

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 participant has less than 20 years of service credit toward retirement under the System at the time of retirement, his or her annuity shall be computed on the assumption that the participant has had 20 years of service, except that the additional service credit that may accrue to a participant under this sentence shall in no case exceed the difference between his or her age at the time of retirement and age 60.

However, if a participant retiring under this section is receiving retired pay or retainer pay for military service (except that specified in section 8332(c)(1) or (2) of title 5) or Department of Veterans Affairs pension or compensation in lieu of such retired or retainer pay, the annuity of that participant shall be computed under this part excluding extra credit authorized by this subsection and excluding credit for military service from that computation. If the amount of the annuity so computed, plus the retired or retainer pay which is received, or which would be received but for the application of the limitation in section 5532¹ of title 5 or the Department of Veterans Affairs pension or compensation in lieu of such retired pay or retainer pay, is less than the annuity that would be payable under this part in the absence of the previous sentence, an amount equal to the difference shall be added to the annuity computed under this part.

(b) Physical examination; reinstatement or reappointment upon recovery; fees and expenses; duration and suspension of annuity

Before being retired under this section, the participant shall be given a physical examination by one or more duly qualified physicians or surgeons designated by the Secretary of State to conduct examinations. Disability or incapacity shall be determined by the Secretary of State on the basis of the advice of such physicians or surgeons. Unless the disability or incapacity is permanent, like examinations shall be made annually until the annuitant has attained age 60. If the Secretary of State determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he or she can return to duty, the annuitant may apply for reinstatement or reappointment in the Service within 1 year from the date recovery is determined. Upon application, the Secretary shall reinstate such recovered annuitant in the class in which the annuitant was serving at time of retirement, or the Secretary may, taking into consideration the age, qualifications, and experience of such annuitant, and the present class of his or her contemporaries in the Service, appoint or recommend that the President appoint the annuitant to a higher class. Payment of the annuity shall continue until a date 6 months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Service, whichever is earlier. Fees for examinations under this section, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of

the Fund. If the annuitant fails to submit to examination as required under this subsection, payment of the annuity shall be suspended until continuance of the disability or incapacity is satisfactorily established.

(c) Benefits upon discontinuance of annuity

If a recovered annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Service, he or she shall be considered to have been separated within the meaning of section 4050 of this title as of the date of retirement for disability or incapacity and shall, after the discontinuance of the annuity, be entitled to the benefits of that section or of section 4055 of this title, except that he or she may elect voluntary retirement if eligible under section 4051 of this title.

(d) Election of benefits; concurrent benefits allowed

No participant shall be entitled to receive an annuity under this part and compensation for injury or disability to himself or herself under subchapter I of chapter 81 of title 5, covering the same period of time, except that a participant may simultaneously receive both an annuity under this section and scheduled disability payments under section 8107 of title 5. This subsection shall not bar the right of any claimant to the greater benefit conferred by either this part or subchapter I of such chapter 8² for any part of the same period of time. Neither this subsection nor any provision of subchapter I of such chapter 8² shall be construed to deny the right of any participant to receive an annuity under this part and to receive concurrently any payment under subchapter I of such chapter 8² by reason of the death of any other individual.

(e) Lump sum disability payments

Notwithstanding any other law, the right of any individual entitled to an annuity under this part shall not be affected because such person has received an award of compensation in a lump sum under section 8135 of title 5, except that where such annuity is payable on account of the same disability for which compensation under such section has been paid, so much of such compensation as has been paid for any period extended beyond the date such annuity becomes effective, as determined by the Secretary of Labor, shall be refunded to the Department of Labor, to be paid into the Federal Employees' Compensation Fund. Before such individual receives such annuity, he or she shall—

(1) refund to the Department of Labor the amount representing such commuted payments for such extended period, or

(2) authorize the deduction of such amount from the annuity payable under this part, which amount shall be transmitted to the Department of Labor for reimbursement to such Fund.

Deductions from such annuity may be made from accrued and accruing payments, or may be prorated against and paid from accruing payments in such manner as the Secretary of Labor shall determine, whenever the Secretary of

¹ See References in Text note below.

² So in original. Probably should be chapter "81".

Labor finds that the financial circumstances of the annuitant warrant deferred refunding.

(f) Time of filing application; waiver

A claim may be allowed under this section only if the application is filed with the Secretary of State before the participant is separated from the Service or within one year thereafter. This time limitation may be waived by the Secretary of State for a participant who at the date of separation from the Service or within one year thereafter is mentally incompetent, if the application is filed with the Secretary of State within one year from the date of restoration of the participant to competency or the appointment of a fiduciary, whichever is earlier.

(Pub. L. 96-465, title I, § 808, Oct. 17, 1980, 94 Stat. 2110; Ex. Ord. No. 12289, § 2, Feb. 14, 1981, 46 F.R. 12693; Pub. L. 99-335, title IV, § 402(a)(2), (b), June 6, 1986, 100 Stat. 609; Pub. L. 100-238, title II, § 215(a), Jan. 8, 1988, 101 Stat. 1774; Pub. L. 102-54, § 13(h)(2), June 13, 1991, 105 Stat. 275.)

REFERENCES IN TEXT

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

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.

ration from the Service and is survived by a spouse or 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.

(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