

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 AMENDMENTS

Pub. L. 99-556, title IV, §408, Oct. 27, 1986, 100 Stat. 3139, provided that: "This title and the amendments made by this title [enacting section 4069 of this title and amending this section and sections 4064, 4071c, 4071d, and 4071j of this title] shall take effect on January 1, 1987. The amendment made by section 403 [amending section 4064 of this title] shall apply to any individual in a reemployed status on or after January 1, 1987."

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.

Pub. L. 99-335, title IV, §417, June 6, 1986, 100 Stat. 622, provided that:

"(a) REGULATIONS.—Notwithstanding section 702 of this Act [5 U.S.C. 8401 note], the authority of the Secretary of State to issue regulations under subchapter II of title 8 [probably means subchapter II of chapter 8 of title I] of the Foreign Service Act of 1980 [part II of this subchapter] shall take effect on the date of enactment of this Act [June 6, 1986].

"(b) 18-MONTH PERIOD TO ELECT SURVIVOR ANNUITY.—(1) Notwithstanding section 702 of this Act, the amendment made by section 407 [enacting subsec. (n) of this section] shall take effect 3 months after the date of enactment of this Act.

"(2)(A) Subject to subparagraph (B), the amendment made by section 407 shall apply with respect to participants and former participants who retire before, on, or after such amendment first takes effect.

"(B) For the purpose of applying the provisions of paragraph (1) of section 806(n) of the Foreign Service Act of 1980 (as added by section 407) to former participants who retire before the date on which the amendment first takes effect—

"(i) the period referred to in subparagraph (A) or (B) of such paragraph (as the case may be) shall be considered to begin on the date on which such amendment first becomes effective; and

"(ii) the amount referred to in paragraph (2) of such section 806(n) shall be computed without regard to the provisions of subparagraph (B)(ii) of such paragraph (relating to interest).

"(3) For purposes of this subsection, the term 'participant' has the meaning given that term in section 803 of the Foreign Service Act of 1980 (22 U.S.C. 4043)."

ELECTION TO PROVIDE SURVIVOR ANNUITY FOR CERTAIN SPOUSES ACQUIRED BEFORE EFFECTIVE DATE OF FOREIGN SERVICE ACT OF 1980

Pub. L. 100-238, title II, §203, Jan. 8, 1988, 101 Stat. 1769, provided that:

"(a) ELECTION.—A former participant who married his or her current spouse before the effective date of the Foreign Service Act of 1980 [see Effective Date note set out under section 3901 of this title] and who married such spouse after retirement under the Foreign Service Retirement and Disability System and who was unable to provide a survivor annuity for such spouse because—

"(1) the participant was married at the time of retirement and elected not to provide a survivor annuity for that spouse at the time of retirement, or

"(2) subject to subsection (e), the participant failed to notify the Secretary of State of the participant's post-retirement marriage within one year after the marriage,

may make the election described in subsection (b).

"(b) ELECTION DESCRIBED.—

"(1) The election referred to in subsection (a) is an election in writing—

"(A) to provide for a survivor annuity for such spouse under section 806(g) of the Foreign Service Act of 1980 (22 U.S.C. 4046(g));

"(B) to have his or her annuity reduced under section 806(b)(2) of such Act; and

"(C) to deposit in the Foreign Service Retirement and Disability Fund an amount determined by the Secretary of State, as nearly as may be administratively feasible, to reflect the amount by which such participant's annuity would have been reduced had the election been continuously in effect since the annuity commenced, plus interest computed under paragraph (2).

"(2) For the purposes of paragraph (1), the annual rate of interest shall be 6 percent for each year during which the annuity would have been reduced if the election had been in effect on and after the date the annuity commenced.

"(c) OFFSET.—If the participant does not make the deposit referred to in subsection (b)(1)(C), the Secretary of State shall collect such amount by offset against such participant's annuity, up to a maximum of 25 percent of the net annuity otherwise payable to such participant. Such participant is deemed to consent to such offset.

"(d) NOTICE.—The Secretary of State shall provide for notice to the general public of the right to make an election under this section.

"(e) PROOF OF ATTEMPTED ELECTION.—In any case in which subsection (a)(2) applies, the retired employee or Member shall provide the Secretary of State with such documentation as the Secretary of State shall decide is appropriate, to show that such participant attempted to elect a reduced annuity with survivor benefit for his or her current spouse and that such election was rejected by the Secretary of State because it was untimely filed.

"(f) DEPOSIT.—A deposit required by this subsection may be made by the surviving spouse of the participant.

"(g) LIMITATION.—The election authorized in subsection (a) may only be made within one year after the date of enactment of this title [Jan. 8, 1988] in accordance with procedures prescribed by the Secretary of State.

"(h) DEFINITIONS.—For the purposes of this section, the terms 'participant' and 'surviving spouse' have the same meaning given such terms in subchapter I of chapter 8 of the Foreign Service Act of 1980 [this part]."

§ 4047. Payment of annuity

(a) Commencement of annuity

(1) Except as otherwise provided in paragraph (2), the annuity of a participant who has met the eligibility requirements for an annuity shall commence on the first day of the month after—

(A) separation from the Service occurs; or

(B) pay ceases and the service and age requirements for entitlement to annuity are met.

