

## AMENDMENTS

1991—Subsec. (a). Pub. L. 102-54 substituted “Department of Veterans Affairs” for “Veterans’ Administration” in two places in second par.

1988—Subsecs. (a), (b). Pub. L. 100-238 substituted “60” for “65”.

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

Subsec. (d). Pub. L. 99-335, §402(b)(1), substituted “subchapter I of such chapter 8” for “such subchapter” in three places and “part” for “chapter” in three places.

Subsec. (e). Pub. L. 99-335, §402(b)(2), substituted “part” for “chapter” in two places.

1981—Subsec. (a). Ex. Ord. No. 12289 added second par. relating to computation of annuity for participant retiring under this section and receiving retired or retiree pay.

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

## EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Ex. Ord. No. 12289 effective Feb. 15, 1981, see section 3 of Ex. Ord. No. 12289, set out under section 4067 of this title.

**§ 4049. Death in service****(a) Lump-sum credit**

If a participant dies and no claim for annuity is payable under this part, the lump-sum credit shall be paid in accordance with section 4055 of this title.

**(b) Surviving spouse**

If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is survived by a spouse or former spouse qualifying for an annuity under section 4054(b) of this title, such surviving spouse shall be entitled to an annuity equal to 55 percent of the annuity computed in accordance with subsections (e) and (g) of this section and section 4046(a) of this title and any surviving former spouse shall be entitled to an annuity under section 4054(b) of this title as if the participant died after being entitled to an annuity under this part. If the participant had less than 3 years creditable civilian service at the time of death, the survivor annuity shall be computed on the basis of the average salary for the entire period of such service.

**(c) Surviving spouse or former spouse, and children**

If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant, and a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(1) and (d) of section 4046 of this title.

**(d) Surviving children**

If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is not survived by a spouse, or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant, but by a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(2) and (d) of section 4046 of this title.

**(e) Service credit; presumption of qualification**

If, at the time of his or her death, the participant had less than 20 years of service credit toward retirement under the System, the annuity payable in accordance with subsection (b) shall be computed in accordance with section 4046 of this title on the assumption he or she has had 20 years of service, except that the additional service credit that may accrue to a deceased participant under this subsection shall in no case exceed the difference between his or her age on the date of death and age 60. In all cases arising under this subsection or subsection (b), (c), (d), or (g), it shall be assumed that the deceased participant was qualified for retirement on the date of death.

**(f) Recall service**

If an annuitant entitled to a reduced annuity dies in service after being recalled under section 3948 of this title and is survived by a spouse or former spouse entitled to a survivor annuity based on the service of such annuitant, such survivor annuity shall be computed as if the recall service had otherwise terminated on the day of death and the annuity of the deceased had been resumed in accordance with section 4063 of this title. If such death occurs after the annuitant had completed sufficient recall service to attain eligibility for a supplemental annuity, a surviving spouse or surviving former spouse who was married to the participant at any time during a period of recall service shall be entitled to elect, in addition to any other benefits and in lieu of a refund of retirement contributions made during the recall service, a supplemental survivor annuity computed and paid under section 4046(i) of this title as if the recall service had otherwise terminated. If the annuitant had completed sufficient recall service to attain eligibility to have his or her annuity determined anew, a surviving spouse or such a surviving former spouse may elect, in lieu of any other survivor benefit under this subchapter, to have the rights of the annuitant redetermined and to receive a survivor annuity computed under subsection (b) on the basis of the total service of the annuitant.

**(g) Limitation on surviving spouse's annuity**

Notwithstanding subsection (b), if the participant or former participant had a former spouse qualifying for an annuity under section 4054(b) of this title, the annuity of the spouse under this section shall be subject to the limitation of section 4046(b)(3)(B) of this title.

**(h) Commencement, termination, and resumption of annuities**

Annuities that become payable under this section shall commence, terminate, and be resumed

in accordance with subsection (b)(4), (e), or (h) of section 4046 of this title, as appropriate.

(Pub. L. 96-465, title I, § 809, Oct. 17, 1980, 94 Stat. 2111; Pub. L. 99-335, title IV, § 402(a)(2), (c), June 6, 1986, 100 Stat. 609; Pub. L. 100-238, title II, § 214(b), 215(b), Jan. 8, 1988, 101 Stat. 1774.)

