

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.

(3) Any participant who completes a period of service authorized by this subsection shall be retired at the end of the month in which such authorized service is completed.

(Pub. L. 96-465, title I, § 812, Oct. 17, 1980, 94 Stat. 2113; Pub. L. 101-513, title V, § 587(b), Nov. 5, 1990, 104 Stat. 2056; Pub. L. 102-499, § 4(c), Oct. 24, 1992, 106 Stat. 3265; Pub. L. 105-382, § 3, Nov. 13, 1998, 112 Stat. 3408.)

REFERENCES IN TEXT

Section 4(a)(2) of the Department of State Special Agents Retirement Act of 1998, referred to in subsec. (a)(2)(A), is section 4(a)(2) of Pub. L. 105-382, which is set out as a note under section 4044 of this title.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105-382 amended first sentence generally. Prior to amendment, first sentence read as follows: “Notwithstanding paragraph (1), 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 that Foreign Service criminal investigator/inspector attains 57 years of age or completes 20 years of service if then over that age.”

1992—Subsec. (a)(2). Pub. L. 102-499 substituted “57” for “55”.

1990—Subsec. (a). Pub. L. 101-513 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-382 effective Nov. 13, 1998, with provisions relating to applicability with respect to certain individuals, see section 4 of Pub. L. 105-382, as amended, set out as a note under section 4044 of this title.

§ 4053. Reassignment and retirement of former Presidential appointees

(a) Reassignment or retirement of participants not eligible for retirement

A participant, who completes an assignment under section 3942(b) of this title in a position to which the participant was appointed by the

President, and is not otherwise eligible for retirement—

(1) shall be reassigned within 90 days after the termination of such assignment and any period of authorized leave, or

(2) if the Secretary of State determines that reassignment is not in the interest of the Foreign Service, shall be retired from the Service and receive retirement benefits in accordance with section 4046 or 4071d of this title, as appropriate.

(b) Retirement of participants eligible for retirement

A participant who completes an assignment under section 3942(b) of this title in a position to which the participant was appointed by the President and is eligible for retirement and is not reassigned within 90 days after the termination of such assignment and any period of authorized leave, shall be retired from the Service and receive retirement benefits in accordance with section 4046 of this title or section 4071d of this title, as appropriate.

(c) Retirement of reemployed participants

A participant who is retired under subsection (a)(2) and is subsequently employed by the United States Government, thereafter, shall be eligible to retire only under the terms of the applicable retirement system.

(Pub. L. 96-465, title I, § 813, Oct. 17, 1980, 94 Stat. 2113; Pub. L. 102-138, title I, § 149, Oct. 28, 1991, 105 Stat. 670; Pub. L. 103-236, title I, § 174, Apr. 30, 1994, 108 Stat. 413.)

AMENDMENTS

1994—Pub. L. 103-236 added subsecs. (a) to (c) and struck out former subsecs. (a) to (c) which read as follows:

“(a) Except as provided under subsection (b) of this section, a participant, who completes an assignment under section 3942(b) of this title in a position to which he or she was appointed by the President, shall be offered reassignment within 90 days after the termination of such assignment and any period of authorized leave.

“(b) Subsection (a) of this section shall not apply with respect to a participant, if the Secretary of State determines that reassignment of the participant is not in the interest of the United States and the Foreign Service.

“(c) A participant who is not reassigned under subsection (a) of this section shall be retired from the Service and receive retirement benefits in accordance with section 4046 or 4071d of this title, as appropriate.”

1991—Pub. L. 102-138 inserted “Reassignment and” in section catchline and amended text generally. Prior to amendment, text read as follows: “If a participant completes an assignment under section 3942(b) of this title in a position to which he or she was appointed by the President and has not been reassigned within 3 months after the termination of such assignment (plus any period of authorized leave), the participant shall be retired from the Service and receive retirement benefits in accordance with section 4046 of this title.”

§ 4054. Former spouses

(a) Living Service members

(1) Unless otherwise expressly provided by any spousal agreement or court order under section 4060(b)(1) of this title, a former spouse of a participant or former participant is entitled to an annuity if such former spouse was married to

the participant for at least 10 years during service of the participant which is creditable under this subchapter with at least 5 of such years occurring while the participant was a member of the Foreign Service and—

(A) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

(B) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 50 percent of such annuity.

