

“(B) the term ‘assumed increase in the price index’ means—

“(i) 6.6 percent, in the case of fiscal year 1983,

“(ii) 7.2 percent, in the case of fiscal year 1984, and

“(iii) 6.6 percent, in the case of fiscal year 1985.

“(5) The amount of any survivor annuity which is based on the service of any early retiree subject to this subsection shall be computed as if this subsection had not been enacted.

“(b) [Repealed. Pub. L. 98-270, title II, §201(c)(2), Apr. 18, 1984, 98 Stat. 158.]

“(c) For purposes of this section, the term ‘cost-of-living increase under a Government retirement system’ means any increase under—

“(1) section 8340(b) of title 5, United States Code;

“(2) section 826 of the Foreign Service Act of 1980 [22 U.S.C. 4066];

“(3) the Central Intelligence Agency Act of 1964 for Certain Employees (50 U.S.C. 403 note);

“(4) section 1401a(b) of title 10, United States Code;

or

“(5) any other adjustment of any annuity under a retirement system for Government officers or employees which the President determines, by Executive order, is based on adjustments under any of the provisions referred to in the preceding paragraph.”

COST-OF-LIVING ADJUSTMENT OF RETIRED PAY OR RETAINER PAY OF MEMBERS AND FORMER MEMBERS OF ARMED FORCES AND COMMISSIONED OFFICERS OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AND PUBLIC HEALTH SERVICE; EFFECTIVE DATE OF AMENDMENT

See provisions of section 801(c) of Pub. L. 94-361, title VIII, July 14, 1976, 90 Stat. 929, set out as a note under section 1401a of Title 10, Armed Forces.

§ 8341. Survivor annuities

(a) For the purpose of this section—

(1) “widow” means the surviving wife of an employee or Member who—

(A) was married to him for at least 9 months immediately before his death; or

(B) is the mother of issue by that marriage;

(2) “widower” means the surviving husband of an employee or Member who—

(A) was married to her for at least 9 months immediately before her death; or

(B) is the father of issue by that marriage;

(3) “dependent”, in the case of any child, means that the employee or Member involved was, at the time of the employee or Member’s death, either living with or contributing to the support of such child, as determined in accordance with such regulations as the Office of Personnel Management shall prescribe; and

(4) “child” means—

(A) an unmarried dependent child under 18 years of age, including (i) an adopted child, and (ii) a stepchild but only if the stepchild lived with the employee or Member in a regular parent-child relationship, and (iii) a recognized natural child, and (iv) a child who lived with and for whom a petition of adoption was filed by an employee or Member, and who is adopted by the surviving spouse of the employee or Member after his death;

(B) such unmarried dependent child regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18; or

(C) such unmarried dependent child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

For the purpose of this paragraph and subsection (e) of this section, a child whose 22nd birthday occurs before July 1 or after August 31 of a calendar year, and while he is regularly pursuing such a course of study or training, is deemed to have become 22 years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if he shows to the satisfaction of the Office of Personnel Management that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(b)(1) Except as provided in paragraph (2) of this subsection, if an employee or Member dies after having retired under this subchapter and is survived by a widow or widower, the widow or widower is entitled to an annuity equal to 55 percent (or 50 percent if retired before October 11, 1962) of an annuity computed under section 8339(a)–(i), (n), (p), (q), (r), and (s) as may apply with respect to the annuitant, or of such portion thereof as may have been designated for this purpose under section 8339(j)(1) of this title, unless the right to a survivor annuity was waived under such section 8339(j)(1) or, in the case of remarriage, the employee or Member did not file an election under section 8339(j)(5)(C) or section 8339(k)(2) of this title, as the case may be.

(2) If an annuitant—

(A) who retired before April 1, 1948; or

(B) who elected a reduced annuity provided in paragraph (2) of section 8339(k) of this title;

dies and is survived by a widow or widower, the widow or widower is entitled to an annuity in an amount which would have been paid had the annuitant been married to the widow or widower at the time of retirement.

