

adoption was filed by an employee, Member, or annuitant and who is adopted by the widow or widower of the employee, Member, or annuitant after the death of such employee, Member, or annuitant;

(B) such unmarried dependent child regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18; or

(C) such unmarried dependent child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

For the purpose of this paragraph and section 8443, a child whose 22nd birthday occurs before July 1 or after August 31 of a calendar year, and while regularly pursuing such a course of study or training, is deemed to have become 22 years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if such child shows to the satisfaction of the Office that such child has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 558.)

#### § 8442. Rights of a widow or widower

(a)(1) Except as provided in subsection (g), if an annuitant dies and is survived by a widow or widower, the widow or widower is entitled to an annuity equal to 50 percent of an annuity computed under section 8415 with respect to the annuitant, (or one-half thereof, if designated for this purpose under section 8419 of this title), unless—

(A) the right to an annuity was waived under section 8416(a) (and no election was subsequently made under section 8416(d) nullifying the waiver); or

(B) in the case of a marriage after retirement, the annuitant did not file an election under section 8416(b) or (c), as the case may be.

(2) A spouse acquired after retirement is entitled to an annuity under this subsection (as provided in paragraph (1)) only upon electing this annuity instead of any other survivor benefit to which such spouse may be entitled under this subchapter or section 8424 or under another retirement system for Government employees.

(b)(1) If an employee or Member dies after completing at least 18 months of civilian service creditable under section 8411 and is survived by a widow or widower, the widow or widower is entitled to—

(A) an amount equal to the sum of—

(i) 50 percent of the final annual rate of basic pay (or of the average pay, if higher) of the employee or Member; and

(ii) \$15,000 as adjusted under section 8462(e); and

(B) if the employee or Member completed at least 10 years of service, an annuity equal to 50 percent of an annuity computed under section 8415 with respect to the employee or Member, but without regard to subsection (f) of such section.

(2) The Office shall prescribe regulations under which the total amount payable to a widow or widower under paragraph (1)(A) may, at the election of the widow or widower, be paid—

(A) in a lump sum; or

(B) on a monthly basis—

(i) over a period of 3 years beginning on the day after the employee's or Member's death; or

(ii) over any other period established under the regulations.

Any method of payment provided for under subparagraph (B) shall be designed such that the present value of the benefits provided under such method is actuarially equivalent to the present value of a lump-sum payment under subparagraph (A).

(3) An amount payable under paragraph (1)(A) shall not be considered to be part of an annuity for purposes of this chapter.

(c)(1) If a former employee or Member dies after having separated from the service with title to a deferred annuity under section 8413 but before having established a valid claim for an annuity, and is survived by a widow or widower to whom married on the date of separation, the widow or widower may elect to receive—

(A) an annuity under paragraph (2); or

(B) the lump-sum credit, if the widow or widower is the individual who would be entitled to the lump-sum credit and if such widow or widower files application therefor with the Office.

(2)(A)(i) Subject to clause (ii) and subparagraph (B)(ii), the annuity of the widow or widower is equal to 50 percent of an annuity computed under section 8415 for the former employee or Member.

(ii)(I) In computing an amount under section 8415 for a former employee or Member (described in subclause (II)) in order to compute the annuity for a widow or widower under this subsection, the computation under section 8415 shall be made as if the former employee or Member had attained the applicable minimum retirement age under section 8412(h).

(II) This clause applies with respect to a former employee or Member who dies before having attained the applicable minimum retirement age under section 8412(h).

(B)(i) Notwithstanding the first sentence of subsection (d)(1), the annuity of the widow or widower of a former employee or Member under subparagraph (A)(ii) commences—

(I) on the day after the date on which the former employee or Member would have attained age 62 (or, if applicable, either age 60 if the former employee or Member completed at least 20 years of service, or the applicable minimum retirement age (under section 8412(h)) if the former employee or Member completed at least 30 years of service); or

(II) if the widow or widower so designates in the election, as of the day after the death of the former employee or Member.

(ii) The present value of the annuity of a widow or widower who chooses the earlier commencement date under clause (i)(II) shall be actuarially equivalent to the present value of an annuity computed for the widow or widower, determined as if the commencement date under clause (i)(I) were applicable.

(3)(A) Paragraphs (1) and (2) shall apply only in the case of an employee or Member who completes at least 10 years of service.

(B) Nothing in this subsection shall be considered to affect the provisions of this chapter relating to a lump-sum credit in the case of the widow or widower of a former employee or Member who dies after completing less than 10 years of service.

