. (a)(3). Pub. L. 97-241 substituted “or the first” for “on the first” in provision preceding subpar. (A).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 261 of title II of Pub. L. 100-238 provided that: “(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title [enacting sections 4069-1 to 4069c-1 of this title, amending this section and sections 4044 to 4046, 4048, 4049, 4051, 4055, 4066, 4071a, 4071c, and 4084 of this title, and enacting provisions set out as a note under section 4046 of this title] shall take effect 90 days after the date of enactment of this title [Jan. 8, 1988].

“(b) EXCEPTIONS.—

“(1) The amendments made by section 202 [enacting section 4069-1 of this title] shall apply to any individual who, on or after the date of enactment of this title [Jan. 8, 1988], is married to a participant or former participant.

“(2) The amendment made by section 217(a) [amending this section] shall not apply with respect to the former spouse of a participant or former participant who is subject to subchapter I of chapter 8 of the Foreign Service Act of 1980 [this part] if, on the date of enactment of this title [Jan. 8, 1988], that former spouse—

“(A) was the spouse of that participant or former participant; or

“(B) is entitled to an annuity under section 814 of the Foreign Service Act of 1980 [this section] pursuant to the divorce or annulment of the marriage to that participant or former participant.

“(c) DEFINITIONS.—For the purpose of this section, the terms ‘participant’ and ‘former participant’ have the same meaning as such terms in chapter 8 of the Foreign Service Act of 1980 [this subchapter].”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

§ 4055. Lump-sum payments

(a) Requirements for payment

(1) A participant is entitled to be paid a lump-sum credit if the participant—

(A) is separated from the Service for at least 31 consecutive days, or is transferred to a position in which the participant is not subject to this subchapter and remains in such a position for at least 31 consecutive days;

(B) files an application with the Secretary of State for payment of the lump-sum credit;

(C) is not reemployed in a position in which the participant is subject to this subchapter at the time the participant files the application;

(D) will not become eligible to receive an annuity under this part within 31 days after filing the application; and

(E) has notified any spouse or former spouse the participant may have of the application for payment in accordance with regulations prescribed by the Secretary of State.

Such regulations may provide for waiver of subparagraph (E) under circumstances described in section 4046(b)(1)(D) of this title.

(2) Such lump-sum credit shall be paid to the participant and to any former spouse of the participant in accordance with subsection (i) of this section.

(b) Recall service; return of contributions

Whenever an annuitant becomes separated from the Service following a period of recall service without becoming eligible for a supplemental or recomputed annuity under section 4063 of this title, the compulsory contributions of the annuitant to the Fund for such service, together with any special contributions the annuitant may have made for other service performed after the date of separation from the Service which forms the basis for annuity, shall be returned to the annuitant (and any former spouse of the annuitant who was married to the participant during the period of recall service, in accordance with subsection (i) of this section).

(c) Difference between annuity and lump-sum credit

If all annuity rights under this part based on the service of a deceased participant or annuitant terminate before the total annuity paid equals the lump-sum credit to which the participant or annuitant is entitled, the difference shall be paid in accordance with subsection (f) of this section.

(d) Lack of eligible survivors

If a participant or former participant dies and is not survived by an individual eligible for an annuity under this part or by such an individual or individuals all of whose annuity rights terminate before a claim for survivor annuity is filed, the lump-sum credit to which the participant or annuitant is entitled shall be paid in accordance with subsection (f) of this section.

(e) Death of annuitant who was former participant

If an annuitant who was a former participant dies, any annuity accrued and unpaid shall be paid in accordance with subsection (f) of this section.

(f) Order of precedence for payments

Payments under subsections (c) through (e) of this section shall be paid in the following order of precedence to individuals surviving the participant and alive on the date entitlement to the payment arises, upon the establishment of a valid claim therefor, and such payment shall be a bar to recovery by any other person:

(1) To the beneficiary or beneficiaries last designated by the participant before or after retirement in a signed and witnessed writing filed with the Secretary of State prior to the death of the participant, for which purpose a designation, change, or cancellation of beneficiary in a will or other document which is not so executed and filed shall have no force or effect.

(2) If there is no such beneficiary, to the surviving wife or husband of the participant.

(3) If none of the above, to the child (without regard to the definition in section 4044(2) of this title) or children of the participant (including adopted and natural children but not stepchildren) and descendants of deceased children by representation.

(4) If none of the above, to the parents of the participant or the survivor of them.

(5) If none of the above, to the duly appointed executor or administrator of the estate of the participant.

(6) If none of the above, to such other next of kin of the participant as may be determined in the judgment of the Secretary of State to be legally entitled to such payment, except that no payment shall be made under this paragraph until after the expiration of 30 days after the death of the participant or annuitant.

(g) Death of survivor annuitant

Annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other person:

(1) To the duly appointed executor or administrator of the estate of the survivor annuitant.

(2) If there is no such executor or administrator, to such person as may be determined by the Secretary of State (after the expiration of 30 days from the date of death of the survivor annuitant) to be entitled under the laws of the domicile of the survivor annuitant at the time of death.

