

basis of the annuity for which the participant would otherwise so qualify.

(3) Election of benefits

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

(4) Application

(A) Time limit; waiver

An annuity under this section shall not be payable unless appropriate written application is provided to the Director, complete with any supporting documentation which the Director may by regulation require, not later than June 2, 1990. The Director may waive the application deadline under the preceding sentence in any case in which the Director determines that the circumstances warrant such a waiver.

(B) Retroactive benefits

Upon approval of an application under subparagraph (A), the appropriate annuity shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to an annuity under this section, but in no event shall an annuity be payable under this section with respect to any period before December 2, 1987.

(d) Restoration of annuities

Notwithstanding subsection (c)(4)(A) of this section, the deadline by which an application for a retirement annuity must be submitted shall not apply in cases in which a former spouse's entitlement to such annuity is restored under subsection (b)(1) or (c)(1)(B) of this section.

(e) Savings provision

Nothing in this section shall be construed to impair, reduce, or otherwise affect the annuity or the entitlement to an annuity of a participant or former participant under this chapter.

(Pub. L. 88-643, title II, §225, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3218; amended Pub. L. 103-178, title II, §202(a)(7), Dec. 3, 1993, 107 Stat. 2026.)

PRIOR PROVISIONS

A prior section 225 of Pub. L. 88-643, as added Pub. L. 100-178, title IV, §401(a), Dec. 2, 1987, 101 Stat. 1012; amended Pub. L. 100-453, title III, §302(c)(1), Sept. 29, 1988, 102 Stat. 1907; Pub. L. 102-88, title III, §307(b), Aug. 14, 1991, 105 Stat. 433, related to retirement benefits for certain other former spouses and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

AMENDMENTS

1993—Subsec. (c)(3). Pub. L. 103-178, §202(a)(7)(A), substituted “any survivor annuity” for “any other annuity”.

Subsec. (c)(4)(A). Pub. L. 103-178, §202(a)(7)(B), substituted “June 2, 1990” for “June 2, 1991”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103-178, set out as a note under section 2001 of this title.

§ 2036. Survivor annuities for previous spouses

The Director shall prescribe regulations under which a previous spouse who is divorced after September 29, 1988, from a participant, former participant, or retired participant shall be eligible for a survivor annuity to the same extent and, to the greatest extent practicable, under the same conditions (including reductions to be made in the annuity of the participant) applicable to former spouses (as defined in section 8331(23) of title 5) of participants in the Civil Service Retirement and Disability System (CSRS) as prescribed by the Civil Service Retirement Spouse Equity Act of 1984.

(Pub. L. 88-643, title II, §226, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3220.)

REFERENCES IN TEXT

The Civil Service Retirement Spouse Equity Act of 1984, referred to in text, is Pub. L. 98-615, Nov. 8, 1984, 98 Stat. 3195, as amended. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 8331 of Title 5, Government Organization and Employees, and Tables.

PRIOR PROVISIONS

A prior section 226 of Pub. L. 88-643, as added Pub. L. 100-453, title III, §302(a), Sept. 29, 1988, 102 Stat. 1906; amended Pub. L. 102-88, title III, §304(b), (c), Aug. 14, 1991, 105 Stat. 431, 432; Pub. L. 102-183, title III, §306(a), (b), Dec. 4, 1991, 105 Stat. 1265, related to survivor annuities for previous spouses and second chance to elect survivor annuity for certain spouses and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

PART D—BENEFITS ACCRUING TO CERTAIN PARTICIPANTS

§ 2051. Retirement for disability or incapacity; medical examination; recovery

(a) Disability retirement

(1) Eligibility

A participant who has become disabled shall, upon the participant's own application or upon order of the Director, be retired on an annuity computed under subsection (b) of this section.

(2) Standard for disability determination

A participant shall be considered to be disabled only if the participant—

(A) is found by the Director to be unable, because of disease or injury, to render useful and efficient service in the participant's position; and

(B) is not qualified for reassignment, under procedures prescribed by the Director, to a vacant position in the Agency at the same grade or level and in which the participant would be able to render useful and efficient service.

(3) Time limit for application**(A) One year requirement**

A claim may be allowed under this section only if the application is submitted before the participant is separated from the Agency or within one year thereafter.

