

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-228, div. A, title III, § 322(c)(2), Sept. 30, 2002, 116 Stat. 1385, provided that: “The amendments made by subsections (a)(2) [amending this section] and (b)(2) [amending section 4071e of this title] shall take effect with the first pay period beginning on or after the date that is 90 days after the date of enactment of this Act [Sept. 30, 2002].”

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-346 effective upon the close of calendar year 2000 and applicable thereafter, see section 101(a) [title V, § 505(i)] of Pub. L. 106-346, set out as a note under section 8334 of Title 5, Government Organization and Employees.

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.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective Oct. 1, 1997, see section 7001(f) of Pub. L. 105-33, set out as a note under section 8334 of Title 5, Government Organization and Employees.

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 1983 AMENDMENT

Amendment by 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.

FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM CONTRIBUTIONS, DEDUCTIONS, AND WITHHOLDINGS

Pub. L. 106-346, § 101(a) [title V, § 505(h)], Oct. 23, 2000, 114 Stat. 1356, 1356A-54, provided that: “Notwithstanding any provision of section 805(a) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a)), during the period beginning on October 1, 2002, through December 31, 2002, each agency employing a participant in the Foreign Service Retirement and Disability System shall contribute to the Foreign Service Retirement and Disability Fund—

“(1) 7.5 percent of the basic pay of each participant covered under section 805(a)(1) of such Act participating in the Foreign Service Retirement and Disability System; and

“(2) 8 percent of the basic pay of each participant covered under paragraph (2) or (3) of section 805(a) of such Act participating in the Foreign Service Retirement and Disability System,

in lieu of the agency contribution otherwise required under section 805(a) of such Act.”

Pub. L. 105-33, title VII, § 7001(d)(1)-(2)(B), Aug. 5, 1997, 111 Stat. 659, 660, as amended by Pub. L. 106-346, § 101(a) [title V, § 505(d)(1)], Oct. 23, 2000, 114 Stat. 1356, 1356A-53, provided that:

“(1) **AGENCY CONTRIBUTIONS.**—Notwithstanding section 805(a)(1) and (2) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a)(1) and (2)), during the period beginning on October 1, 1997, through September 30, 2002, each agency employing a participant in the Foreign Service Retirement and Disability System shall con-

tribute to the Foreign Service Retirement and Disability Fund—

“(A) 8.51 percent of the basic pay of each participant covered under section 805(a)(1) of such Act participating in the Foreign Service Retirement and Disability System; and

“(B) 9.01 percent of the basic pay of each participant covered under section 805(a)(2) of such Act participating in the Foreign Service Retirement and Disability System;

in lieu of the agency contribution otherwise required under section 805(a)(1) and (2) of such Act.

“(2) **INDIVIDUAL DEDUCTIONS, WITHHOLDINGS, AND DEPOSITS.**—

“(A) **IN GENERAL.**—Notwithstanding section 805(a)(1) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a)(1)), beginning on January 1, 1999, through December 31, 2000, the amount withheld and deducted from the basic pay of a participant in the Foreign Service Retirement and Disability System shall be as follows:

“7.25 January 1, 1999, to December 31, 1999.

“7.4 January 1, 2000, to December 31, 2000.

“(B) **FOREIGN SERVICE CRIMINAL INVESTIGATORS/INSPECTORS OF THE OFFICE OF THE INSPECTOR GENERAL, AGENCY FOR INTERNATIONAL DEVELOPMENT.**—Notwithstanding section 805(a)(2) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a)(2)), beginning on January 1, 1999, through December 31, 2000, the amount withheld and deducted from the basic pay of an eligible Foreign Service criminal investigator/inspector of the Office of the Inspector General, Agency for International Development participating in the Foreign Service Retirement and Disability System shall be as follows:

“7.75 January 1, 1999, to December 31, 1999.

“7.9 January 1, 2000, to December 31, 2000.”