For the purposes of this paragraph, the term "creditable service" means service which is creditable under part I or II.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

(3) The annuity of a former spouse under this subsection commences on the later of the day the participant upon whose service the annuity is based becomes entitled to an annuity under this part or the first day of the month in which the divorce or annulment involved becomes final. The annuity of such former spouse and the right thereto terminate on—

(A) the last day of the month before the former spouse dies or remarries before 60 years of age; or

(B) the date the annuity of the participant terminates (except in the case of an annuity subject to paragraph (5)(B)).

(4) No spousal agreement or court order under section 4060(b)(1) of this title involving any participant may provide for an annuity or any combination of annuities under this subsection which exceeds the annuity of the participant, nor may any such court order relating to an annuity under this subsection be given effect if it is issued more than 24 months after the date the divorce or annulment involved becomes final.

(5)(A) The annuity payable to any participant shall be reduced by the amount of an annuity under this subsection paid to any former spouse based upon the service of that participant. Such reduction shall be disregarded in calculating the survivor annuity for any spouse, former spouse, or other survivor under this part, and in calculating any reduction in the annuity of the participant to provide survivor benefits under subsection (b) or section 4046(b)(3) of this title.

(B) If any annuitant whose annuity is reduced under subparagraph (A) is recalled to service under section 3948 of this title, or reinstated or reappointed in the Service in the case of a recovered disability annuitant or if any annuitant is reemployed as provided for under section 4064 of this title, the salary of that annuitant shall be reduced by the same amount as the annuity would have been reduced if it had continued. Amounts equal to the reductions under this subparagraph shall be deposited in the Treasury of the United States to the credit of the Fund.

(6) Notwithstanding paragraph (3), in the case of any former spouse of a disability annuitant—

(A) the annuity of that former spouse shall commence on the date the participant would

qualify on the basis of his or her creditable service for an annuity under this part (other than a disability annuity) or the date the disability annuity begins, whichever is later, and

(B) the amount of the annuity of the former spouse shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

(7) An annuity under this subsection shall be treated the same as a survivor annuity under subsection (b) for purposes of section 4046(h) of this title or any comparable provision of law.

(b) Deceased Service members

(1) Subject to any election under section 4046(b)(1)(C) of this title and unless otherwise expressly provided by any spousal agreement or court order under section 4060(b)(1) of this title, if a former participant who is entitled to receive an annuity is survived by a former spouse, the former spouse shall be entitled to a survivor annuity—

(A) if married to the participant throughout the creditable service of the participant, equal to 55 percent of the full amount of the participant's annuity, as computed under section 4046(a) of this title; or

(B) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 55 percent of the full amount of such annuity.

For the purposes of this paragraph, the term "creditable service" means service which is creditable under part I or II.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

(3) An annuity payable from the Fund under this part to a surviving former spouse under this subsection shall commence on the day after the annuitant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(4)(A) The maximum survivor annuity or combination of survivor annuities under this section (and section 4046(b)(3) of this title) with respect to any participant or former participant may not exceed 55 percent of the full amount of the participant's annuity, as calculated under section 4046(a) of this title.

(B) Once a survivor annuity has been provided for under this subsection for any former spouse, a survivor annuity may thereafter be provided for under this subsection (or section 4046(b)(3) of this title) with respect to a participant or former participant only for that portion (if any) of the maximum available which is not committed for survivor benefits for any former spouse whose prospective right to such annuity has not terminated by reason of death or remarriage.

(C) After the death of a participant or former participant, a court order under section 4060(b)(1) of this title may not adjust the

amount of the annuity of any former spouse under this section.

(5)(A) For each full month after a former spouse of a participant or former participant dies or remarries before attaining age 60, the annuity of the participant, if reduced to provide a survivor annuity for that former spouse, shall be recomputed and paid as if the annuity had not been so reduced, unless an election is in effect under subparagraph (B).

(B) Subject to paragraph (4)(B), the participant may elect in writing within one year after receipt of notice of the death or remarriage of the former spouse to continue the reduction in order to provide a higher survivor annuity under section 4046(b)(3) of this title for any spouse of the participant.

(c) Additional survivor annuity

(1) In the case of any participant or former participant providing a survivor annuity benefit under subsection (b) for a former spouse—

(A) such participant may elect, or

(B) a spousal agreement or court order under section 4060(b)(1) of this title may provide for, an additional survivor annuity under this subsection for any other former spouse or spouse surviving the participant, if the participant satisfactorily passes a physical examination as prescribed by the Secretary of State.