(3) A spouse acquired after retirement is entitled to a survivor annuity under this subsection only upon electing this annuity instead of any other survivor benefit to which he may be entitled under this subchapter or another retirement system for Government employees. The annuity of the widow or widower under this subsection commences on the day after the annuitant dies. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(A) dies; or

(B) except as provided in subsection (k), remarries before becoming 55 years of age.

(4) Notwithstanding the preceding provisions of this subsection, the annuity payable under this subsection to the widow or widower of a retired employee or Member may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under this subsection (determined without regard to any waiver or designation under section 8339(j)(1) of this title or a prior similar provision of law), and

(B) the amount of the survivor annuity payable to any former spouse of such employee or Member under subsection (h) of this section.

(c) The annuity of a survivor named under section 8339(k)(1) of this title is 55 percent of the reduced annuity of the retired employee or Member. The annuity of the survivor commences on the day after the retired employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the survivor dies.

(d) If an employee or Member dies after completing at least 18 months of civilian service, his widow or widower is entitled to an annuity equal to 55 percent of an annuity computed under section 8339(a)–(f), (i), (n), (p), (q), (r), and (s) as may apply with respect to the employee or Member, except that, in the computation of the annuity under such section, the annuity of the employee or Member shall be at least the smaller of—

(1) 40 percent of his average pay; or

(2) the sum obtained under such section after increasing his service of the type last performed by the period elapsing between the date of death and the date he would have become 60 years of age.

Notwithstanding the preceding sentence, the annuity payable under this subsection to the widow or widower of an employee or Member may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under this subsection, and

(B) the amount of the survivor annuity payable to any former spouse of such employee or Member under subsection (h) of this section.

The annuity of the widow or widower commences on the day after the employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(i) dies; or

(ii) except as provided in subsection (k), remarries before becoming 55 years of age.

(e)(1) For the purposes of this subsection, “former spouse” includes a former spouse who was married to an employee or Member for less than 9 months and a former spouse of an employee or Member who completed less than 18 months of service covered by this subchapter.

(2) If an employee or Member dies after completing at least 18 months of civilian service, or an employee or Member dies after retiring under this subchapter, and is survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the employee or Member, that surviving child is entitled to an annuity equal to the smallest of—

(A) 60 percent of the average pay of the employee or Member divided by the number of children;

(B) \$900; or

(C) \$2,700 divided by the number of children; subject to section 8340 of this title. If the employee or Member is not survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the employee or Member, that surviving child is entitled to an annuity equal to the smallest of—

(i) 75 percent of the average pay of the employee or Member divided by the number of children;

(ii) \$1,080; or

(iii) \$3,240 divided by the number of children;

subject to section 8340 of this title.

(3) The annuity of a child under this subchapter or under the Act of May 29, 1930, as amended from and after February 28, 1948, commences on the day after the employee or Member dies, or commences or resumes on the first day of the month in which the child later becomes or again becomes a student as described by subsection (a)(3) of this section, if any lump sum paid is returned to the Fund. This annuity and the right thereto terminate on the last day of the month before the child—

(A) becomes 18 years of age unless he is then a student as described or incapable of self-support;

(B) becomes capable of self-support after becoming 18 years of age unless he is then such a student;

(C) becomes 22 years of age if he is then such a student and capable of self-support;

(D) ceases to be such a student after becoming 18 years of age unless he is then incapable of self-support; or

(E) dies or marries;

whichever first occurs. 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 employee or Member.

(4) If the annuity of a child under this subchapter terminates under paragraph (3)(E) because of marriage, then, if such marriage ends, such annuity shall resume on the first day of the month in which it ends, but only if—

(A) any lump sum paid is returned to the Fund; and

(B) that individual is not otherwise ineligible for such annuity.

(f) If a Member heretofore or hereafter separated from the service with title to deferred annuity from the Fund hereafter dies before having established a valid claim for annuity and is survived by a spouse to whom married at the date of separation, the surviving spouse—

(1) is entitled to an annuity equal to 55 percent of the deferred annuity of the Member commencing on the day after the Member dies and terminating on the last day of the month before the surviving spouse dies or remarries; or

(2) may elect to receive the lump-sum credit instead of annuity if the spouse is the individual who would be entitled to the lump-sum credit and files application therefor with the Office before the award of the annuity.