§ 4046. Computation of annuities

(a)¹ Measurements; reduction for special contributions; Foreign Service investigator/inspectors

(1) The annuity of a participant shall be equal to 2 percent of his or her average basic salary for the highest 3 consecutive years of service multiplied by the number of years, not exceeding 35, of service credit obtained in accordance with sections 4056 and 4057 of this title, except that the highest 3 years of service shall be used in computing the annuity of any participant who serves an assignment in a position, as described in section 3942(b) of this title, to which the participant was appointed by the President and whose continuity of service in that position is interrupted prior to retirement by appointment or assignment to any other position determined by the Secretary of State to be of comparable importance. In determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, shall not be counted. The annuity shall be reduced by 10 percent of any special contribution described in section 4045(d) of this title which is due for service for which no contributions were made and which remains unpaid unless the participant elects to eliminate the service involved for purposes of annuity computation.

(2) Notwithstanding the percentage limitation contained in paragraph (1) of this subsection—

¹ See Amendment of Section note below.

(A) utilizing the definition of average pay contained in section 8331(4) of title 5, the annuity of a Foreign Service criminal investigator/inspector of the Office of the Inspector General, Agency for International Development, who was appointed to a law enforcement position, as defined in section 8331(20) of title 5, prior to January 1, 1984, and would have been eligible to retire pursuant to section 8336(c) of that title, after attaining 50 years of age and completing 20 years as a law enforcement officer had the employee remained in the civil service shall be computed in the same manner as that of a law enforcement officer pursuant to section 8339(d) of that title, except as provided in paragraph (3); and

(B) the annuity of a Foreign Service criminal investigator/inspector of such office, who was appointed to a law enforcement position as defined in section 8401(17) of that title on or after January 1, 1984, and who would have been eligible to retire pursuant to section 8412(d) of that title, after attaining 50 years of age and completing 20 years of service as such a law enforcement officer, had the employee remained in the civil service, shall be computed in the same manner as that of a law enforcement officer pursuant to section 8415(e) of that title.

(3) The annuity of a Foreign Service investigator/inspector of the Office of the Inspector General, Agency for International Development, appointed to a law enforcement position prior to January 1, 1984, who exercised election rights under section 4071i of this title, shall be computed as follows: for the period prior to election the annuity shall be computed in accordance with section 8339(d) of title 5; for the period following election the annuity shall be computed in accordance with section 8415(e) of that title.

(4) All service in a law enforcement position, as defined in section 8331(20) or 8401(17) of that title, as applicable, in any agency or combination of agencies shall be included in the computation of time for purposes of this paragraph.

(5) The annuity of a Foreign Service criminal investigator/inspector of the Office of the Inspector General of the Agency for International Development who has not completed 20 years of service as a law enforcement officer, as defined in section 8331(20) or 8401(17) of that title, shall be computed in accordance with paragraph (1).

(6)(A) The annuity of a special agent under this part shall be computed under paragraph (1) except that, in the case of a special agent described in subparagraph (B), paragraph (1) shall be applied by substituting for “2 percent”—

(i) the percentage under subparagraph (A) of section 8339(d)(1) of title 5 for so much of the participant’s total service as is specified thereunder; and

(ii) the percentage under subparagraph (B) of section 8339(d)(1) of title 5 for so much of the participant’s total service as is specified thereunder.

(B) A special agent described in this subparagraph is any such agent or former agent who—

(i)(I) retires voluntarily or involuntarily under section 4007, 4008, 4010a, 4051, 4052, or 4053 of this title, under conditions authorizing an

immediate annuity, other than for cause on charges of misconduct or delinquency, or retires for disability under section 4048 of this title; and

(II) at the time of retirement—

(aa) if voluntary, is at least 50 years of age and has completed at least 20 years of service as a special agent; or

(bb) if involuntary or disability, has completed at least 20 years of service as a special agent; or

(ii) dies in service after completing at least 20 years of service as a special agent, when an annuity is payable under section 4049 of this title.

(C) For purposes of subparagraph (B), included with the years of service performed by an individual as a special agent shall be any service performed by such individual as a law enforcement officer (within the meaning of section 8331(20) or section 8401(17) of title 5), or a member of the Capitol Police.

(7) In the case of a special agent who becomes or became subject to part II—

(A) for purposes of paragraph (6)(B), any service performed by the individual as a special agent (whether under this part or under part II), as a law enforcement officer (within the meaning of section 8331(20) or section 8401(17) of title 5), or as a member of the Capitol Police shall be creditable; and

(B) if the individual satisfies paragraph (6)(B), the portion of such individual’s annuity which is attributable to service under the Foreign Service Retirement and Disability System or the Civil Service Retirement System shall be computed in conformance with paragraph (6).

