

**§ 2035. Retirement annuity for certain former spouses**

**(a) Retirement annuity**

An individual who was a former spouse of a participant, former participant, or retired participant on November 15, 1982, and any former spouse divorced after November 15, 1982, from a participant or former participant who retired before November 15, 1982, shall be entitled, except to the extent such former spouse is disqualified under subsection (b) of this section, to an annuity—

(1) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

(2) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 50 percent of such annuity.

**(b) Limitations**

A former spouse is not entitled to an annuity under this section if—

(1) the former spouse remarries before age 55, except that the entitlement of the former spouse to an annuity under this section shall be restored on the date such remarriage is dissolved by death, annulment, or divorce; or

(2) the former spouse is less than 50 years of age.

**(c) Commencement and termination**

**(1) Retirement annuities**

The entitlement of a former spouse to an annuity under this section—

(A) shall commence on the later of—

(i) the day the participant upon whose service the right to the annuity is based becomes entitled to an annuity under this subchapter;

(ii) the first day of the month in which the divorce or annulment involved becomes final; or

(iii) such former spouse's 50th birthday; and

(B) shall terminate on the earlier of—

(i) the last day of the month before the former spouse dies or remarries before 55 years of age, except that the entitlement of the former spouse to an annuity under this section shall be restored on the date such remarriage is dissolved by death, annulment, or divorce; or

(ii) the date on which the annuity of the participant terminates.

**(2) Disability annuities**

Notwithstanding paragraph (1)(A)(i), in the case of a former spouse of a disability annuitant—

(A) the annuity of the former spouse shall commence on the date on which the participant would qualify on the basis of the participant's creditable service for an annuity under this subchapter (other than disability annuity) or the date the disability annuity begins, whichever is later; and

(B) the amount of the annuity of the former spouse shall be calculated on the

basis of the annuity for which the participant would otherwise so qualify.

**(3) Election of benefits**

A former spouse of a participant or retired participant shall not become entitled under this section to an annuity or to the restoration of an annuity payable from the fund unless the former spouse elects to receive it instead of any survivor annuity to which the former spouse may be entitled under this or any other retirement system for Government employees on the basis of a marriage to someone other than the participant.

**(4) Application**

**(A) Time limit; waiver**

An annuity under this section shall not be payable unless appropriate written application is provided to the Director, complete with any supporting documentation which the Director may by regulation require, not later than June 2, 1990. The Director may waive the application deadline under the preceding sentence in any case in which the Director determines that the circumstances warrant such a waiver.

**(B) Retroactive benefits**

Upon approval of an application under subparagraph (A), the appropriate annuity shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to an annuity under this section, but in no event shall an annuity be payable under this section with respect to any period before December 2, 1987.

**(d) Restoration of annuities**

Notwithstanding subsection (c)(4)(A) of this section, the deadline by which an application for a retirement annuity must be submitted shall not apply in cases in which a former spouse's entitlement to such annuity is restored under subsection (b)(1) or (c)(1)(B) of this section.

**(e) Savings provision**

Nothing in this section shall be construed to impair, reduce, or otherwise affect the annuity or the entitlement to an annuity of a participant or former participant under this subchapter.

(Pub. L. 88-643, title II, §225, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3218; amended Pub. L. 103-178, title II, §202(a)(7), Dec. 3, 1993, 107 Stat. 2026.)

PRIOR PROVISIONS

A prior section 225 of Pub. L. 88-643, as added Pub. L. 100-178, title IV, §401(a), Dec. 2, 1987, 101 Stat. 1012; amended Pub. L. 100-453, title III, §302(c)(1), Sept. 29, 1988, 102 Stat. 1907; Pub. L. 102-88, title III, §307(b), Aug. 14, 1991, 105 Stat. 433, related to retirement benefits for certain other former spouses and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

AMENDMENTS

1993—Subsec. (c)(3). Pub. L. 103-178, §202(a)(7)(A), substituted "any survivor annuity" for "any other annuity".

Subsec. (c)(4)(A). Pub. L. 103-178, §202(a)(7)(B), substituted “June 2, 1990” for “June 2, 1991”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103-178, set out as a note under section 2001 of this title.