Notwithstanding the preceding sentence, an annuity payable under this subsection to the sur-

viving spouse of a Member may not exceed the difference between—

(A) the annuity which would otherwise be payable to such surviving spouse under this subsection, and

(B) the amount of the survivor annuity payable to any former spouse of such Member under subsection (h) of this section.

(g) In the case of a surviving spouse whose annuity under this section is terminated because of remarriage before becoming 55 years of age, annuity at the same rate shall be restored commencing on the day the remarriage is dissolved by death, annulment, or divorce, if—

(1) the surviving spouse elects to receive this annuity instead of a survivor benefit to which he may be entitled, under this subchapter or another retirement system for Government employees, by reason of the remarriage; and

(2) any lump sum paid on termination of the annuity is returned to the Fund.

(h)(1) Subject to paragraphs (2) through (5) of this subsection, a former spouse of a deceased employee, Member, annuitant, or former Member who was separated from the service with title to a deferred annuity under section 8338(b) of this title is entitled to a survivor annuity under this subsection, if and to the extent expressly provided for in an election under section 8339(j)(3) of this title, or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(2)(A) The annuity payable to a former spouse under this subsection may not exceed the difference between—

(i) the amount applicable in the case of such former spouse, as determined under subparagraph (B) of this paragraph, and

(ii) the amount of any annuity payable under this subsection to any other former spouse of the employee, Member, or annuitant, based on an election previously made under section 8339(j)(3) of this title, or a court order previously issued.

(B) The applicable amount, for purposes of subparagraph (A)(i) of this paragraph in the case of a former spouse, is the amount which would be applicable—

(i) under subsection (b)(4)(A) of this section in the case of a widow or widower, if the deceased was an employee or Member who died after retirement;

(ii) under subparagraph (A) of subsection (d) of this section in the case of a widow or widower, if the deceased was an employee or Member described in the first sentence of such subsection; or

(iii) under subparagraph (A) of subsection (f) of this section in the case of a surviving spouse, if the deceased was a Member described in the first sentence of such subsection.

(3) The commencement and termination of an annuity payable under this subsection shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—

(A) shall not commence before—

(i) the day after the employee, Member, or annuitant dies, or

(ii) the first day of the second month beginning after the date on which the Office receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Office may prescribe,

whichever is later, and

(B) shall terminate—

(i) except as provided in subsection (k), in the case of an annuity computed by reference to clause (i) or (ii) of paragraph (2)(B) of this subsection, no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies; or

(ii) in the case of an annuity computed by reference to clause (iii) of such paragraph, no later than the last day of the month before the former spouse remarries or dies.

(4) For purposes of this subchapter, a modification in a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective—

(A) if such modification is made after the retirement or death of the employee or Member concerned, and

(B) to the extent that such modification involves an annuity under this subsection.

(5) For purposes of this subchapter, a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective, in the case of a former spouse, to the extent that it is inconsistent with any joint designation or waiver previously executed with respect to such former spouse under section 8339(j)(1) of this title or a similar prior provision of law.

(6) Any payment under this subsection to a person bars recovery by any other person.

(7) As used in this subsection, “court” means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.

(i) The requirement in subsections (a)(1)(A) and (a)(2)(A) of this section that the surviving spouse of an employee or Member have been married to such employee or Member for at least 9 months immediately before the employee or Member’s death in order to qualify as the widow or widower of such employee or Member shall be deemed satisfied in any case in which the employee or Member dies within the applicable 9-month period, if—

(1) the death of the employee or Member was accidental; or

(2) the surviving spouse of such individual had been previously married to the individual and subsequently divorced, and the aggregate time married is at least 9 months.