(8) For purposes of paragraphs (2), (3), (4), and (6) of this subsection, the term “basic pay” includes pay as provided in accordance with section 3972 of this title or section 5545(c)(2) of title 5.

(9) For purposes of any annuity computation under this subsection, the basic salary or basic pay of any member of the Service whose official duty station is outside the continental United States shall be considered to be the salary or pay that would have been paid to the member had the member’s official duty station been Washington, D.C., including locality-based comparability payments under section 5304 of title 5 that would have been payable to the member if the member’s official duty station had been Washington, D.C.

(b) Married participants

(1)(A) Except to the extent provided otherwise under a written election under subparagraph (B) or (C), if at the time of retirement a participant or former participant is married (or has a former spouse who has not remarried before attaining age 60), the participant shall receive a reduced annuity and provide a survivor annuity for his or her spouse under this subsection or former spouse under section 4054(b) of this title, or a combination of such annuities, as the case may be.

(B) At the time of retirement, a married participant or former participant and his or her

spouse may jointly elect in writing to waive a survivor annuity for that spouse under this section (or under section 4054(b) of this title if the spouse later qualifies as a former spouse under section 4044(6) of this title), or to reduce such survivor annuity under this section (or section 4054(b) of this title) by designating a portion of the annuity of the participant as the base for the survivor benefit. In the event the marriage is dissolved following an election for such a reduced annuity and the spouse qualifies as a former spouse, the base used in calculating any annuity of the former spouse under section 4054(b) of this title may not exceed the portion of the participant's annuity designated under this subparagraph.

(C) If a participant or former participant has a former spouse, the participant and such former spouse may jointly elect by spousal agreement under section 4060(b)(1) of this title to waive a survivor annuity under section 4054(b) of this title for that former spouse if the election is made (i) before the end of the 24-month period after the divorce or annulment involving that former spouse becomes final or (ii) at the time of retirement, whichever occurs first.

(D) The Secretary of State may prescribe regulations under which a participant or former participant may make an election under subparagraph (B) or (C) without the participant's spouse or former spouse if the participant establishes to the satisfaction of the Secretary of State that the participant does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse or former spouse.

(2) The annuity of a participant or former participant providing a survivor benefit under this section (or section 4054(b) of this title), excluding any portion of the annuity not designated or committed as a base for any survivor annuity, shall be reduced by 2½ percent of the first \$3,600 plus 10 percent of any amount over \$3,600. The reduction under this paragraph shall be calculated before any reduction under section 4054(a)(5) of this title.

(3)(A) If a former participant entitled to receive a reduced annuity under this subsection dies and is survived by a spouse, a survivor annuity shall be paid to the surviving spouse equal to 55 percent of the full amount of the participant's annuity computed under subsection (a), or 55 percent of any lesser amount elected as the base for the survivor benefit under paragraph (1)(B).

(B) Notwithstanding subparagraph (A), the amount of the annuity calculated under subparagraph (A) for a surviving spouse in any case in which there is also a surviving former spouse of the participant who qualifies for an annuity under section 4054(b) of this title may not exceed 55 percent of the portion (if any) of the base for survivor benefits which remains available under section 4054(b)(4)(B) of this title.

(C) An annuity payable from the Fund under this part to a surviving spouse under this paragraph shall commence on the day after the participant dies and shall terminate on the last day of the month before the surviving 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.

(c) Surviving children

(1) If an annuitant who was a participant dies 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 by a child or children, in addition to the annuity payable to the surviving spouse, there shall be paid to or on behalf of each child an annuity equal to the smaller of—

- (A) \$900, or
- (B) \$2,700 divided by the number of children.

(2) If an annuitant who was a participant dies 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 paid an annuity equal to the smaller of—

- (A) \$1,080, or
- (B) \$3,240 divided by the number of children.

(3) The amounts specified in this subsection are subject to—

- (A) cost-of-living adjustments as specified under section 4066(c)(3) of this title, and
- (B) the minimum specified in subsection (1)(2) of this section.

(d) Recomputation for remaining children

On the death of the surviving spouse or former spouse or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though the spouse, former spouse, or child had not survived the participant. If the annuity to a surviving child who has not been receiving an annuity is initiated or resumed, the annuities of any other children shall be recomputed and paid from that date as though the annuities to all currently eligible children in the family were then being initiated.

