

after the death of the participant or annuitant.

(g) Death of survivor annuitant

Annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other person:

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

(2) If there is no such executor or administrator, to such person as may be determined by the Secretary of State (after the expiration of 30 days from the date of death of the survivor annuitant) to be entitled under the laws of the domicile of the survivor annuitant at the time of death.

(h) Amount of credit

¹Amounts deducted and withheld from basic salary of a participant under section 4045 of this title from the beginning of the first pay period after the participant has completed 35 years of service computed under section 4056 of this title (excluding service credit for unused sick leave under section 4056(b) of this title), together with interest on the amounts at the rate of 3 percent a year compounded annually from the date of the deduction to the date of retirement or death, shall be applied toward any special contribution due under section 4045(d) of this title, and any balance not so required shall be refunded in a lump sum to the participant after separation or, in the event of a death in service, to a beneficiary in the order of precedence specified in subsection (f).

(i) Former spouses

Unless otherwise expressly provided by any spousal agreement or court order under section 4060(b)(1) of this title, the amount of a participant's or former participant's lump-sum credit payable to a former spouse of that participant shall be—

(1) if the former spouse was married to the participant throughout the period of creditable service of the participant, 50 percent of the lump-sum credit to which such participant would be entitled in the absence of this subsection, or

(2) if such former spouse was not married to the participant throughout such creditable service, an amount equal to such former spouse's pro rata share of 50 percent of such lump-sum credit.

The lump-sum credit of the participant shall be reduced by the amount of the lump-sum credit payable to the former spouse. For the purposes of this subsection, the term "creditable service" means service which is creditable under part I or II.

(Pub. L. 96-465, title I, § 815, Oct. 17, 1980, 94 Stat. 2116; Pub. L. 99-335, title IV, §§ 402(a)(2), 404(c), 413, June 6, 1986, 100 Stat. 609, 610, 614; Pub. L. 100-238, title II, § 218, Jan. 8, 1988, 101 Stat. 1775.)

AMENDMENT OF SECTION

Section 1(a) and (c) of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, set out as a note

¹ See Amendment of Section note below.

under section 4067 of this title, provided that the first sentence of subsection (h) of this section, applicable (i) to contributions for civilian service performed on or after the first day of Nov. 1983, (ii) to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of Nov. 1983, and (iii) to excess contributions under section 4055(h) of this title and voluntary contributions under section 4065(a) of this title from the first day of Nov. 1983, is deemed to be amended to provide that interest shall be compounded at the annual rate of 3 percent per annum through December 31, 1984, and thereafter at a rate equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 4059 of this title, as determined by the Secretary of the Treasury.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-238 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Whenever a participant becomes separated from the Service without becoming eligible for an annuity or a deferred annuity under this subchapter, a lump-sum credit shall be paid to the participant (and to any former spouse of the participant, in accordance with subsection (i) of this section). A participant who becomes subject to part II of this subchapter shall be entitled to payment of the lump-sum credit if, and to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees' Retirement System Act of 1986."

1986—Subsec. (a). Pub. L. 99-335, § 413, inserted provision relating to payment of a lump-sum credit for a participant who becomes subject to part II of this subchapter.

Subsecs. (c), (d). Pub. L. 99-335, § 402(a)(2), substituted "part" for "subchapter".

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

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.

§ 4056. Creditable service

(a) Applicability of civil service provisions

(1) ¹Except as otherwise specified by law, all periods of civilian and military and naval service, and all other periods through the date of final separation of a participant from the Service that the Secretary of State determines would be creditable toward retirement under the Civil Service Retirement and Disability System (as determined in accordance with section 8332 of title 5), shall be creditable for purposes of this part. Conversely, any such service performed after December 31, 1976, that would not be creditable under specified conditions under section

¹ See Amendment of Section note below.

8332 of title 5, shall be excluded under this part under the same conditions.

(2) The service of an individual who first becomes a participant on or after October 17, 1983, without any credit under this section for civilian service performed prior to October 1, 1982, shall include credit for:

(A) each period of military or naval service performed before January 1, 1957, and

(B) each period of military or naval service performed after December 31, 1956, and before the separation on which the entitlement to annuity under this part is based, only if a deposit (with interest if any is required) is made with respect to that period, as provided in section 4045(e) of this title.