(k)(1)¹ Subsections (b)(3)(B), (d)(ii), and (h)(3)(B)(i) (to the extent that they provide for termination of a survivor annuity because of a remarriage before age 55) shall not apply if the

¹ So in original. No subsec. (j) has been enacted.

widow, widower, or former spouse was married for at least 30 years to the individual on whose service the survivor annuity is based.

(2) A remarriage described in paragraph (1) shall not be taken into account for purposes of section 8339(j)(5)(B) or (C) or any other provision of this chapter which the Office may by regulation identify in order to carry out the purposes of this subsection.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 577; Pub. L. 90-83, §1(80), Sept. 11, 1967, 81 Stat. 216; Pub. L. 91-93, title II, §206, Oct. 20, 1969, 83 Stat. 140; Pub. L. 91-658, §3, Jan. 8, 1971, 84 Stat. 1961; Pub. L. 92-243, §1, Mar. 9, 1972, 86 Stat. 56; Pub. L. 92-297, §7(4), May 16, 1972, 86 Stat. 145; Pub. L. 93-260, §1(a), Apr. 9, 1974, 88 Stat. 76; Pub. L. 94-183, §2(36), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95-317, §1(b), July 10, 1978, 92 Stat. 382; Pub. L. 95-318, §2, July 10, 1978, 92 Stat. 384; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-598, title III, §338(c), Nov. 6, 1978, 92 Stat. 2681; Pub. L. 96-179, §1, Jan. 2, 1980, 93 Stat. 1299; Pub. L. 98-353, title I, §112, July 10, 1984, 98 Stat. 343; Pub. L. 98-615, §2(4), Nov. 8, 1984, 98 Stat. 3199; Pub. L. 99-251, title II, §§205-207, Feb. 27, 1986, 100 Stat. 25; Pub. L. 99-272, title XV, §15204(a)(2), Apr. 7, 1986, 100 Stat. 335; Pub. L. 101-428, §2(d)(7), Oct. 15, 1990, 104 Stat. 929; Pub. L. 102-378, §2(63), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §633(a)(1)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-362; Pub. L. 105-61, title V, §§516(a)(4), 518(a), Oct. 10, 1997, 111 Stat. 1306, 1307; Pub. L. 106-553, §1(a)(2) [title III, §308(h)(7)], Dec. 21, 2000, 114 Stat. 2762, 2762A-89.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 2251(h)-(j).	July 31, 1956, ch. 804, § 401 "Sec. 1(h)-(j)", 70 Stat. 744. Oct. 11, 1962, Pub. L. 87-793, §1103(f)(A), 76 Stat. 871.
(b)-(f)	5 U.S.C. 2260.	July 31, 1956, ch. 804, § 401 "Sec. 10", 70 Stat. 754. Aug. 27, 1958, Pub. L. 85-772, §1(b), (c), 72 Stat. 930. Sept. 6, 1960, Pub. L. 86-713, §1(a), 74 Stat. 813. Oct. 11, 1962, Pub. L. 87-793, §1103 (less (a) and (f)(A)), 76 Stat. 870, 871.

In subsection (b), the words "designated for this purpose under section 8339(i) of this title" are substituted for "designated in writing for such purpose by the employee or Member at the time of retirement" in view of the provisions of section 8339(i).

In subsection (f), the words "heretofore or hereafter" are substituted "either prior to, on, or after the effective date of the Civil Service Retirement Act Amendments of 1956".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8341(a)(4) ...	5 App.: 2251(j) (less last sentence).	Apr. 25, 1966, Pub. L. 89-407, §1 (words before 1st comma), 80 Stat. 131. July 18, 1966, Pub. L. 89-504, §502, 80 Stat. 300.

1967 ACT—CONTINUED

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8341(b) (last sentence).	5 App.: 2260(a)(2).	July 18, 1966, Pub. L. 89-504, §506(a), 80 Stat. 301.
8341(d) (last sentence).	5 App.: 2260(c) (last sentence).	July 18, 1966, Pub. L. 89-504, §506(b), 80 Stat. 301.
8341(e)	5 App.: 2260(d).	July 18, 1966, Pub. L. 89-504, §506(c), 80 Stat. 301.
8341(g)	5 App.: 2260(f).	July 18, 1966, Pub. L. 89-504, §506(d), 80 Stat. 302.