(e) Payment period for child

The annuity payable to a child under subsection (c) or (d) shall begin on the day after the participant dies, or if the child is not then qualified, on the first day of the month in which the child becomes eligible. The annuity of a child shall terminate on the last day of the month which precedes the month in which eligibility ceases.

(f) Unmarried participants

At the time of retirement an unmarried participant who does not have a former spouse for whose benefit a reduction is made under subsection (b) may elect to receive a reduced annuity and to provide for an annuity equal to 55 percent of the reduced annuity payable after his or her death to a beneficiary whose name is designated in writing to the Secretary of State. The annuity payable to a participant making such election shall be reduced by 10 percent of an annuity computed under subsection (a) and by 5 percent of an annuity so computed for each full 5 years the designated beneficiary is younger than the retiring participant, but such total reduction shall not exceed 40 percent. No such election of a reduced annuity payable to a beneficiary shall be valid until the participant has

satisfactorily passed a physical examination as prescribed by the Secretary of State. The annuity payable to a beneficiary under this subsection shall begin on the day after the annuitant dies and shall terminate on the last day of the month preceding the death of the beneficiary. An annuity which is reduced under this subsection (or any similar prior provision of law) shall, effective the first day of the month following the death of the beneficiary named under this subsection, be recomputed and paid as if the annuity had not been so reduced.

(g) Marriage after retirement

A participant or former participant who was unmarried at retirement and who later marries may, within one year after such marriage, irrevocably elect in writing to receive a reduced annuity and to provide a survivor annuity for the spouse (if such spouse qualifies as a surviving spouse under section 4044(13) of this title). Receipt by the Secretary of State of notice of an election under this subsection voids prospectively any election previously made under subsection (f). The reduction in annuity required by an election under this subsection shall be computed and the amount of the survivor annuity shall be determined in accordance with subsections (b)(2) and (3). The annuity reduction or recomputation shall be effective the first day of the month beginning one year after the date of marriage.

(h) Election of benefits

A surviving spouse or surviving former spouse of any participant or former participant shall not become entitled to a survivor annuity or to the restoration of a survivor annuity payable from the Fund under this part unless the survivor elects to receive it instead of any other survivor annuity to which he or she may be entitled under this or any other retirement system for Government employees on the basis of a marriage to someone other than that participant.

(i) Reversion to retired status

(1) Any married annuitant who reverts to retired status with entitlement to a supplemental annuity under section 4063 of this title shall, unless the annuitant and his or her spouse jointly elect in writing to the contrary at that time, have the supplemental annuity reduced by 10 percent to provide a supplemental survivor annuity for his or her spouse. Such supplemental survivor annuity shall be equal to 55 percent of the supplemental annuity of the annuitant and shall be payable to a surviving spouse to whom the annuitant was married at the time of reversion to retired status or whom the annuitant subsequently married.

(2) The Secretary of State shall issue regulations to provide for the application of paragraph (1) of this subsection and of section 4063 of this title in any case in which an annuitant has a former spouse who was married to the participant at any time during a period of recall service and who qualifies for an annuity under this part.

(j) Recomputation upon dissolution of marriage; election after remarriage

An annuity which is reduced under this section or any similar prior provision of law to pro-

vide a survivor benefit for a spouse shall, if the marriage of the participant to such spouse is dissolved, be recomputed and paid for each full month during which an annuitant is not married (or is remarried if there is no election in effect under the following sentence) as if the annuity had not been so reduced, subject to any reduction required to provide a survivor benefit under section 4054(b) or (c) of this title. Upon remarriage the retired participant may irrevocably elect, by means of a signed writing received by the Secretary within one year after such remarriage, to receive during such marriage a reduction in annuity for the purpose of allowing an annuity for the new spouse of the annuitant in the event such spouse survives the annuitant. Such reduction shall be equal to the reduction in effect immediately before the dissolution of the previous marriage (unless such reduction is adjusted under section 4054(b)(5) of this title), and shall be effective the first day of the first month beginning one year after the date of remarriage. A survivor annuity elected under this subsection shall be treated in all respects as a survivor annuity under subsection (b).