(h) Amount of credit

¹Amounts deducted and withheld from basic salary of a participant under section 4045 of this title from the beginning of the first pay period after the participant has completed 35 years of service computed under section 4056 of this title (excluding service credit for unused sick leave under section 4056(b) of this title), together with interest on the amounts at the rate of 3 percent a year compounded annually from the date of the deduction to the date of retirement or death, shall be applied toward any special contribution due under section 4045(d) of this title, and any balance not so required shall be refunded in a lump sum to the participant after separation or, in the event of a death in service, to a beneficiary in the order of precedence specified in subsection (f) of this section.

(i) Former spouses

Unless otherwise expressly provided by any spousal agreement or court order under section 4060(b)(1) of this title, the amount of a participant's or former participant's lump-sum credit payable to a former spouse of that participant shall be—

(1) if the former spouse was married to the participant throughout the period of creditable service of the participant, 50 percent of the lump-sum credit to which such participant would be entitled in the absence of this subsection, or

¹ See Amendment of Section note below.

(2) if such former spouse was not married to the participant throughout such creditable service, an amount equal to such former spouse's pro rata share of 50 percent of such lump-sum credit.

The lump-sum credit of the participant shall be reduced by the amount of the lump-sum credit payable to the former spouse. For the purposes of this subsection, the term "creditable service" means service which is creditable under part I or II of this subchapter.

(Pub. L. 96-465, title I, § 815, Oct. 17, 1980, 94 Stat. 2116; Pub. L. 99-335, title IV, §§ 402(a)(2), 404(c), 413, June 6, 1986, 100 Stat. 609, 610, 614; Pub. L. 100-238, title II, § 218, Jan. 8, 1988, 101 Stat. 1775.)

AMENDMENT OF SECTION

Section 1(a) and (c) of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, set out as a note under section 4067 of this title, provided that the first sentence of subsection (h) of this section, applicable (i) to contributions for civilian service performed on or after the first day of Nov. 1983, (ii) to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of Nov. 1983, and (iii) to excess contributions under section 4055(h) of this title and voluntary contributions under section 4065(a) of this title from the first day of Nov. 1983, is deemed to be amended to provide that interest shall be compounded at the annual rate of 3 percent per annum through December 31, 1984, and thereafter at a rate equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 4059 of this title, as determined by the Secretary of the Treasury.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-238 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Whenever a participant becomes separated from the Service without becoming eligible for an annuity or a deferred annuity under this subchapter, a lump-sum credit shall be paid to the participant (and to any former spouse of the participant, in accordance with subsection (i) of this section). A participant who becomes subject to part II of this subchapter shall be entitled to payment of the lump-sum credit if, and to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees' Retirement System Act of 1986."

1986—Subsec. (a). Pub. L. 99-335, § 413, inserted provision relating to payment of a lump-sum credit for a participant who becomes subject to part II of this subchapter.

Subsecs. (c), (d). Pub. L. 99-335, § 402(a)(2), substituted "part" for "subchapter".

Subsec. (i). Pub. L. 99-335, § 404(c), inserted provision defining "creditable service" as service creditable under part I or II of this subchapter.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effec-

tive Date note under section 8401 of Title 5, Government Organization and Employees.

§ 4056. Creditable service

(a) Applicability of civil service provisions

(1) ¹Except as otherwise specified by law, all periods of civilian and military and naval service, and all other periods through the date of final separation of a participant from the Service that the Secretary of State determines would be creditable toward retirement under the Civil Service Retirement and Disability System (as determined in accordance with section 8332 of title 5), shall be creditable for purposes of this part. Conversely, any such service performed after December 31, 1976, that would not be creditable under specified conditions under section 8332 of title 5, shall be excluded under this part under the same conditions.

(2) The service of an individual who first becomes a participant on or after October 17, 1983, without any credit under this section for civilian service performed prior to October 1, 1982, shall include credit for:

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

(B) each period of military or naval service performed after December 31, 1956, and before the separation on which the entitlement to annuity under this part is based, only if a deposit (with interest if any is required) is made with respect to that period, as provided in section 4045(e) of this title.

(3) The service of an individual who first became a participant on or after October 17, 1983, with credit under this section for civilian service performed prior to October 1982, shall include credit for each period of military or naval service performed before the date of the separation on which the entitlement to an annuity under this part is based, subject, in the case of military or naval service performed after December 1956, to subsection (j) of this section.

(4) The service of an individual who first became a participant before October 17, 1983, shall include credit for each period of military or naval service performed before the date of the separation on which the entitlement to an annuity under this part is based, subject, in the case of military or naval service performed after December 1976, to subsection (j) of this section.

(b) Unused sick leave credit

In computing any annuity under this part, the total service of a participant who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes (without regard to the 35-year limitation imposed by section 4046(a) of this title) the days of unused sick leave to the credit of the participant, except that these days shall not be counted in determining average basic salary or annuity eligibility under this part. A contribution to the Fund shall not be required from a participant for this service credit.

¹ See Amendment of Section note below.