

amination. If a restored-to-earning-capacity annuitant has not medically recovered from the disability for which retired and establishes to the Director's satisfaction that the annuitant's income from wages and self-employment in any calendar year before reaching age 62 was less than 80 percent of the rate of pay for the grade and step the annuitant held at the time of retirement, the annuitant's terminated disability annuity (same type and rate) shall be reinstated from the first of the next following year. If the annuitant has been allowed an involuntary or voluntary retirement annuity in the meantime, the annuitant's reinstated disability annuity shall be substituted for it unless the annuitant elects to retain the former benefit.

(e) Coordination of benefits

(1) Workers' compensation

A participant is not entitled to receive for the same period of time—

- (A) an annuity under this subchapter, and
- (B) compensation for injury to, or disability of, such participant under subchapter I of chapter 81 of title 5, other than compensation payable under section 8107 of such title.

(2) Survivor annuities

An individual is not entitled to receive an annuity under this subchapter and a concurrent benefit under subchapter I of chapter 81 of title 5 on account of the death of the same person.

(3) Greater benefit

Paragraphs (1) and (2) do not bar the right of a claimant to the greater benefit conferred by either this subchapter or subchapter I of chapter 81 of title 5.

(f) Offset from survivor annuity for workers' compensation payment

(1) Refund to Department of Labor

If an individual is entitled to an annuity under this subchapter and the individual receives a lump-sum payment for compensation under section 8135 of title 5 based on the disability or death of the same person, so much of the compensation as has been paid for a period extended beyond the date payment of the annuity commences, as determined by the Secretary of Labor, shall be refunded to the Department for credit to the Employees' Compensation Fund. Before the individual may receive the annuity, the individual shall—

- (A) refund to the Secretary of Labor the amount representing the commuted compensation payments for the extended period; or

- (B) authorize the deduction of the amount from the annuity.

(2) Source of deduction

Deductions from the annuity may be made from accrued or accruing payments. The amounts deducted and withheld from the annuity shall be transmitted to the Secretary for reimbursement to the Employees' Compensation Fund.

(3) Prorating deduction

If the Secretary finds that the financial circumstances of an individual entitled to an an-

nuity under this subchapter warrant deferred refunding, deductions from the annuity may be prorated against and paid from accruing payments in such manner as the Secretary determines appropriate.

(Pub. L. 88-643, title II, §231, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3220; amended Pub. L. 103-178, title II, §202(a)(8), Dec. 3, 1993, 107 Stat. 2026.)

REFERENCES IN TEXT

Section 5532 of title 5, referred to in subsec. (b)(2), was repealed by Pub. L. 106-65, div. A, title VI, §651(a)(1), Oct. 5, 1999, 113 Stat. 664.

PRIOR PROVISIONS

A prior section 231 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1046; Ex. Ord. No. 12326, §2, Sept. 30, 1981, 46 F.R. 48889; Pub. L. 94-522, title II, §§205-207, Oct. 17, 1976, 90 Stat. 2470; Ex. Ord. No. 12443, §1, Sept. 27, 1983, 48 F.R. 44751; Pub. L. 99-335, title V, §501(2), June 6, 1986, 100 Stat. 622; Pub. L. 102-183, title III, §305, Dec. 4, 1991, 105 Stat. 1265, related to retirement for disability or incapacity, medical examination, and recovery 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. (d)(2). Pub. L. 103-178 substituted “2071(a) of this title” for “2071(b) of this title”.

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.

EFFECTIVE DATE

Section effective on first day of fourth month beginning after Oct. 24, 1992, see section 805 of Pub. L. 102-496, set out as a note under section 2001 of this title.

§ 2052. Death in service

(a) Return of contributions when no annuity payable

If a participant dies and no claim for an annuity is payable under this subchapter, the participant's lump-sum credit and any voluntary contributions made under section 2121 of this title, with interest, shall be paid in the order of precedence shown in section 2071(c) of this title.

(b) Survivor annuity for surviving spouse or former spouse

(1) In general

If a participant dies before separation or retirement from the Agency and is survived by a spouse or by a former spouse qualifying for a survivor annuity under section 2032(b) of this title, such surviving spouse shall be entitled to an annuity equal to 55 percent of the annuity computed in accordance with paragraphs (2) and (3) of this subsection and section 2031(a) of this title, and any such surviving former spouse shall be entitled to an annuity computed in accordance with section 2032(b) of this title and paragraph (2) of this subsection as if the participant died after being entitled to an annuity under this subchapter. The annuity of such surviving 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 death or remarriage before attaining age 55 of the surviving spouse or former spouse (subject to the payment and restoration provisions of sections 2031(b)(3)(C), 2031(h), and 2032(b)(3) of this title).

