

eligible for an annuity under this subchapter based on that separation.

**(b) Refund of contributions for time not allowed for credit**

If a participant (other than a participant separated from the service because of death or disability) fails to meet the service and pay status requirement of subsection (a), any amounts deducted from the participant's pay during the period for which no eligibility is established based on the separation shall be returned to the participant on the separation.

**(c) Exception**

Failure to meet the service and pay status requirement of subsection (a) shall not deprive the participant or the participant's survivors of any annuity to which they may be entitled under this subchapter based on a previous separation.

(Pub. L. 88-643, title II, §236, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3226.)

PRIOR PROVISIONS

A prior section 236 of Pub. L. 88-643, as added Pub. L. 101-193, title III, §302(2), Nov. 30, 1989, 103 Stat. 1703, related to eligibility for annuity 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.

A prior section 237 of Pub. L. 88-643, title II, formerly §236, Oct. 13, 1964, 78 Stat. 1049; Pub. L. 91-626, §4, Dec. 31, 1970, 84 Stat. 1873; Pub. L. 93-31, May 8, 1973, 87 Stat. 65; Pub. L. 99-335, title V, §501(2), June 6, 1986, 100 Stat. 622, renumbered §237, Pub. L. 101-193, title III, §302(1), Nov. 30, 1989, 103 Stat. 1703, related to limitation on number of retirements 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.

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.

PART E—LUMP-SUM PAYMENTS

**§ 2071. Lump-sum payments**

**(a) Entitlement to lump-sum credit**

Subject to section 2082(d) of this title and subsection (b) of this section, a participant who—

(1) is separated from the Agency for at least 31 consecutive days and is not transferred to employment covered by another retirement system for Government employees;

(2) files an application with the Director for payment of the lump-sum credit;

(3) is not reemployed in a position in which the participant is subject to this subchapter at the time the participant files the application; and

(4) will not become eligible to receive an annuity under this subchapter within 31 days after filing the application,

is entitled to be paid the lump-sum credit. Receipt of the payment of the lump-sum credit by the former participant voids all annuity rights under this subchapter based on the service on which the lump-sum credit is based, until the former participant is reemployed in service subject to this subchapter.

**(b) Conditions for payment of lump-sum credit**

**(1) In general**

Whenever a former participant becomes entitled to receive payment of the lump-sum credit under subsection (a), such lump-sum credit shall be paid to the former participant and to any former spouse or former wife or husband of the former participant in accordance with paragraphs (2) through (4). The former participant's lump-sum credit shall be reduced by the amount of the lump-sum credit payable to any former spouse or former wife or husband.

**(2) Pro rata share for former spouse**

Unless otherwise expressly provided by any spousal agreement or court order under section 2094(b) of this title, a former spouse of the former participant shall be entitled to receive a share of such participant's lump-sum credit—

(A) if married to the participant throughout the period of creditable service of the participant, equal to 50 percent of such lump-sum credit; or

(B) if not married to the participant throughout such creditable service, equal to a proportion of 50 percent of such lump-sum credit which is the proportion that the number of days of the marriage of the former spouse to the participant during periods of creditable service of such participant bears to the total number of days of such creditable service.

**(3) Share for former wife or husband**

Payment of the former participant's lump-sum credit shall be subject to the terms of a court order under section 2094(c) of this title concerning any former wife or husband of the former participant if—

(A) the court order expressly relates to any portion of such lump-sum credit; and

(B) payment of the lump-sum credit would extinguish entitlement of such former wife or husband to a survivor annuity under section 2036 of this title or to any portion of the participant's annuity under section 2094(c) of this title.

**(4) Notification**

A lump-sum credit may be paid to or for the benefit of a former participant—

(A) only upon written notification to (i) the current spouse, if any, (ii) any former spouse, and (iii) any former wife or husband who has a court order covered by paragraph (3); and

(B) only if the express written concurrence of the current spouse has been received by the Director.

This paragraph may be waived under circumstances described in section 2031(b)(1)(D) of this title.

