

Sec. 843.202 Eligibility for payment of the unexpended balance to a separated employee.

(a) Except as provided in Sec. Sec. 843.208 and 843.209 or in section 3716 of title 31, United States Code, on administrative offset for Government claims, a separated employee who has been separated from a covered position for at least 31 days and who is ineligible for an annuity commencing within 31 days after the date of filing an application for refund is eligible for a payment of the unexpended balance.

(b) Periods of service for which employee contributions have been refunded are not creditable service in determining whether the employee has sufficient service to have title to an annuity or for any other purpose.

Sec. 843.203 Eligibility for a one-time payment upon death of an employee, separated employee, or retiree if no one is eligible for an annuity.

(a) If there is no survivor who is entitled to monthly survivor annuity benefits on the death of an employee, separated employee, retiree, or survivor annuitant, the unexpended balance is payable, except as provided in section 3716 of title 31, United States Code, on administrative offset for Government claims, to the person(s) entitled in the normal order of precedence described in section 8424 of title 5, United States Code.

(b) If a deceased employee, separated employee, retiree or Member provided in a valid designation of beneficiary that the lump sum proceeds shall be payable to the deceased's estate, or to

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the Executor, Administrator, or other representative of the deceased's estate, or if the proceeds would otherwise be properly payable to the duly appointed representative of the deceased's estate under the order of precedence specified in 5 U.S.C. 8424(d), payment of the proceeds to the duly appointed representative of the deceased's estate will bar recovery by any other person.

[52 FR 2074, Jan. 16, 1987, as amended at 57 FR 29784, July 7, 1992]

Sec. 843.204 Eligibility for a one-time payment upon death of an employee, separated employee, or retiree if someone is eligible for an annuity.

(a) Except as provided in section 3716 of title 31, United States Code, on administrative offset for Government claims, even if an annuity is payable, the person entitled in the order of precedence described in section 8424 of title 5, United States Code, may be paid--

(1) Partial deposits for civilian service performed on and after October 1, 1982; and

(2) Partial deposits for post-1956 military service; and

(3) The accrued benefit.

(b) Except as provided in subpart G of part 842 of this chapter or Sec. 843.311, when someone is eligible for an annuity, the person

entitled in the order of precedence may not be paid--

(1) Partial or completed deposits for nondeduction civilian service performed before October 1, 1982, unless the service covered by the deposit is not creditable under FERS; or

(2) Completed deposits for nondeduction civilian service performed on and after October 1, 1982, unless the service covered by the deposit is not creditable under or FERS; or

(3) Completed deposits for post-1956 military service, unless the service covered by the deposit is not creditable under FERS.

(c) Payments of the partial or completed deposits mentioned in paragraph (b) of this section are subject to section 3716 of title 31, United States Code (administrative offset for Governmental claims).

Sec. 843.208 Notification of current and/or former spouse before payment of unexpended balance to a separated employee.

(a) Payment to an employee of the unexpended balance may be made only if current and former spouses are notified of the former employee's application.

(b) Proof of notification will consist of a signed and witnessed statement by the current and/or former spouse on a form provided by OPM acknowledging that he or she has been informed of the former employee's application for the unexpended balance and the consequences of the refund on the current or former spouse's possible annuity entitlement. This statement must be presented to the employing agency or OPM when filing the application for the unexpended balance.

(c) If the current and/or former spouse refuses to acknowledge the notification or the employee is otherwise unable to obtain the acknowledgment, the employee must submit--

(1) Affidavits signed by two individuals who witnessed the employee's attempt to personally notify the current or former spouse. The witnesses must attest that they were in the presence of the employee and the current or former spouse and that the employee's purpose should have been clear to the current or former spouse; or

(2) The current mailing address of the current or former spouse. OPM will attempt to notify (by certified mail--return receipt requested) the current or former spouse at the address provided by the employee. The unexpended balance will not be paid until OPM receives the signed return receipt.

Sec. 843.209 Waiver of notification requirement.

The current and/or former spouse notification requirement will be waived upon a showing that the current and/or former spouse's whereabouts cannot be determined. A request for waiver on this basis must be accompanied by--

(a) A judicial or administrative determination that the current and/or former spouse's whereabouts cannot be determined; or

(b) Affidavits by the former employee and two other persons, at least one of whom is not related to the former employee, attesting to the inability to locate the current and/or former spouse and stating the efforts made to locate the current and/or former spouse.