(2) Neither the total amount of survivor annuity or annuities under this subsection with respect to any participant or former participant, nor the survivor annuity or annuities for any one surviving spouse or former spouse of such participant under this section and section 4046 of this title, shall exceed 55 percent of the full amount of the participant's annuity, as computed under section 4046(a) of this title.

(3)(A) In accordance with regulations which the Secretary of State shall prescribe, the participant involved may provide for any annuity under this subsection—

(i) by a reduction in the annuity or an allotment from the salary of the participant,

(ii) by a lump sum payment or installment payments to the Fund, or

(iii) by any combination thereof.

(B) The present value of the total amount to accrue to the Fund under subparagraph (A) to provide any annuity under this subsection shall be actuarially equivalent in value to such annuity, as calculated upon such tables of mortality as may from time to time be prescribed for this purpose by the Secretary of State.

(C) If a former spouse predeceases the participant or remarries before attaining age 60 (or, in the case of a spouse, the spouse does not qualify as a former spouse upon dissolution of the marriage)—

(i) if an annuity reduction or salary allotment under subparagraph (A) is in effect for that spouse or former spouse, the annuity shall be recomputed and paid as if it had not been reduced or the salary allotment terminated, as the case may be, and

(ii) any amount accruing to the Fund under subparagraph (A) shall be refunded, but only to the extent that such amount may have exceeded the actuarial cost of providing benefits

under this subsection for the period such benefits were provided, as determined under regulations prescribed by the Secretary of State.

(D) Under regulations prescribed by the Secretary of State, an annuity shall be recomputed (or salary allotment terminated or adjusted), and a refund provided (if appropriate), in a manner comparable to that provided under subparagraph (C), in order to reflect a termination or reduction of future benefits under this subsection for a spouse in the event a former spouse of the participant dies or remarries before attaining age 60 and an increased annuity is provided for that spouse in accordance with this part.

(4) An annuity payable under this subsection to a 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 former spouse's death or remarriage before attaining age 60.

(5) Section 4066 of this title shall not apply to any annuity under this subsection, unless authorized under regulations prescribed by the Secretary of State.

(Pub. L. 96-465, title I, § 814, Oct. 17, 1980, 94 Stat. 2113; Pub. L. 97-241, title I, § 125(2), Aug. 24, 1982, 96 Stat. 282; Pub. L. 99-335, title IV, §§ 402(a)(2), (3), 404(b), June 6, 1986, 100 Stat. 609, 610; Pub. L. 100-238, title II, § 217(a), (b), (c)(2), Jan. 8, 1988, 101 Stat. 1775.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100-238, § 217(a), which directed the amendment of par. (1) by inserting "if such former spouse was married to the participant for at least 10 years during service of the participant which is creditable under this subchapter with at least 5 of such years occurring while the participant was a member of the Foreign Service and" after "annuity", was executed by inserting the new language after "annuity" in introductory provisions, as the probable intent of Congress.

Subsec. (a)(4). Pub. L. 100-238, § 217(b), substituted "24" for "12".

Subsec. (d). Pub. L. 100-238, § 217(c)(2), struck out subsec. (d) which read as follows: "Section 4046(l) of this title shall not apply—

"(1) to any annuity payable under subsection (a) or (b) of this section to any former spouse if the amount of that annuity varies by reason of a spousal agreement or court order under section 4060(b)(1) of this title, or an election under section 4046(b)(1)(B) of this title, from the amount which would be calculated under subsection (a)(1) or (b)(1) of this section, as the case may be, in the absence of such spousal agreement, court order, or election; and

"(2) to any annuity payable under subsection (c) of this section."

1986—Subsec. (a)(1). Pub. L. 99-335, § 404(b)(1), inserted provision defining "creditable service" as service creditable under part I or II of this subchapter.

Subsec. (a)(3), (5)(A), (6)(A). Pub. L. 99-335, § 402(a)(2), substituted "part" for "subchapter".

Subsec. (b)(1). Pub. L. 99-335, § 404(b)(2), inserted provision defining "creditable service" as service creditable under part I or II of this subchapter.