(d)(1) The annuity of a widow or widower under this section commences on the day after the death of the individual on whose service such annuity is based. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(A) dies; or

(B) except as provided in paragraph (3), remarries before becoming 55 years of age.

(2) In the case of a widow or widower whose annuity under this section is terminated because of remarriage before becoming 55 years of age, the annuity shall be restored at the same rate commencing on the day the remarriage is dissolved by death, divorce, or annulment, if—

(A) the widow or widower elects to receive this annuity instead of any other survivor benefit to which such widow or widower may be entitled (under this subchapter or section 8424 or under another retirement system for Government employees) by reason of the remarriage; and

(B) any lump sum paid on termination of the annuity is returned to the Fund.

(3) Paragraph (1)(B) (relating to termination of a survivor annuity because of a remarriage before age 55) shall not apply if the widow or widower was married for at least 30 years to the individual on whose service the survivor annuity is based.

(e) The requirement in paragraphs (1)(A) and (2)(A) of section 8441 that the widow or widower of an annuitant, employee, or Member, or of a former employee or Member, have been married to such individual for at least 9 months immediately before the death of the individual in order to qualify as the widow or widower of such individual shall be deemed satisfied in any case in which the individual dies within the applicable 9-month period, if—

(1) the death of the individual was accidental; or

(2) the surviving spouse of the individual had been previously married to such individual and subsequently divorced, and the aggregate time married is at least 9 months.

(f)(1) Subject to paragraph (4), a survivor who is entitled to an annuity under subsection (a) shall also be entitled to a supplementary annuity under this subsection.

(2) A supplementary annuity under this subsection shall be equal to the lesser of—

(A) the amount by which the survivor's assumed CSRS annuity exceeds the annuity payable to such survivor under subsection (a); or

(B) the amount determined under paragraph (3).

(3)(A) Except as provided in subparagraph (B), the amount under this paragraph for a survivor is the amount of widow's or widower's insurance benefits which would be payable to such survivor under title II of the Social Security Act (without regard to sections 202(e)(7), 202(f)(2), and 203 of such Act) based on the wages and self-employment income of the deceased annuitant, and determined—

(i) as of the date on which the annuitant died; and

(ii) as if the survivor had attained age 60 and made application for those benefits under subsection (e) or (f) of section 202 of such Act, as the case may be.

(B) Any computation or determination under this paragraph shall be made in accordance with the applicable provisions of the Social Security Act, except that in computing any primary insurance amount under section 215 of such Act for purposes of determining an amount under this subsection, subparagraphs (A) and (C) of section 8421(b)(2) shall apply.

(4) A supplementary annuity under this subsection—

(A) shall be payable to a survivor only for calendar months ending before the calendar month in which such survivor first satisfies the minimum age requirement under section 202(e)(1)(B)(i) or 202(f)(1)(B)(i) of the Social Security Act, as the case may be;

(B) shall not be payable to a survivor who would not be entitled to benefits under subsection (e) or (f) of section 202 of the Social Security Act based on the wages and self-employment income of the deceased annuitant (determined, as of the date of the annuitant's death, as if the survivor had attained age 60 and made appropriate application for benefits, but without regard to any restriction under either such subsection relating to remarriage); and

(C) shall not be payable to a survivor for any calendar month in which such survivor is entitled (or would, on proper application, be entitled) to benefits under section 202(g) of the Social Security Act (relating to mother's and father's insurance benefits), or under section 202(e) or (f) of such Act by reason of having become disabled, based on the wages and self-employment income of the deceased annuitant.

(5) For the purpose of this subsection, the term "assumed CSRS annuity", as used in the case of a survivor, means the amount of the annuity to which such survivor would be entitled under subchapter III of chapter 83 of this title based on the service of the deceased annuitant, determined—

(A) as of the day after the date of the annuitant's death;

(B) as if the survivor had made appropriate application therefor; and

(C) as if the service of the deceased annuitant were creditable under such subchapter.

(6) An amount payable under this subsection shall be adjusted under section 8462 and shall otherwise be treated under this chapter in the same way as an amount payable under subsection (a).

(g)(1) If the widow or widower of an annuitant under section 8452 (hereinafter in this subsection referred to as a “disability annuitant”) is determined under subsection (a) to be entitled to an annuity based on the service of such disability annuitant, the annuity of the widow or widower shall be equal to 50 percent of the amount determined under paragraph (2) (or one-half thereof if designated for this purpose under section 8419 of this title), rather than of the amount referred to in subsection (a).