(B) Waiver for mentally incompetent participant

The time limitation may be waived by the Director for a participant who, at the date of separation from the Agency or within one year thereafter, is mentally incompetent, if the application is filed with the Agency within one year from the date of restoration of the participant to competency or the appointment of a fiduciary, whichever is earlier.

(b) Computation of disability annuity**(1) In general**

Except as provided in paragraph (2), an annuity payable under subsection (a) of this section shall be computed under section 2031(a) of this title. However, if the disabled or incapacitated participant has less than 20 years of service credit toward retirement under the system at the time of retirement, the annuity shall be computed on the assumption that the participant has had 20 years of service, but the additional service credit that may accrue to a participant under this paragraph may not exceed the difference between the participant's age at the time of retirement and age 60.

(2) Coordination with military retired pay and veterans' compensation and pension

If a participant retiring under this section is receiving retired pay or retainer pay for military service (except that specified in section 2082(e)(3) of this title) or Department of Veterans Affairs compensation or pension in lieu of such retired or retainer pay, the annuity of that participant shall be computed under section 2031(a) of this title, excluding credit for such military service from that computation. If the amount of the annuity so computed, plus the retired or retainer pay which is received, or which would be received but for the application of the limitation in section 5532¹ of title 5, or the Department of Veterans Affairs compensation or pension in lieu of such retired or retainer pay, is less than the annuity that would be payable under this section in the absence of the previous sentence, an amount equal to the difference shall be added to the annuity payable under section 2031(a) of this title.

(c) Medical examinations**(1) Medical examination required for determination of disability**

In each case, the participant shall be given a medical examination by one or more duly qualified physicians or surgeons designated by the Director to conduct examinations, and disability shall be determined by the Director on the basis of the advice of such physicians or surgeons.

(2) Annual reexaminations until age 60

Unless the disability is permanent, like examinations shall be made annually until the annuitant becomes age 60. If the Director determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that the annuitant can return to duty, the annuitant may apply for reinstatement or reappointment in the Agency within one year from the date the annuitant's recovery is determined.

(3) Reinstatement

Upon application, the Director may reinstate any such recovered disability annuitant in the grade held at time of retirement, or the Director may, taking into consideration the age, qualifications, and experience of such annuitant, and the present grade of the annuitant's contemporaries in the Agency, appoint the annuitant to a grade higher than the one held before retirement.

(4) Termination of disability annuity

Payment of the annuity shall continue until a date one year after the date of examination showing recovery or until the date of reinstatement or reappointment in the Agency, whichever is earlier.

(5) Payment of fees

Fees for examinations under this subsection, together with reasonable traveling and other expenses incurred in order to submit to examination, may be paid out of the fund.

(6) Suspension of annuity pending required examination

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

(7) Termination of annuity upon restoration of earning capacity

If the annuitant receiving a disability retirement annuity is restored to earning capacity before becoming age 60, payment of the annuity terminates on reemployment by the Government or 180 days after the end of the calendar year in which earning capacity is restored, whichever is earlier. Earning capacity shall be considered to be restored if in any calendar year the income of the annuitant from wages or self-employment, or both, equals at least 80 percent of the current rate of pay for the grade and step the annuitant held at the time of retirement.

(d) Treatment of recovered disability annuitant who is not reinstated**(1) Separation**

If a recovered or restored disability annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Agency, the annuitant shall be considered, except for service credit, to have been separated within the meaning of section 2054 of this title as of the date of termination of the disability annuity.

¹ See References in Text note below.

(2) Retirement

After such termination, the recovered or restored annuitant shall be entitled to the benefits of section 2054 or 2071(a) of this title, except that the annuitant may elect voluntary retirement under section 2053 of this title, if qualified thereunder, or may be placed by the Director in an involuntary retirement status under section 2055(a) of this title, if qualified thereunder. Retirement rights under this paragraph shall be based on the provisions of this subchapter in effect as of the date on which the disability annuity is discontinued.