Subsec. (b)(3). Pub. L. 99-335, § 402(a)(3), inserted "under this part" after "payable from the Fund".

Subsec. (c)(3)(D). Pub. L. 99-335, § 402(a)(2), substituted "part" for "subchapter".

1982—Subsec. (a)(3). Pub. L. 97-241 substituted "or the first" for "on the first" in provision preceding subpar. (A).

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-238, title II, §261, Jan. 8, 1988, 101 Stat. 1776, provided that:

“(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title [enacting sections 4069-1 to 4069c-1 of this title, amending this section and sections 4044 to 4046, 4048, 4049, 4051, 4055, 4066, 4071a, 4071c, and 4084 of this title, and enacting provisions set out as a note under section 4046 of this title] shall take effect 90 days after the date of enactment of this title [Jan. 8, 1988].

“(b) EXCEPTIONS.—

“(1) The amendments made by section 202 [enacting section 4069-1 of this title] shall apply to any individual who, on or after the date of enactment of this title [Jan. 8, 1988], is married to a participant or former participant.

“(2) The amendment made by section 217(a) [amending this section] shall not apply with respect to the former spouse of a participant or former participant who is subject to subchapter I of chapter 8 of the Foreign Service Act of 1980 [this part] if, on the date of enactment of this title [Jan. 8, 1988], that former spouse—

“(A) was the spouse of that participant or former participant; or

“(B) is entitled to an annuity under section 814 of the Foreign Service Act of 1980 [this section] pursuant to the divorce or annulment of the marriage to that participant or former participant.

“(c) DEFINITIONS.—For the purpose of this section, the terms ‘participant’ and ‘former participant’ have the same meaning as such terms in chapter 8 of the Foreign Service Act of 1980 [this subchapter].”

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.

§ 4055. Lump-sum payments**(a) Requirements for payment**

(1) A participant is entitled to be paid a lump-sum credit if the participant—

(A) is separated from the Service for at least 31 consecutive days, or is transferred to a position in which the participant is not subject to this subchapter and remains in such a position for at least 31 consecutive days;

(B) files an application with the Secretary of State for payment of the lump-sum credit;

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

(D) will not become eligible to receive an annuity under this part within 31 days after filing the application; and

(E) has notified any spouse or former spouse the participant may have of the application for payment in accordance with regulations prescribed by the Secretary of State.

Such regulations may provide for waiver of subparagraph (E) under circumstances described in section 4046(b)(1)(D) of this title.

(2) Such lump-sum credit shall be paid to the participant and to any former spouse of the participant in accordance with subsection (i).

(b) Recall service; return of contributions

Whenever an annuitant becomes separated from the Service following a period of recall service without becoming eligible for a supplemental or recomputed annuity under section

4063 of this title, the compulsory contributions of the annuitant to the Fund for such service, together with any special contributions the annuitant may have made for other service performed after the date of separation from the Service which forms the basis for annuity, shall be returned to the annuitant (and any former spouse of the annuitant who was married to the participant during the period of recall service, in accordance with subsection (i)).

(c) Difference between annuity and lump-sum credit

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

(d) Lack of eligible survivors

If a participant or former participant dies and is not survived by an individual eligible for an annuity under this part or by such an individual or individuals all of whose annuity rights terminate before a claim for survivor annuity is filed, the lump-sum credit to which the participant or annuitant is entitled shall be paid in accordance with subsection (f).

(e) Death of annuitant who was former participant

If an annuitant who was a former participant dies, any annuity accrued and unpaid shall be paid in accordance with subsection (f).

(f) Order of precedence for payments

Payments under subsections (c) through (e) 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 the establishment of a valid claim therefor, and such payment shall be a bar to recovery by any other person:

(1) To the beneficiary or beneficiaries last designated by the participant before or after retirement in a signed and witnessed writing filed with the Secretary of State prior to the death of the participant, for which purpose a designation, change, or cancellation of beneficiary in a will or other document which is not so executed and filed shall have no force or effect.

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

(3) If none of the above, to the child (without regard to the definition in section 4044(2) of this title) or children of the participant (including adopted and natural children but not stepchildren) and descendants of deceased children by representation.

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

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

(6) If none of the above, to such other next of kin of the participant as may be determined in the judgment of the Secretary of State to be legally entitled to such payment, except that no payment shall be made under this paragraph until after the expiration of 30 days