Sec. 8424. Lump-sum benefits; designation of beneficiary; order of precedence

-STATUTE-

(a) Subject to subsection (b), an employee or Member who -

(1) (A) is separated from the service for at least 31 consecutive days; or

(B) is transferred to a position in which the individual is not subject to this chapter and remains in such a position for at least 31 consecutive days;

(2) files an application with the Office for payment of the lump-sum credit;

(3) is not reemployed in a position in which the individual is subject to this chapter at the time of filing the application; and

(4) will not become eligible to receive an annuity within 31 days after filing the application;

is entitled to be paid the lump-sum credit. Except as provided in section 8420a, payment of the lump-sum credit to an employee or Member voids all annuity rights under this subchapter, and subchapters IV and V of this chapter, based on the service on which the lump-sum credit is based.

(b) (1) (A) Payment of the lump-sum credit under subsection (a) may be made only if the spouse, if any, and any former spouse of the employee or Member are notified of the employee or Member's application.

(B) The Office shall prescribe regulations under which the lump-sum credit shall not be paid without the consent of a spouse or former spouse of the employee or Member where the Office has received such additional information or documentation as the Office may require that -

(i) a court order bars payment of the lump-sum credit in order to preserve the court's ability to award an annuity under section 8445 or 8467; or

(ii) payment of the lump-sum credit would extinguish the entitlement of the spouse or former spouse, under a court order on file with the Office, to a survivor annuity under section 8445 or to any portion of an annuity under section 8467.

(2) (A) Notification of a spouse or former spouse under this subsection shall be made in accordance with such requirements as the Office shall by regulation prescribe.

(B) Under the regulations, the Office may provide that paragraph (1) (A) may be waived with respect to a spouse or former spouse if the employee or Member establishes to the satisfaction of the Office that the whereabouts of such spouse or former spouse cannot be determined.

(3) The Office shall prescribe regulations under which this subsection shall be applied in any case in which the Office receives two or more orders or decrees referred to in paragraph (1) (B) (i).

(c) Under regulations prescribed by the Office, an employee or Member, or a former employee or Member, may designate one or more beneficiaries under this section.

(d) Lump-sum benefits authorized by subsections (e) through (g) shall be paid to the individual or individuals surviving the

employee or Member and alive at the date title to the payment arises in the following order of precedence, and the payment bars recovery by any other individual:

First, to the beneficiary or beneficiaries designated by the employee or Member in a signed and witnessed writing received in the Office before the death of such employee or Member. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee or Member.

Third, if none of the above, to the child or children of the employee or Member and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or Member or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee or Member.

Sixth, if none of the above, to such other next of kin of the employee or Member as the Office determines to be entitled under the laws of the domicile of the employee or Member at the date of death of the employee or Member.

For the purpose of this subsection, "child" includes a natural child and an adopted child, but does not include a stepchild.

(e) If an employee or Member, or former employee or Member, dies

(1) without a survivor, or

(2) with a survivor or survivors and the right of all survivors under subchapter IV terminates before a claim for survivor annuity under such subchapter is filed,

the lump-sum credit shall be paid.

(f) If all annuity rights under this chapter (other than under subchapter III of this chapter) based on the service of a deceased employee or Member terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

(g) If an annuitant dies, annuity accrued and unpaid shall be paid.

(h) Annuity accrued and unpaid on the termination, except by death, of the annuity of an annuitant or survivor shall be paid to that individual. Annuity accrued and unpaid on the death of a survivor shall be paid in the following order of precedence, and the payment bars recovery by any other person:

First, to the duly appointed executor or administrator of the estate of the survivor.

Second, if there is no executor or administrator, payment may be made, after 30 days from the date of death of the survivor, to such next of kin of the survivor as the Office determines to be entitled under the laws of the domicile of the survivor at the date of death.

--SOURCE--

(Added Pub. L. 99-335, title I, Sec. 101(a), June 6, 1986, 100 Stat. 539; amended Pub. L. 106-361, Sec. 3(b), Oct. 27, 2000, 114 Stat. 1402.)

-MISC1-

AMENDMENTS

2000 - Subsec. (b)(1). Pub. L. 106-361 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Payment of the lump-sum credit under subsection (a) -

"(A) may be made only if any current spouse and any former spouse of the employee or Member are notified of the application by the employee or Member; and

"(B) in any case in which there is a former spouse, shall be subject to the terms of a court decree of divorce, annulment, or legal separation issued with respect to such former spouse if -

"(i) the decree expressly relates to any portion of the lump-sum credit involved; and

"(ii) payment of the lump-sum credit would affect any right or interest of the former spouse with respect to a survivor annuity under section 8445, or to any portion of an annuity under section 8467."

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8402, 8433, 8442, 8468 of this title; title 50 section 2154.