In subsection (a)(4), the words "for the purposes of section 10(d)" are omitted as covered by the words "For the purpose of this section."

In clause (2) of the last sentence of subsection (b), the word "retired" is inserted before "Member" for clarity and to conform to the penultimate sentence and clause (1) of the last sentence.

In subsection (e), the words "any lump sum paid" are substituted for "the lump-sum credit, if paid" for clarity and consistency with subsection (g)(2).

In subsection (e)(2)(C), the words "capable of self-support" are substituted for "not incapable of self-support."

In subsection (g), the words "after July 18, 1966" are substituted for "hereafter." In clause (1), the word "he" is substituted for "he or she" on authority of 1 U.S.C. 1. The words "another retirement system for Government employees" are substituted for "any other retirement system established for employees of the Government" for consistency with section 8101(1)(ii).

REFERENCES IN TEXT

The Act of May 29, 1930, as amended from and after February 28, 1948, referred to in subsec. (e)(3), is the predecessor of section 8338 of this title.

AMENDMENTS

2000—Subsecs. (b)(1), (d). Pub. L. 106-553 substituted "(q), (r), and (s)" for "(q), and (r)".

1997—Subsec. (b)(1). Pub. L. 105-61, §516(a)(4), substituted "(q), and (r)" for "and (q) of this title".

Subsec. (b)(3)(B). Pub. L. 105-61, §518(a)(2)(A), substituted "except as provided in subsection (k), remarries" for "remarries".

Subsec. (d). Pub. L. 105-61, §§516(a)(4), 518(a)(2)(A), substituted "(q), and (r)" for "and (q) of this title" in introductory provisions and "except as provided in subsection (k), remarries" for "remarries" in cl. (ii).

Subsec. (h)(3)(B)(i). Pub. L. 105-61, §518(a)(2)(B), substituted "except as provided in subsection (k), in" for "in".

Subsec. (k). Pub. L. 105-61, §518(a)(1), added subsec. (k).

1996—Subsec. (e)(4). Pub. L. 104-208 added par. (4).

1992—Subsecs. (b)(1), (d). Pub. L. 102-378 substituted "(p)." for "(o)".

1990—Subsecs. (b)(1), (d). Pub. L. 101-428 substituted "(n), (o), and (q)" for "(n), and (o)".

1986—Subsecs. (b)(1), (d). Pub. L. 99-272 substituted "(, (n) and (o))" for "and (n)" in subsec. (b)(1), and "(n), and (o)" for "and (n)" in subsec. (d).

Subsec. (e). Pub. L. 99-251, §205, added par. (1), redesignated existing pars. (1) and (2) as (2) and (3), respectively, and in par. (2) as redesignated substituted "that surviving child" for "each surviving child" in two places.

Subsec. (h)(1). Pub. L. 99-251, §206, substituted "annuitant, or former Member who was separated from the service with title to a deferred annuity under section 8338(b) of this title" for "or annuitant".

Subsec. (h)(4)(A). Pub. L. 99-251, §207, inserted "or death" after "retirement".

1984—Subsec. (a)(1)(A), (2)(A). Pub. L. 98-615, §2(4)(A), substituted "9 months" for "1 year".

Subsec. (b)(1). Pub. L. 98-615, §2(4)(B)(i), substituted "by a widow or widower, the widow or widower is entitled to an annuity equal to 55 percent (or 50 percent if

retired before October 11, 1962)" for "by a spouse to whom he was married at the time of retirement, or by a widow or widower whom he married after retirement, the spouse, widow, or widower is entitled to an annuity equal to 55 percent, or 50 percent if retired before October 11, 1962" and "section 8339(j)(1) of this title, unless the right to a survivor annuity was waived under such section 8339(j)(1) or, in the case of remarriage, the employee or Member did not file an election under section 8339(j)(5)(C) or section 8339(k)(2) of this title, as the case may be" for "section 8339(j) of this title, unless the employee or Member has notified the Office in writing at the time of retirement that he does not desire any spouse surviving him to receive his annuity, or in the case of remarriage, he did not file an election under the third sentence of section 8339(j) of this title".