**(c) Order of precedence of payment**

A lump-sum payment authorized by subsection (d) or (e) of this section 2121(d)<sup>1</sup> of this

<sup>1</sup> So in original. The words "of this section 2121(d)" probably should be "of this section or by section 2121(d)".

title and a payment of any accrued and unpaid annuity authorized by subsection (f) of this section shall be paid in the following order of precedence to individuals surviving the participant and alive on the date entitlement to the payment arises, upon establishment of a valid claim therefor, and such payment bars recovery by any other individual:

(1) To the beneficiary or beneficiaries designated by such participant in a signed and witnessed writing received by the Director before the participant's death. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed with the Director shall have no force or effect.

(2) If there is no designated beneficiary, to the surviving wife or husband of such participant.

(3) If none of the above, to the child or children of such participant and descendent of deceased children by representation.

(4) If none of the above, to the parents of such participant or the survivor of them.

(5) If none of the above, to the duly appointed executor or administrator of the estate of such participant.

(6) If none of the above, to such other next of kin of such participant as the Director determines to be legally entitled to such payment.

**(d) Death of former participant before retirement**

**(1) In general**

Except as provided in paragraph (2), if a former participant eligible for a deferred annuity under section 2054 of this title dies before reaching age 62, such former participant's lump-sum credit shall be paid in accordance with subsection (c).

**(2) Limitation**

In any case where there is a surviving former spouse or surviving former wife or husband of such participant who is entitled to a share of such participant's lump-sum credit under paragraphs (2) and (3) of subsection (b), the lump-sum credit payable under paragraph (1) shall be reduced by the lump-sum credit payable to such former spouse or former wife or husband.

**(e) Termination of all annuity rights**

If all annuity rights under this subchapter based on the service of a deceased participant or annuitant terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid in accordance with subsection (c).

**(f) Payment of accrued and unpaid annuity when retired participant dies**

If a retired participant dies, any annuity accrued and unpaid shall be paid in accordance with subsection (c).

**(g) Termination of survivor annuity**

An annuity accrued and unpaid on the termination, except by death, of the annuity of a survivor annuitant shall be paid to that individual. An annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the follow-

ing order of precedence, and the payment bars recovery by any other individual:

(1) To the duly appointed executor or administrator of the estate of the survivor annuitant.

(2) If there is no executor or administrator, to such next of kin of the survivor annuitant as the Director determines to be legally entitled to such payment, except that no payment shall be made under this paragraph until after the expiration of 30 days from the date of death of the survivor annuitant.

(Pub. L. 88-643, title II, §241, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3226; amended Pub. L. 103-178, title II, §202(a)(11), Dec. 3, 1993, 107 Stat. 2026.)

**PRIOR PROVISIONS**

A prior section 241 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1049; Pub. L. 94-522, title II, §209, Oct. 17, 1976, 90 Stat. 2471; Ex. Ord. No. 12443, §5, Sept. 27, 1983, 48 F.R. 44752; Pub. L. 99-335, title V, §501(2), June 6, 1986, 100 Stat. 622, related to disposition of contributions and interest in excess of benefits received 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). Pub. L. 103-178, §202(a)(11)(A), substituted "A lump-sum payment authorized by subsection (d) or (e) of this section 2121(d) of this title and a payment of any accrued and unpaid annuity authorized by subsection (f) of this section" for "A lump-sum benefit that would have been payable to a participant, former participant, or annuitant, or to a survivor annuitant, authorized by subsection (d) or (e) of this section or by section 2054(b) or 2121(d) of this title".

Subsecs. (f), (g). Pub. L. 103-178, §202(a)(11)(B), added subsec. (f) and redesignated former subsec. (f) as (g).

**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.

**PART F—PERIOD OF SERVICE FOR ANNUITIES**

**§ 2081. Computation of length of service**

**(a) In general**

**(1) Crediting service as participant**

For the purposes of this subchapter, the period of service of a participant shall be computed from the date on which the participant becomes a participant under this subchapter.

**(2) Exclusion of certain periods**

In computing the period of service of a participant, all periods of separation from the Agency and so much of any leave of absence without pay as may exceed six months in the aggregate in any calendar year shall be excluded, except leaves of absence while receiving benefits under chapter 81 of title 5 and leaves of absence granted participants while performing active and honorable service in the Armed Forces.

**(3) Crediting certain periods of separation**

A participant or former participant who returns to Government duty after a period of