(2)(A) Except as provided in subparagraph (B), the amount on which the annuity of the widow or widower of a disability annuitant is based shall be the amount of the annuity to which such disability annuitant was entitled, as computed under section 8452 (including appropriate reduction under subsection (a)(2) of such section and any adjustments under section 8462 allowed under section 8452), as of the day before the date of the disability annuitant’s death.

(B)(i) In the case of a widow or widower entitled to an annuity based on the service of a disability annuitant who dies before age 62, the amount under clause (ii) shall apply instead of the amount which would otherwise apply under subparagraph (A).

(ii)(I) Subject to subclause (II), the amount of the annuity to which the disability annuitant was entitled as of the day before the date of death shall be considered to be the amount which would be computed with respect to such disability annuitant under section 8452(b) if the disability annuitant had attained age 62 on the day before date of death.

(II) For purposes of any such computation under section 8452(b)(2) pursuant to this clause, creditable service shall (in addition to the service which would otherwise be used under subparagraph (B)(i) of such section) include the period of time between date of death and the date of the sixty-second anniversary of the birth of the annuitant, and average pay shall be adjusted in accordance with subparagraph (B)(ii) of such section only through date of death.

(h) The following rules shall apply notwithstanding any other provision of this section:

(1) The annuity payable under this section to a widow or widower may not exceed the difference between—

(A) the amount of the annuity which would otherwise be payable to such widow or widower under this section; and

(B) the amount of the annuity payable to any former spouse of the deceased employee, Member, or annuitant, or former employee or Member, based on an election made under section 8417(b) or a court order previously issued or agreement previously entered into as described in section 8445(a).

(2) The amount payable under subsection (b)(1)(A) to a widow or widower may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under such subsection; and

(B) the portion of such amount payable to any former spouse of the deceased employee, Member, or annuitant, or former employee or Member, based on a court order previously issued or agreement previously entered into.

(3) A lump-sum credit under subsection (c)(2) shall be subject to the same terms and conditions as apply with respect to a lump-sum credit under section 8424(b).

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 559; amended Pub. L. 99-556, title I, §120, Oct. 27, 1986, 100 Stat. 3134; Pub. L. 100-238, title I, §131(b), Jan. 8, 1988, 101 Stat. 1760; Pub. L. 105-61, title V, §518(b)(1), Oct. 10, 1997, 111 Stat. 1307.)

#### REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (f)(3), (4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42. Sections 202, 203, and 215 are classified to sections 402, 403, and 415, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

#### AMENDMENTS

1997—Subsec. (d)(1)(B). Pub. L. 105-61, §518(b)(1)(B), substituted “except as provided in paragraph (3), remarries” for “remarries”.

Subsec. (d)(3). Pub. L. 105-61, §518(b)(1)(A), added par. (3).

1988—Subsec. (a)(1). Pub. L. 100-238, §131(b)(1), inserted “(or one-half thereof, if designated for this purpose under section 8419 of this title),” after “with respect to the annuitant.”

Subsec. (g)(1). Pub. L. 100-238, §131(b)(2), inserted “(or one-half thereof if designated for this purpose under section 8419 of this title)” after “paragraph (2)”.

1986—Subsec. (c)(2)(B)(i)(I). Pub. L. 99-556 which directed that subsec. (c)(2)(B)(i)(I) of this section be amended generally was executed to subsec. (c)(2)(B)(i)(I) of this section, as the probable intent of Congress. Prior to the amendment, subcl. (I) read as follows: “on the day after the date on which the former employee or Member would have attained age 62; or”.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-61 applicable with respect to remarriages occurring on or after Jan. 1, 1995, see section 518(c) of Pub. L. 105-61, set out as a note under section 8341 of this title.

#### § 8443. Rights of a child

(a)(1) If an employee or Member dies after completing at least 18 months of civilian service which is creditable under section 8411, or an annuitant dies, each surviving child is, for any month, entitled to an annuity equal to—

(A) the amount by which the applicable amount under paragraph (2) for such month exceeds the applicable amount under paragraph (3) for such month, divided by

(B) the number of children entitled to a payment under this section for such month.

(2) The applicable amount under this paragraph for any month is the total amount to which the surviving child or children (as the case may be) of the annuitant, employee, or Member would be entitled for such month under