(k) Informing of rights by Secretary

The Secretary of State shall, on an annual basis—

- (1) inform each participant of his or her right of election under subsections (g) and (j); and
- (2) to the maximum extent practicable, inform spouses or former spouses of participants or former participants of their rights under this section and section 4054 of this title.

(l) Repealed. Pub. L. 100-238, title II, § 217(c)(1), Jan. 8, 1988, 101 Stat. 1775

(m) Offset of Social Security benefits

The retirement, disability, or survivor annuity payable to any person based on the service of an individual subject to section 4045(h) of this title beginning with the first day of the month for which such person first becomes—

- (1) eligible for an annuity under this part based on the service of such individual, and
- (2) entitled, or would, upon proper application, be entitled to old age, disability, or survivor benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.], based on the service of such individual under this part,

shall be computed as if section 8349 of title 5 were applicable.

(n) 18-month period to elect survivor annuity

(1)(A) A participant—

- (i) who, at the time of retirement, is married; and
- (ii) who elects at such time (in accordance with subsection (b)) to waive a survivor annuity,

may, during the 18-month period beginning on the date of the retirement of such participant, elect to have a reduction under subsection (b) made in the annuity of the participant (or in such portion thereof as the participant may designate) in order to provide a survivor annuity for the spouse of such participant.

(B) A participant—

(i) who, at the time of retirement, is married, and

(ii) who at such time designates (in accordance with subsection (b)) that a limited portion of the annuity of such participant is to be used as the base for a survivor annuity,

may, during the 18-month period beginning on the date of the retirement of such participant, elect to have a greater portion of the annuity of such participant so used.

(2)(A) An election under subparagraph (A) or (B) of paragraph (1) of this subsection shall not be considered effective unless the amount specified in subparagraph (B) of this paragraph is deposited into the Fund before the expiration of the applicable 18-month period under paragraph (1).

(B) The amount to be deposited with respect to an election under this subsection is an amount equal to the sum of—

(i) the additional cost to the System which is associated with providing a survivor annuity under subsection (b) of this section and results from such election taking into account (I) the difference (for the period between the date on which the annuity of the former participant commences and the date of the election) between the amount paid to such former participant under this part and the amount which would have been paid if such election had been made at the time the participant or former participant applied for the annuity, and (II) the costs associated with providing the later election; and

(ii) interest on the additional cost determined under clause (i)(I) of this subparagraph computed using the interest rate specified or determined under section 4045(d)(3) of this title for the calendar year in which the amount to be deposited is determined.

(3) An election by a participant under this subsection voids prospectively any election previously made in the case of such participant under subsection (b).

(4) An annuity which is reduced in connection with an election under this subsection shall be reduced by the same percentage reductions as were in effect at the time of the retirement of the participant whose annuity is so reduced.

(5) Rights and obligations resulting from the election of a reduced annuity under this subsection shall be the same as the rights and obligations which would have resulted had the participant involved elected such annuity at the time of retiring.

(Pub. L. 96-465, title I, § 806, Oct. 17, 1980, 94 Stat. 2106; Pub. L. 99-335, title IV, §§ 402(a)(2), (3), 406, 407, June 6, 1986, 100 Stat. 609-611; Pub. L. 99-556, title IV, § 402, Oct. 27, 1986, 100 Stat. 3136; Pub. L. 100-238, title II, §§ 213, 214(a), 217(c)(1), Jan. 8, 1988, 101 Stat. 1774, 1775; Pub. L. 101-513, title V, § 587(a), Nov. 5, 1990, 104 Stat. 2055; Pub. L. 102-499, § 4(d), Oct. 24, 1992, 106 Stat. 3266; Pub. L. 105-382, § 2(d)(1)-(3)(A), Nov. 13, 1998, 112 Stat. 3407, 3408; Pub. L. 107-228, div. A, title III, § 322(a)(1), Sept. 30, 2002, 116 Stat. 1383; Pub. L. 112-96, title V, § 5001(c)(2)(E), Feb. 22, 2012, 126 Stat. 200.)

AMENDMENT OF SECTION

Section 1(b) and (c) of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, set out as a note under section 4067 of this title, provided that subsection (a) 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 section 4056(a) of this title 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.

Editorial Notes

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (m)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2012—Subsec. (a)(2)(B), (3). Pub. L. 112-96 substituted “section 8415(e)” for “section 8415(d)”.

2002—Subsec. (a)(9). Pub. L. 107-228 added par. (9).