(2) The annuity of—

(A) a participant who is retired and is eligible for benefits under section 4009(a) of this title or a participant who is retired under section 4053 of this title or is otherwise involuntarily separated from the Service, except by removal for cause on charges of misconduct or delinquency,

(B) a participant retiring under section 4048 of this title due to a disability, and

(C) a participant who serves 3 days or less in the month of retirement—

shall commence on the day after separation from the Service or the day after pay ceases and the requirements for entitlement to annuity are met.

(b) Survivor's annuity; application; proof of eligibility; payment to estate

The annuity to a survivor shall become effective as otherwise specified but shall not be paid until the survivor submits an application for such annuity, supported by such proof of eligibility as the Secretary of State may require. If such application or proof of eligibility is not submitted during the lifetime of an otherwise eligible individual, no annuity shall be due or payable to his or her estate.

(c) Waiver

An individual entitled to annuity from the Fund may decline to accept all or any part of the annuity by submitting a signed waiver to the Secretary of State. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

(d) Recovery of overpayment

Recovery of overpayments under this part may not be made from an individual when, in the judgment of the Secretary of State, the individual is without fault and recovery would be against equity and good conscience or administratively infeasible.

(e) Alternate forms of annuities

(1) The Secretary of State shall prescribe regulations under which any participant who has a life-threatening affliction or other critical medical condition may, at the time of retiring under this part (other than under section 4048 of this title), elect annuity benefits under this section instead of any other benefits under this part (including survivor benefits) based on the service of the participant.

(2) Subject to paragraph (3), the Secretary of State shall by regulation provide for such alternative forms of annuities as the Secretary considers appropriate, except that among the alternatives offered shall be—

(A) an alternative which provides for—

- (i) payment of the lump-sum credit (excluding interest) to the participant; and
- (ii) payment of an annuity to the participant for life; and

(B) in the case of a participant who is married at the time of retirement, an alternative which provides for—

- (i) payment of the lump-sum credit (excluding interest) to the participant; and
- (ii) payment of an annuity to the participant for life, with a survivor annuity payable for the life of a surviving spouse.

(3) Each alternative provided for under paragraph (2) shall, to the extent practicable, be designed such that the total value of the benefits provided under such alternative (including any lump-sum credit) is actuarially equivalent to the value of the annuity which would otherwise be provided the participant under this part, as computed under section 4046(a) of this title.

(4) A participant who, at the time of retiring under this part—

(A) is married, shall be ineligible to make an election under this section unless a waiver is made under section 4046(b)(1)(B) of this title; or

(B) has a former spouse, shall be ineligible to make an election under this section if the former spouse is entitled to benefits under this part (based on the service of the participant) unless a waiver has been made under section 4046(b)(1)(C) of this title.

(5) A participant who is married at the time of retiring under this part and who makes an election under this section may, during the 18-month period beginning on the date of retirement, make the election provided for under section 4046(n) of this title, subject to the deposit requirement thereunder.

(6) Notwithstanding any other provision of law, any lump-sum credit provided pursuant to an election under this subsection shall not preclude an individual from receiving any other benefits under this subsection.

(Pub. L. 96-465, title I, §807, Oct. 17, 1980, 94 Stat. 2109; Ex. Ord. No. 12446, §3(a), Oct. 17, 1983, 48 F.R. 48443; Pub. L. 99-335, title IV, §§402(a)(2), 408, June 6, 1986, 100 Stat. 609, 612; Pub. L. 103-66, title XI, §11002(b), Aug. 10, 1993, 107 Stat. 409.)

AMENDMENTS

1993—Subsec. (e)(1). Pub. L. 103-66 substituted “any participant who has a life-threatening affliction or other critical medical condition” for “a participant”.

1986—Subsec. (d). Pub. L. 99-335, §402(a)(2), substituted “part” for “subchapter”.

Subsec. (e). Pub. L. 99-335, §408, added subsec. (e).

1983—Subsec. (a). Ex. Ord. No. 12446 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Except as otherwise provided, the annuity of a former participant who has met the eligibility requirements for an annuity shall commence on the day after separation from the Service or on the day after pay ceases. The annuity of a former participant who is entitled to a deferred annuity under this chapter shall become effective on the day he or she attains age 60.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 effective Oct. 1, 1994, and applicable with respect to any annuity commencing on or after that date, see section 11002(d) of Pub. L. 103-66, set out as a note under section 8343a of Title 5, Government Organization and Employees.

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.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Ex. Ord. No. 12446 effective 30 days after Oct. 17, 1983, see section 3(b) of Ex. Ord. No. 12446, set out under section 4067 of this title.

§ 4048. Retirement for disability or incapacity**(a) Causes; service credit**

Any participant who has at least 5 years of service credit toward retirement under the System (excluding military and naval service) and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury (not due to vicious habits, intemperance, or willful conduct of the participant) shall, upon his or her own application or upon order of the Secretary, be retired on an annuity computed as prescribed in section 4046 of this title. If the disabled or incapacitated par-