(3) The service of an individual who first became a participant on or after October 17, 1983, with credit under this section for civilian service performed prior to October 1982, shall include credit for each period of military or naval service performed before the date of the separation on which the entitlement to an annuity under this part is based, subject, in the case of military or naval service performed after December 1956, to subsection (j).

(4) The service of an individual who first became a participant before October 17, 1983, shall include credit for each period of military or naval service performed before the date of the separation on which the entitlement to an annuity under this part is based, subject, in the case of military or naval service performed after December 1976, to subsection (j).

(b) Unused sick leave credit

In computing any annuity under this part, the total service of a participant who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes (without regard to the 35-year limitation imposed by section 4046(a) of this title) the days of unused sick leave to the credit of the participant, except that these days shall not be counted in determining average basic salary or annuity eligibility under this part. A contribution to the Fund shall not be required from a participant for this service credit.

(c) Service with other Government agency when on approved leave without pay; arrangement for payment of retirement deductions and agency contributions; special contribution

(1) A participant who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of Government employees may, within 60 days after entering on that leave without pay, file with the employing agency an election to receive full retirement credit for such periods of leave without pay and arrange to pay concurrently into the Fund through the employing agency, amounts equal to the retirement deductions and agency contributions on the Foreign Service salary rate that would be applicable if the participant were in a pay status. If the election and all payments provided by this subsection are not made for the periods of such leave without pay occurring after November 7, 1976, the participant may not receive any credit for such periods of leave without pay occurring after such date.

(2) A participant may make a special contribution for any period or periods of approved leave without pay while serving before November 7, 1976, as a full-time officer or employee of an organization composed primarily of Government employees. Any such contribution shall be based upon the suspended Foreign Service salary rate and shall be computed in accordance with section 4045 of this title. A participant who makes such contributions shall be allowed full retirement credit for the period or periods of leave without pay. If this contribution is not made, up to 6 months' retirement credit shall be allowed for such periods of leave without pay each calendar year.

(d) Special contribution in repayment of refund of retirement contributions

²A participant who has received a refund of retirement contributions (which has not been repaid) under this or any other retirement system for Government employees covering service which may be creditable may make a special contribution for such service under section 4045 of this title. Credit may not be allowed for service covered by the refund unless the special contribution is made.

(e) Civilian service under other Government retirement system

No credit in annuity computation shall be allowed for any period of civilian service for which a participant made retirement contributions to another retirement system for Government employees unless—

(1) the right to any annuity under the other system which is based on such service is waived, and

(2) a special contribution is made under section 4045 of this title covering such service.

(f) Service in military during period of war or national emergency

A participant who during a period of war, or national emergency proclaimed by the President or declared by the Congress, leaves the Service to enter the military service is deemed, for the purpose of this part, as not separated from the Service unless the participant applies for and receives a lump-sum payment under section 4055 of this title. However, the participant is deemed to be separated from the Service after the expiration of 5 years of such military service.

(g) Recomputation of annuity for participants of Japanese ancestry interned during World War II

(1) An annuity or survivor annuity based on the service of a participant of Japanese ancestry who would be eligible under section 8332(l) of title 5, for credit for civilian service for periods of internment during World War II shall, upon application to the Secretary of State, be recomputed to give credit for that service. Any such recomputation of an annuity shall apply with respect to months beginning more than 30 days after the date on which application for such recomputation is received by the Secretary of State.

(2) The Secretary of State shall take such action as may be necessary and appropriate to in-

² See Amendment of Section note below.

form individuals entitled to have any service credited or annuity recomputed under this subsection of their entitlement to such credit or recomputation.

(3) The Secretary of State shall, on request, assist any individual referred to in paragraph (1) in obtaining from any agency or other Government establishment information necessary to verify the entitlement of the individual to have any service credited or any annuity recomputed under this subsection.

(4) Any agency or other Government establishment shall, upon request, furnish to the Secretary of State any information it possesses with respect to the internment or other detention, as described in section 8332(l) of title 5, of any participant.

(h) Service as employees of Member or office of Congress while on approved leave without pay

A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member or office of the Congress shall continue to make contributions to the Fund based upon the Foreign Service salary rate that would be in effect if the participant were in a pay status. The participant's employing office in the Congress shall make a matching contribution (from the appropriation or fund which is used for payment of the salary of the participant) to the Treasury of the United States to the credit of the Fund. All periods of service for which full contributions to the Fund are made under this subsection shall be counted as creditable service for purposes of this part and shall not, unless all retirement credit is transferred, be counted as creditable service under any other Government retirement system.