Pub. L. 98-353 substituted "and (n)" for "and (o)".

Subsec. (b)(3). Pub. L. 98-615, §2(4)(B)(i), substituted "widow or widower" for "spouse, widow, or widower" wherever appearing in provisions preceding subpar. (A).

Subsec. (b)(3)(B). Pub. L. 98-615, §2(4)(B)(ii), substituted "55 years of age" for "60 years of age".

Subsec. (b)(4). Pub. L. 98-615, §2(4)(B)(iv), added par. (4).

Subsec. (d). Pub. L. 98-615, §2(4)(C)(i), inserted provision that the annuity payable under this subsection to the widow or widower of an employee or Member may not exceed the difference between the amount which would otherwise be payable to such widow or widower under this subsection and the amount of the survivor annuity payable to any former spouse of such employee or Member under subsec. (h).

Pub. L. 98-353 substituted "and (n)" for "and (o)".

Subsec. (d)(i). Pub. L. 98-615, §2(4)(C)(ii), redesignated subpar. (A) as cl. (i).

Subsec. (d)(ii). Pub. L. 98-615, §2(4)(C)(ii), redesignated subpar. (B) as cl. (ii) and substituted "55 years of age" for "60 years of age".

Subsec. (e)(1). Pub. L. 98-615, §2(4)(D)(i), inserted "or a former spouse who is the natural or adoptive parent of a surviving child of the employee or Member" in provisions preceding subpar. (A) and following subpar. (C).

Subsec. (e)(2). Pub. L. 98-615, §2(4)(D)(ii), substituted "surviving spouse or former spouse" for "surviving spouse" and "spouse, former spouse, or child" for "spouse or child" in provisions following subpar. (E).

Subsec. (f). Pub. L. 98-615, §2(4)(E), inserted provision that an annuity payable under this subsection to the surviving spouse of a Member may not exceed the difference between the annuity which would otherwise be payable to such surviving spouse under this subsection and the amount of the survivor annuity payable to any former spouse of such Member under subsec. (h) of this section in provisions following par. (2).

Subsec. (g). Pub. L. 98-615, §2(4)(F), substituted "55 years of age" for "60 years of age" in provisions preceding par. (1).

Subsecs. (h), (i). Pub. L. 98-615, §2(4)(G), added subsecs. (h) and (i).

1980—Subsec. (a)(2)(B). Pub. L. 96-179, §1(1), struck out "and" after "marriage:".

Subsec. (a)(3). Pub. L. 96-179, §1(2), added par. (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 96-179, §1(3), redesignated former par. (3) as (4), substituted "unmarried dependent child" for "unmarried child" wherever appearing in subpars. (A), (B), and (C), substituted "but only if the stepchild" for "or recognized natural child who" in subpar. (A)(ii), and inserted "a recognized natural child, and (iv)" after "(iii)".

1978—Subsec. (a)(3). Pub. L. 95-454, §906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (b)(1). Pub. L. 95-598, §338(c)(1), inserted reference to subsec. (o) of section 8339 of this title.

Pub. L. 95-454, §906(a)(3), substituted "Office" for "Commission".

Pub. L. 95-317 inserted provisions relating to failure to file an election under section 8339(j) of this title in the case of remarriage.

Subsec. (d). Pub. L. 95-598, §338(c)(2), inserted reference to subsec. (o) of section 8339 of this title.

Subsec. (f)(2). Pub. L. 95-454, §906(a)(3), substituted "Office" for "Commission".

Subsec. (g). Pub. L. 95-318 struck out "after July 18, 1966," after "terminated".

1975—Subsec. (c). Pub. L. 94-183 substituted "8339(k)(1)" for "8339(k)".