1998—Subsec. (a)(6). Pub. L. 105-382, § 2(d)(1), added par. (6). Former par. (6) redesignated (7).

Subsec. (a)(7). Pub. L. 105-382, § 2(d)(2)(B), added par. (7). Former par. (7) redesignated (8).

Subsec. (a)(8). Pub. L. 105-382, § 2(d)(2)(A), (3)(A), redesignated par. (7) as (8) and substituted “(4), and (6)” for “and (4)”.

1992—Subsec. (a)(6). Pub. L. 102-499 substituted “section 5545(c)(2)” for “section 5545(a)(2)”.

1990—Subsec. (a). Pub. L. 101-513 designated existing provisions as par. (1) and added pars. (2) to (6).

1988—Subsec. (b)(1)(C). Pub. L. 100-238, § 213(a), substituted “24-month” for “12-month”.

Subsec. (c)(1), (2). Pub. L. 100-238, § 214(a)(1), inserted “or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant” after “survived by a spouse”.

Subsec. (d). Pub. L. 100-238, § 214(a)(2), amended first sentence generally. Prior to amendment, first sentence read as follows: “If a surviving spouse dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such spouse or child had not survived the participant.”

Subsec. (i)(2). Pub. L. 100-238, § 213(b), substituted “this part” for “section 4054(b) of this title”.

Subsec. (l). Pub. L. 100-238, § 217(c)(1), struck out subsec. (l) which set minimum rates for annuities paid under this part.

1986—Subsecs. (b)(3)(C), (h). Pub. L. 99-335, § 402(a)(3), inserted “under this part” after “payable from the Fund”.

Subsec. (l)(1), (2). Pub. L. 99-335, § 402(a)(2), substituted “part” for “subchapter”.

Subsec. (m). Pub. L. 99-556, § 402, amended subsec. (m) generally. Prior to amendment, subsec. (m) read as follows: "The annuity or survivor annuity payable to any individual subject to section 4045(h) of this title beginning with the first month for which such individual both—

"(1) attains the minimum age for old-age benefits under title II of the Social Security Act, and

"(2) first becomes entitled, or would upon proper application become entitled, for disability or survivor benefits under title II of the Social Security Act based on the service of any individual under this part, shall be computed as if section 8349 of title 5 were applicable."

Pub. L. 99-335, § 406, added subsec. (m).

Subsec. (n). Pub. L. 99-335, § 407, added subsec. (n).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-228, div. A, title III, § 322(c)(1), Sept. 30, 2002, 116 Stat. 1385, provided that: "The amendments made by subsections (a)(1) [amending this section] and (b)(1) [amending section 4071d of this title] shall apply to service performed on or after the first day of the first pay period beginning on or after the date that is 90 days after the date of enactment of this Act [Sept. 30, 2002]."

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.

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 AMENDMENTS

Pub. L. 99-556, title IV, § 408, Oct. 27, 1986, 100 Stat. 3139, provided that: "This title and the amendments made by this title [enacting section 4069 of this title and amending this section and sections 4064, 4071c, 4071d, and 4071j of this title] shall take effect on January 1, 1987. The amendment made by section 403 [amending section 4064 of this title] shall apply to any individual in a reemployed status on or after January 1, 1987."

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.

Pub. L. 99-335, title IV, § 417, June 6, 1986, 100 Stat. 622, provided that:

"(a) REGULATIONS.—Notwithstanding section 702 of this Act [5 U.S.C. 8401 note], the authority of the Secretary of State to issue regulations under subchapter II of title 8 [probably means subchapter II of chapter 8 of title I] of the Foreign Service Act of 1980 [part II of this subchapter] shall take effect on the date of enactment of this Act [June 6, 1986].

"(b) 18-MONTH PERIOD TO ELECT SURVIVOR ANNUITY.—(1) Notwithstanding section 702 of this Act, the amendment made by section 407 [enacting subsec. (n) of this section] shall take effect 3 months after the date of enactment of this Act.

"(2)(A) Subject to subparagraph (B), the amendment made by section 407 shall apply with respect to participants and former participants who retire before, on, or after such amendment first takes effect.