(i) Former spouses

(1) Service of a participant shall be considered creditable service for purposes of applying provisions of this part relating to former spouses if such service would be creditable—

(A) under subsection (c)(1) or (2) but for the fact an election was not made under subsection (c)(1) or a special contribution was not made under subsection (c)(2), and

(B) under subsection (d) but for the fact that a refund of contributions has not been repaid unless the former spouse received under this part a portion of the lump sum (or a spousal agreement or court order provided otherwise).

(2) A former spouse shall not be considered as married to a participant for periods assumed to be creditable service under section 4048(a) of this title or section 4049(e) of this title.

(j) Redetermination of credit for military and naval service

(1) Except as otherwise provided by statute or Executive Order, section 8332(j) of title 5, relating to redetermination of credit for military and naval service, shall be applied to annuities payable under this part. The Secretary of State shall redetermine service, and may request and obtain information from the Secretary of Health and Human Services, as the Office of Personnel Management is directed or authorized to do in section 8332(j).

(2) Section 8332(j) of title 5 shall not apply with respect to:

(A) the service of any individual who first became a participant on or after October 17, 1983, without any credit under this section for civilian service performed prior to October 1982; or

(B) any military or naval service performed prior to 1957 by an individual who first became a participant on or after October 17, 1983, with credit under this section for civilian service performed prior to October 1982, or any period of military or naval service performed after 1956 with respect to which the participant has made a contribution (with interest if any is required) under section 4045(e) of this title; or

(C) any military or naval service performed prior to 1977 by any individual who first became a participant before October 17, 1983, or any period of military or naval service performed after 1976 with respect to which the participant has made a contribution (with interest if any is required) under section 4045(e) of this title.

(Pub. L. 96-465, title I, §816, Oct. 17, 1980, 94 Stat. 2118; Ex. Ord. No. 12446, §4(b), (c), Oct. 17, 1983, 48 F.R. 48444, 48445; Pub. L. 99-335, title IV, §402(a)(2), June 6, 1986, 100 Stat. 609; Pub. L. 101-246, title I, §145(a), Feb. 16, 1990, 104 Stat. 36.)

AMENDMENT OF SECTION

Section 5 of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48445, set out as a note under section 4067 of this title, provided that:

“(a) Section 816(a) of the Act (22 U.S.C. 4056(a)) is deemed to be further amended so that the provisions of section 8332(j) of Title 5 of the United States Code, relating to credit for military service, shall not apply with respect to any individual who is entitled to an annuity under such Act [this chapter] on or before the date of approval of this Order [Oct. 17, 1983], or who is entitled to an annuity based on a separation from service occurring on or before such date.

“(b) Subject to subsection (c), in any case in which an individual described in subsection (a) is also entitled to old-age or survivors insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing application therefor), the amount of the annuity to which such individual is entitled under chapter 8 of the Act [this subchapter] (after taking into account subsection (a)) which is payable for any month shall be reduced by an amount determined by multiplying the amount of such old-age or survivors insurance benefit for the determination month by a fraction—

“(1) the numerator of which is the total of the wages (within the meaning of section 209 of the Social Security Act [42 U.S.C. 409]) for service referred to in section 210(1) of such Act [42 U.S.C. 410] (relating to service in the uniformed services) and deemed additional wages (within the meaning of section 229 of such Act [42 U.S.C. 429]) of such individual credited for years after 1956 and before the calendar year in which the determination month occurs, up to the contribution and benefit base determined under section 230 of the Social Security Act [42 U.S.C. 430] (or other applicable maximum annual amount referred to in section 215(e)(1) of such Act [42 U.S.C. 415(e)(1)]) for each such year, and

“(2) the denominator of which is the total of all wages deemed additional wages described in paragraph (1) of this subsection plus all other wages (within the meaning of section 209 of the Social Security Act [42 U.S.C. 409] and all self-employment income (within the meaning of section 211(b) of such Act [42 U.S.C. 411(b)]) of such individual credited for years after 1936 and before the calendar year in which the determination month occurs, up to the contribution and benefit base (or such other amount referred to in such section 215(e)(1) of such Act [42 U.S.C. 415(e)(1)]) for each such year.