#### AMENDMENTS

1988—Subsecs. (c), (d). Pub. L. 100-238, § 214(b), inserted “or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant,” after “spouse”.

Subsec. (e). Pub. L. 100-238, § 215(b), substituted “60” for “65”.

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

Subsec. (b). Pub. L. 99-335, § 402(a)(2), substituted “part” for “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 Effective Date note under section 8401 of Title 5, Government Organization and Employees.

### § 4050. Discontinued service retirement

Any participant who voluntarily separates from the Service after obtaining at least 5 years of service credit toward retirement under the System (excluding military and naval service) may upon separation from the Service or at any time prior to becoming eligible for an annuity elect to have his or her contributions to the Fund returned in accordance with section 4055 of this title, or to leave his or her contributions in the Fund and receive an annuity, computed under section 4046 of this title, commencing at age 60.

(Pub. L. 96-465, title I, § 810, Oct. 17, 1980, 94 Stat. 2112.)

### § 4051. Voluntary retirement

Any participant who is at least 50 years of age and has 20 years of creditable service, including at least 5 years of service credit toward retirement under the System (excluding military and naval service), may on his or her own application and with the consent of the Secretary be retired from the Service and receive retirement benefits in accordance with section 4046 of this title. The Secretary shall withhold consent for retirement under this section by any participant who has not been a member of the Service for 5 years. Any participant who voluntarily separates from the Service before completing 5 years in the System and who, on the date of separation, would be eligible for an annuity, based on a voluntary separation, under section 8336 or 8338 of title 5, if the participant had been covered under the Civil Service Retirement System rather than subject to this subchapter while a member of the Service, may receive an annuity under section 8336 or 8338, notwithstanding section 8333(b) of title 5, if all contributions transferred to the Fund under section 4045(c)(1) of this title, as well as all contributions withheld

from the participant's pay or contributed by the employer, and deposited into the Fund during the period he or she was subject to this subchapter, including interest on these amounts, are transferred to the Civil Service Retirement and Disability Fund effective on the date the participant separates from the Service.

(Pub. L. 96-465, title I, § 811, Oct. 17, 1980, 94 Stat. 2112; Pub. L. 100-238, title II, § 216, Jan. 8, 1988, 101 Stat. 1774.)

#### AMENDMENTS

1988—Pub. L. 100-238 inserted last two sentences relating to withholding consent to retirement and to certain participants who voluntarily separate from the Service before completing 5 years in the System.

#### 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.

### § 4052. Mandatory retirement

(a)(1) Except as provided in subsection (b), any participant shall be retired from the Service at the end of the month in which the participant has reached age 65 and has at least 5 years of service credit toward retirement under the System (excluding military and naval service), and shall receive retirement benefits in accordance with section 4046 of this title.

(2) Notwithstanding paragraph (1)—

(A) an individual described in section 4(a)(2) of the Department of State Special Agents Retirement Act of 1998 who is otherwise eligible for immediate retirement under this subchapter; or

(B) a Foreign Service criminal investigator/inspector of the Office of Inspector General of the Agency for International Development who would have been eligible for retirement pursuant to either section 8336(c) or 8412(d) of title 5, as applicable, had the employee remained in civil service,

shall be separated from the Service on the last day of the month in which such individual under subparagraph (A) or such Foreign Service criminal investigator/inspector under subparagraph (B) attains 57 years of age or completes 20 years of service if then over that age. If the head of the agency judges that the public interest so requires, that agency head may exempt such an employee from automatic separation under this subsection until that employee attains 60 years of age. The employing office shall notify the employee in writing of the date of separation at least 60 days before that date. Action to separate the employee is not effective without the consent of the employee, until the last day of the month in which the 60-day notice expires.

(b)(1) Any participant who is otherwise required to retire under subsection (a) while occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, may continue to serve until that appointment is terminated.

(2) Whenever the Secretary determines it to be in the public interest, any participant who is otherwise required to retire under subsection (a) may be retained on active service for a period not to exceed 5 years.