(3) Further disability before age 62

If, based on a current medical examination, the Director determines that a recovered annuitant has, before reaching age 62, again become totally disabled due to recurrence of the disability for which the annuitant was originally retired, the annuitant's terminated disability annuity (same type and rate) shall be reinstated from the date of such medical examination. If a restored-to-earning-capacity annuitant has not medically recovered from the disability for which retired and establishes to the Director's satisfaction that the annuitant's income from wages and self-employment in any calendar year before reaching age 62 was less than 80 percent of the rate of pay for the grade and step the annuitant held at the time of retirement, the annuitant's terminated disability annuity (same type and rate) shall be reinstated from the first of the next following year. If the annuitant has been allowed an involuntary or voluntary retirement annuity in the meantime, the annuitant's reinstated disability annuity shall be substituted for it unless the annuitant elects to retain the former benefit.

(e) Coordination of benefits**(1) Workers' compensation**

A participant is not entitled to receive for the same period of time—

- (A) an annuity under this subchapter, and
- (B) compensation for injury to, or disability of, such participant under subchapter I of chapter 81 of title 5, other than compensation payable under section 8107 of such title.

(2) Survivor annuities

An individual is not entitled to receive an annuity under this subchapter and a concurrent benefit under subchapter I of chapter 81 of title 5 on account of the death of the same person.

(3) Greater benefit

Paragraphs (1) and (2) do not bar the right of a claimant to the greater benefit conferred by either this subchapter or subchapter I of chapter 81 of title 5.

(f) Offset from survivor annuity for workers' compensation payment**(1) Refund to Department of Labor**

If an individual is entitled to an annuity under this subchapter and the individual receives a lump-sum payment for compensation under section 8135 of title 5 based on the disability or death of the same person, so much

of the compensation as has been paid for a period extended beyond the date payment of the annuity commences, as determined by the Secretary of Labor, shall be refunded to the Department for credit to the Employees' Compensation Fund. Before the individual may receive the annuity, the individual shall—

(A) refund to the Secretary of Labor the amount representing the commuted compensation payments for the extended period; or

(B) authorize the deduction of the amount from the annuity.

(2) Source of deduction

Deductions from the annuity may be made from accrued or accruing payments. The amounts deducted and withheld from the annuity shall be transmitted to the Secretary for reimbursement to the Employees' Compensation Fund.

(3) Prorating deduction

If the Secretary finds that the financial circumstances of an individual entitled to an annuity under this subchapter warrant deferred refunding, deductions from the annuity may be prorated against and paid from accruing payments in such manner as the Secretary determines appropriate.

(Pub. L. 88-643, title II, §231, as added Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3220; amended Pub. L. 103-178, title II, §202(a)(8), Dec. 3, 1993, 107 Stat. 2026.)

REFERENCES IN TEXT

Section 5532 of title 5, referred to in subsec. (b)(2), was repealed by Pub. L. 106-65, div. A, title VI, §651(a)(1), Oct. 5, 1999, 113 Stat. 664.

PRIOR PROVISIONS

A prior section 231 of Pub. L. 88-643, title II, Oct. 13, 1964, 78 Stat. 1046; Ex. Ord. No. 12326, §2, Sept. 30, 1981, 46 F.R. 48889; Pub. L. 94-522, title II, §§205-207, Oct. 17, 1976, 90 Stat. 2470; Ex. Ord. No. 12443, §1, Sept. 27, 1983, 48 F.R. 44751; Pub. L. 99-335, title V, §501(2), June 6, 1986, 100 Stat. 622; Pub. L. 102-183, title III, §305, Dec. 4, 1991, 105 Stat. 1265, related to retirement for disability or incapacity, medical examination, and recovery and was set out as a note under section 403 of this title prior to the general amendment of Pub. L. 88-643 by section 802 of Pub. L. 102-496.

AMENDMENTS

1993—Subsec. (d)(2). Pub. L. 103-178 substituted “2071(a) of this title” for “2071(b) of this title”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-178 effective Feb. 1, 1993, see section 202(b) of Pub. L. 103-178, set out as a note under section 2001 of this title.

§ 2052. Death in service**(a) Return of contributions when no annuity payable**

If a participant dies and no claim for an annuity is payable under this subchapter, the participant's lump-sum credit and any voluntary contributions made under section 2121 of this title, with interest, shall be paid in the order of precedence shown in section 2071(c) of this title.