1974—Subsec. (a)(1)(A), (2)(A). Pub. L. 93-260 substituted "1 year" for "2 years".

1972—Subsec. (a)(3)(A). Pub. L. 92-243 added cl. (iii).

Subsec. (c). Pub. L. 92-297, §7(4)(i), substituted "section 8339(a)-(i)", "section 8339(j)", and "section 8339(k)" for "section 8339(a)-(h)", "section 8339(i)", and "section 8339(j)", respectively.

Pub. L. 92-297, §7(4)(ii), substituted "section 8339(k)" for "section 8339(j)".

Subsec. (d). Pub. L. 92-297, §7(4)(iii), substituted "section 8339(a)-(f) and (i)" for "section 8339(a)-(e) and (h)".

1971—Subsec. (a)(3), (4). Pub. L. 91-658, §3(a), struck out par. (3) which defined "dependent widower", and redesignated par. (4) as (3).

Subsec. (b). Pub. L. 91-658, §3(b), designated existing first sentence as par. (1), and inserted exception phrase, provision for survival by widow or widower whom employee or Member marries after retirement, entitlement of widow or widower to 55 percent annuity (limited to 50 percent where retirement before Oct. 11, 1962), and substituted "any spouse surviving him" for "his spouse"; added par. (2); and added par. (3), first sentence, respecting entitlement to survivor annuity by a spouse acquired after retirement upon election from available survivor benefits, and designated as second and third sentences former second and third sentences, providing for widows and widowers and substituting "annuitant" for "retired employee or member".

Subsec. (d). Pub. L. 91-658, §3(c), substituted "his widow or widower" for "the widow or dependent widower of the employee or Member" in first sentence, struck out "or dependent" before "widower" in second sentence, and substituted in third sentence provision for termination of annuity where widow or widower dies or remarries before becoming 60 years of age for prior termination of annuity before widow or dependent widower dies, the dependent widower becomes capable of self-support, the widow or dependent widower of an employee remarries before becoming 60 years of age, or the widow or dependent widower of a member remarries.

Subsec. (e)(2). Pub. L. 91-658, §3(d), substituted reference to "subsection (a)(3)" for "subsection (a)(4)".

1969—Subsec. (d). Pub. L. 91-93, §206(a), provided for entitlement to a survivor annuity after an 18 month rather than a 5 year period of civilian service and prescribed as the annuity the smaller of two computations when computing the annuity under section 8399 (a) to (e) and (h) of this title.

Subsec. (e)(1). Pub. L. 91-93, §206(b), increased annuity of a surviving child, substituting "eighteen months" for "five years" of civilian service in par. (1), "60 percent", "\$900", and "\$2,700" for "40 percent", "\$600", and "\$1,800" in cls. (A), (B), and (C), respectively, and "75 percent", "\$1,080", and "\$3,240", for "50 percent", "\$720", and "\$2,160" in cls. (i), (ii), and (iii), respectively.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-553 effective on the first day of the first applicable pay period that begins on Dec. 21, 2000, and applicable only to an individual who is employed as a member of the Supreme Court Police after Dec. 21, 2000, see section 1(a)(2) [title III, §308(i), (j)] of Pub. L. 106-553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 516(a) of Pub. L. 105-61 applicable to any annuity commencing before, on, or after Oct. 10, 1997, and effective with regard to any payment

made after the first month following Oct. 10, 1997, see section 516(b) of Pub. L. 105-61, set out as a note under section 8334 of this title.

Section 518(c) of Pub. L. 105-61 provided that: “The amendments made by this section [amending this section and sections 8442 and 8445 of this title] shall apply with respect to remarriages occurring on or after January 1, 1995.”