(2) Computation

The annuity payable under paragraph (1) shall be computed in accordance with section 2031(a) of this title, except that the computation of the annuity of the participant under such section shall be at least the smaller of (A) 40 percent of the participant's high-3 average pay, or (B) the sum obtained under such section after increasing the participant's length of service by the difference between the participant's age at the time of death and age 60.

(3) Limitation

Notwithstanding paragraph (1), if the participant had a former spouse qualifying for an annuity under section 2032(b) of this title, the annuity of a surviving spouse under this section shall be subject to the limitation of section 2031(b)(3)(B) of this title, and the annuity of a former spouse under this section shall be subject to the limitation of section 2032(b)(4)(B) of this title.

(4) Precedence of section 2034 survivor annuity over death-in-service annuity

If a former spouse who is eligible for a death-in-service annuity under this section is or becomes eligible for an annuity under section 2034 of this title, the annuity provided under this section shall not be payable and shall be superseded by the annuity under section 2034 of this title.

(c) Annuities for surviving children

(1) Participants dying before April 1, 1992

In the case of a participant who before April 1, 1992, died before separation or retirement from the Agency and who was survived by a child or children—

(A) if the participant was survived by a spouse, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under section 2031(d)(3)(A) of this title; and

(B) if the participant was not survived by a spouse, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under section 2031(d)(3)(B) of this title.

(2) Participants dying on or after April 1, 1992

In the case of a participant who on or after April 1, 1992, dies before separation or retirement from the Agency and who is survived by a child or children—

(A) if the participant is survived by a spouse or former spouse who is the natural or adoptive parent of a surviving child of the participant, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under section 2031(d)(3)(A) of this title; and

(B) if the participant is not survived by a spouse or former spouse who is the natural

or adoptive parent of a surviving child of the participant, there shall be paid to or on behalf of each such surviving child an annuity determined under section 2031(d)(3)(B) of this title.

(3) "Former spouse" defined

For purposes of this subsection, the term "former spouse" includes any former wife or husband of a participant, regardless of the length of marriage or the amount of creditable service completed by the participant.

(Pub. L. 88-643, title II, §232, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3223; amended Pub. L. 103-178, title II, §202(a)(9), Dec. 3, 1993, 107 Stat. 2026.)

PRIOR PROVISIONS

A prior section 232 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1048; Pub. L. 91-185, §4, Dec. 30, 1969, 83 Stat. 848; Pub. L. 94-522, title II, §208, Oct. 17, 1976, 90 Stat. 2471; Pub. L. 99-335, title V, §501(2), June 6, 1986, 100 Stat. 622; Pub. L. 100-178, title IV, §402(a), Dec. 2, 1987, 101 Stat. 1013; Pub. L. 101-193, title III, §303, Nov. 30, 1989, 103 Stat. 1703; Pub. L. 102-88, title III, §305(a)(3), Aug. 14, 1991, 105 Stat. 432; Pub. L. 102-183, title III, §302(b), (c), Dec. 4, 1991, 105 Stat. 1262, 1263; Pub. L. 102-496, title III, §304(b), Oct. 24, 1992, 106 Stat. 3183, related to death in service 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. (b)(4). Pub. L. 103-178 substituted "eligible for an annuity under section 2034" for "eligible for an annuity under section 2032".

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.

EFFECTIVE DATE

Section effective on first day of fourth month beginning after Oct. 24, 1992, see section 805 of Pub. L. 102-496, set out as a note under section 2001 of this title.

§ 2053. Voluntary retirement

(a) A participant who is at least 50 years of age and has completed 20 years of service may, on the participant's application and with the consent of the Director, be retired from the Agency and receive benefits in accordance with the provisions of section 2031 of this title if the participant has not less than 10 years of service with the Agency.

(b) A participant who has at least 25 years of service, ten years of which are with the Agency, may retire, with the consent of the Director, at any age and receive benefits in accordance with the provisions of section 2031 of this title if the Office of Personnel Management has authorized separation from service voluntarily for Agency employees under section 8336(d)(2) of title 5 with respect to the Civil Service Retirement System or section 8414(b)(1)(B) of such title with respect to the Federal Employees' Retirement System.

(Pub. L. 88-643, title II, §233, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3225; amended Pub. L. 103-36, §3, June 8, 1993, 107 Stat. 106.)