“(c) Subsection (b) shall not reduce the annuity of any individual below the amount of the annuity which would be payable under chapter 8 of the Act [this subchapter] to the individual for the determination month if section 8332(j) of Title 5 of the United States Code applied to the individual for such month.

“(d) For purposes of this section, the term ‘determination month’ means—

“(1) the first month the individual described in subsection (a) is entitled to old-age or survivors insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing application therefor); or

“(2) the first day of the month following the month in which this Order is issued [Oct. 1983] in the case of any individual so entitled to such benefits for such month.

“(e) The preceding provisions of this section shall take effect with respect to any annuity payment payable under chapter 8 of the Act [this subchapter] for calendar months beginning after the date of this Order [Oct. 17, 1983].

“(f) The Secretary of Health and Human Services shall furnish such information to the Secretary of State as may be necessary to carry out the preceding provisions of this section.”

Section 1(b) and (c) of Ex. Ord. No. 12446 provided that subsection (d) of this section, applicable (i) to contributions for civilian service performed on or after the first day of Nov. 1983, (ii) to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of Nov. 1983, and (iii) to excess contributions under section 4055(h) of this title and voluntary contributions under section 4065(a) of this title from the first day of Nov. 1983, is deemed to be amended to exclude from the computation of creditable civilian service under subsec. (a) of this section any period of civilian service for which retirement deductions or contributions have not been made under section 4045(d) of this title unless—

(1) the participant makes a contribution for such period as provided in such section 4045(d) of this title; or

(2) no contribution is required for such service as provided under section 4045(f) of this title as deemed to be amended by this Order, or under any other statute.

AMENDMENTS

1990—Subsec. (i)(2). Pub. L. 101-246 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “A former spouse shall not be considered as married to a participant—

“(A) for periods assumed to be creditable service under section 4048(a) of this title or section 4049(e) of this title, or

“(B) for any extra period of creditable service provided under section 4057 of this title for service of a participant at an unhealthful post unless the former spouse resided with the participant at that post during that period.”

1986—Subsecs. (a), (b), (f), (h), (i)(1), (j)(1). Pub. L. 99-335 substituted “part” for “subchapter” wherever appearing.

1983—Subsec. (a). Ex. Ord. No. 12446, §4(b), designated existing provisions as par. (1) and added pars. (2) to (4). Subsec. (j). Ex. Ord. No. 12446, §4(c), added subsec. (j).

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 section 4 of Ex. Ord. No. 12446 effective Oct. 17, 1983, see section 4(e) of Ex. Ord. No. 12446, set out under section 4067 of this title.

§ 4057. Extra credit for service at unhealthful posts

The Secretary of State may from time to time establish a list of places which by reason of climatic or other extreme conditions are to be classed as unhealthful posts. Each year of duty at such posts, inclusive of regular leaves of absence, shall be counted as one and a half years in computing the length of the service of a participant for the purpose of retirement, fractional months being considered as full months in computing such service. No such extra credit for service at such unhealthful posts shall be credited to any participant who is paid a differential under section 5925 or 5928 of title 5 for such service. Such extra credit may not be used to determine the eligibility of a person to qualify as a former spouse under this part, or to compute the pro rata share under section 4044(10) of this title. No extra credit for service at unhealthful posts may be given under this section for any service as part of a tour of duty, or extension thereof, beginning on or after February 16, 1990.

(Pub. L. 96-465, title I, §817, Oct. 17, 1980, 94 Stat. 2120; Pub. L. 101-246, title I, §145(b), Feb. 16, 1990, 104 Stat. 37.)

AMENDMENTS

1990—Pub. L. 101-246 inserted provisions at end that extra credit not be used to determine eligibility to qualify as former spouse under this part or to compute the pro rata share under section 4044(10) of this title and that no extra credit for service at unhealthful posts be given under this section for any service as part of a tour of duty, or extension thereof, beginning on or after Feb. 16, 1990.

§ 4058. Estimate of appropriations needed

The Secretary of the Treasury shall prepare the estimates of the annual appropriations required to be made to the Fund, and shall make actuarial valuations of the System at intervals of not more than five years. The Secretary of State may expend from money to the credit of the Fund an amount not exceeding \$5,000 per year for the incidental expenses necessary in ad-