"(B) For the purpose of applying the provisions of paragraph (1) of section 806(n) of the Foreign Service Act of 1980 (as added by section 407) to former participants who retire before the date on which the amendment first takes effect—

"(i) the period referred to in subparagraph (A) or (B) of such paragraph (as the case may be) shall be

considered to begin on the date on which such amendment first becomes effective; and

"(ii) the amount referred to in paragraph (2) of such section 806(n) shall be computed without regard to the provisions of subparagraph (B)(ii) of such paragraph (relating to interest).

"(3) For purposes of this subsection, the term 'participant' has the meaning given that term in section 803 of the Foreign Service Act of 1980 (22 U.S.C. 4043)."

ELECTION TO PROVIDE SURVIVOR ANNUITY FOR CERTAIN SPOUSES ACQUIRED BEFORE EFFECTIVE DATE OF FOREIGN SERVICE ACT OF 1980

Pub. L. 100-238, title II, § 203, Jan. 8, 1988, 101 Stat. 1769, provided that:

"(a) ELECTION.—A former participant who married his or her current spouse before the effective date of the Foreign Service Act of 1980 [see Effective Date note set out under section 3901 of this title] and who married such spouse after retirement under the Foreign Service Retirement and Disability System and who was unable to provide a survivor annuity for such spouse because—

"(1) the participant was married at the time of retirement and elected not to provide a survivor annuity for that spouse at the time of retirement, or

"(2) subject to subsection (e), the participant failed to notify the Secretary of State of the participant's post-retirement marriage within one year after the marriage,

may make the election described in subsection (b).

"(b) ELECTION DESCRIBED.—

"(1) The election referred to in subsection (a) is an election in writing—

"(A) to provide for a survivor annuity for such spouse under section 806(g) of the Foreign Service Act of 1980 (22 U.S.C. 4046(g));

"(B) to have his or her annuity reduced under section 806(b)(2) of such Act; and

"(C) to deposit in the Foreign Service Retirement and Disability Fund an amount determined by the Secretary of State, as nearly as may be administratively feasible, to reflect the amount by which such participant's annuity would have been reduced had the election been continuously in effect since the annuity commenced, plus interest computed under paragraph (2).

"(2) For the purposes of paragraph (1), the annual rate of interest shall be 6 percent for each year during which the annuity would have been reduced if the election had been in effect on and after the date the annuity commenced.

"(c) OFFSET.—If the participant does not make the deposit referred to in subsection (b)(1)(C), the Secretary of State shall collect such amount by offset against such participant's annuity, up to a maximum of 25 percent of the net annuity otherwise payable to such participant. Such participant is deemed to consent to such offset.

"(d) NOTICE.—The Secretary of State shall provide for notice to the general public of the right to make an election under this section.

"(e) PROOF OF ATTEMPTED ELECTION.—In any case in which subsection (a)(2) applies, the retired employee or Member shall provide the Secretary of State with such documentation as the Secretary of State shall decide is appropriate, to show that such participant attempted to elect a reduced annuity with survivor benefit for his or her current spouse and that such election was rejected by the Secretary of State because it was untimely filed.

"(f) DEPOSIT.—A deposit required by this subsection may be made by the surviving spouse of the participant.

"(g) LIMITATION.—The election authorized in subsection (a) may only be made within one year after the date of enactment of this title [Jan. 8, 1988] in accordance with procedures prescribed by the Secretary of State.

"(h) DEFINITIONS.—For the purposes of this section, the terms 'participant' and 'surviving spouse' have the

same meaning given such terms in subchapter I of chapter 8 of the Foreign Service Act of 1980 [this part].”

§ 4047. Payment of annuity

(a) Commencement of annuity

(1) Except as otherwise provided in paragraph (2), the annuity of a participant who has met the eligibility requirements for an annuity shall commence on the first day of the month after—

(A) separation from the Service occurs; or

(B) pay ceases and the service and age requirements for entitlement to annuity are met.

(2) The annuity of—

(A) a participant who is retired and is eligible for benefits under section 4009(a) of this title or a participant who is retired under section 4053 of this title or is otherwise involuntarily separated from the Service, except by removal for cause on charges of misconduct or delinquency,

(B) a participant retiring under section 4048 of this title due to a disability, and

(C) a participant who serves 3 days or less in the month of retirement—

shall commence on the day after separation from the Service or the day after pay ceases and 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 alter-

native 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.)

Editorial Notes

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.”