**§ 2036. Survivor annuities for previous spouses**

The Director shall prescribe regulations under which a previous spouse who is divorced after September 29, 1988, from a participant, former participant, or retired participant shall be eligible for a survivor annuity to the same extent and, to the greatest extent practicable, under the same conditions (including reductions to be made in the annuity of the participant) applicable to former spouses (as defined in section 8331(23) of title 5) of participants in the Civil Service Retirement and Disability System (CSRS) as prescribed by the Civil Service Retirement Spouse Equity Act of 1984.

(Pub. L. 88-643, title II, §226, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3220.)

REFERENCES IN TEXT

The Civil Service Retirement Spouse Equity Act of 1984, referred to in text, is Pub. L. 98-615, Nov. 8, 1984, 98 Stat. 3195, as amended. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 8331 of Title 5, Government Organization and Employees, and Tables.

PRIOR PROVISIONS

A prior section 226 of Pub. L. 88-643, as added Pub. L. 100-453, title III, §302(a), Sept. 29, 1988, 102 Stat. 1906; amended Pub. L. 102-88, title III, §304(b), (c), Aug. 14, 1991, 105 Stat. 431, 432; Pub. L. 102-183, title III, §306(a), (b), Dec. 4, 1991, 105 Stat. 1265, related to survivor annuities for previous spouses and second chance to elect survivor annuity for certain spouses and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

PART D—BENEFITS ACCRUING TO CERTAIN PARTICIPANTS

**§ 2051. Retirement for disability or incapacity; medical examination; recovery**

**(a) Disability retirement**

**(1) Eligibility**

A participant who has become disabled shall, upon the participant's own application or upon order of the Director, be retired on an annuity computed under subsection (b) of this section.

**(2) Standard for disability determination**

A participant shall be considered to be disabled only if the participant—

(A) is found by the Director to be unable, because of disease or injury, to render useful and efficient service in the participant's position; and

(B) is not qualified for reassignment, under procedures prescribed by the Director, to a vacant position in the Agency at the same grade or level and in which the participant would be able to render useful and efficient service.

**(3) Time limit for application**

**(A) One year requirement**

A claim may be allowed under this section only if the application is submitted before the participant is separated from the Agency or within one year thereafter.

**(B) Waiver for mentally incompetent participant**

The time limitation may be waived by the Director for a participant who, at the date of separation from the Agency or within one year thereafter, is mentally incompetent, if the application is filed with the Agency within one year from the date of restoration of the participant to competency or the appointment of a fiduciary, whichever is earlier.

**(b) Computation of disability annuity**

**(1) In general**

Except as provided in paragraph (2), an annuity payable under subsection (a) of this section shall be computed under section 2031(a) of this title. However, if the disabled or incapacitated participant has less than 20 years of service credit toward retirement under the system at the time of retirement, the annuity shall be computed on the assumption that the participant has had 20 years of service, but the additional service credit that may accrue to a participant under this paragraph may not exceed the difference between the participant's age at the time of retirement and age 60.

**(2) Coordination with military retired pay and veterans' compensation and pension**

If a participant retiring under this section is receiving retired pay or retainer pay for military service (except that specified in section 2082(e)(3) of this title) or Department of Veterans Affairs compensation or pension in lieu of such retired or retainer pay, the annuity of that participant shall be computed under section 2031(a) of this title, excluding credit for such military service from that computation. If the amount of the annuity so computed, plus the retired or retainer pay which is received, or which would be received but for the application of the limitation in section 5532<sup>1</sup> of title 5, or the Department of Veterans Affairs compensation or pension in lieu of such retired or retainer pay, is less than the annuity that would be payable under this section in the absence of the previous sentence, an amount equal to the difference shall be added to the annuity payable under section 2031(a) of this title.

**(c) Medical examinations**

**(1) Medical examination required for determination of disability**

In each case, the participant shall be given a medical examination by one or more duly qualified physicians or surgeons designated by the Director to conduct examinations, and disability shall be determined by the Director on the basis of the advice of such physicians or surgeons.

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