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(f) [title VI, §633(b)] of Pub. L. 104-208 provided that: “The amendments made by subsection (a) [amending this section and sections 8443 and 8908 of this title] shall apply with respect to any termination of marriage taking effect before, on, or after the date of enactment of this Act [Sept. 30, 1996], except that benefits shall be payable only with respect to amounts accruing for periods beginning on the first day of the month beginning after the later of such termination of marriage or such date of enactment.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective with respect to service performed on or after Apr. 7, 1986, see section 15204(b) of Pub. L. 99-272, as amended, set out as a note under section 8339 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 4 of Pub. L. 98-615, as amended by Pub. L. 99-251, title II, §201(a)-(c), Feb. 27, 1986, 100 Stat. 20, 22; Pub. L. 99-549, §9(a), Oct. 27, 1986, 100 Stat. 3065; Pub. L. 99-556, title V, §501(a), Oct. 27, 1986, 100 Stat. 3139; Pub. L. 100-238, title I, §127, Jan. 8, 1988, 101 Stat. 1758, provided that:

“(a)(1) Except as provided in paragraphs (3), (4), (5), and (6) and subsections (b) and (c), the amendments made by section 2 of this Act [amending this section and sections 8331, 8334, 8339, 8342, 8345, and 8348 of this title] shall take effect May 7, 1985, and shall apply—

“(A) to any individual who, on or after such date, is married to an employee or Member who, on or after such date, retires, dies, or applies for a refund of contributions under subchapter III of chapter 83 of title 5, United States Code, and

“(B) to any individual who, as of such date, is married to a retired employee or Member, unless (i) such employee or Member has waived, under the first sentence of section 8339(j)(1) of such title (or a similar prior provision of law), the right of that individual's spouse to receive a survivor annuity, or (ii) in the case of a post-retirement marriage or remarriage, an election has not been made before such date by such employee or Member with respect to such individual under the applicable provisions of section 8339(j)(1) or 8339(k)(2) of such title, as the case may be (or a similar prior provision of law).

“(2) Except as provided in subsection (f), the amendments made by section 3 of this Act [amending sections 8901 to 8903, 8905, 8907, 8909, and 8913 of this title] shall take effect May 7, 1985, and shall apply to any individual who, on or after such date, is married to an employee or annuitant.

“(3) The amendments made by subparagraphs (B)(iii) and (C)(ii) of section 2(4) of this Act [amending section 8341 of this title] (relating to the termination of survivor benefits for a widow or widower who remarries before age 55) and the amendments made by subparagraph (F) of such section 2(4) [amending section 8341 of this title] (relating to the restoration of a survivor annuity upon the dissolution of such a remarriage) shall apply—

“(A) in the case of a remarriage occurring on or after the date of the enactment of this Act [Nov. 8, 1984]; and

“(B) with respect to periods beginning on or after such date.

“(4)(A) Except as provided in subparagraph (B), the amendment made by section 2(3)(A) of this Act [amending section 8339 of this title] (but only to the extent

that it amends title 5, United States Code, by adding a new section 8339(j)(5)(C)) and the amendment made by section 2(3)(C) of this Act [amending section 8339 of this title] (which relate to the election of a survivor annuity for a spouse in the case of a post-retirement marriage or remarriage) shall apply—

“(i) to an employee or Member who retires before, on, or after May 7, 1985; and

“(ii) in the case of a marriage occurring on or after May 7, 1985.

“(B) The amendments referred to in subparagraph (A) shall not apply in the case of a marriage of an employee or Member retiring before May 7, 1985, if the marriage occurred after May 6, 1985, and before the date of the enactment of the Federal Employees Benefits Improvement Act of 1986 [Feb. 27, 1986].

“(C) Any election by an employee or Member described in subparagraph (B) to provide a survivor annuity for that individual's spouse by a marriage described in such subparagraph shall be effective if made in accordance with the applicable provisions of section 8339(j)(1) or 8339(k)(2) of title 5, United States Code, as the case may be, as in effect on May 6, 1985.

“(5)(A) Paragraphs (3), (4), and (5)(B) of section 8339(j) of title 5, United States Code (as added by section 2(3)(A) of this Act), shall apply in the case of a former spouse of an employee or Member whose marriage to such employee or Member terminated before May 7, 1985, if such employee or Member retires on or after such date. The paragraphs referred to in the preceding sentence shall so apply only insofar as they relate to an election to provide a survivor annuity for a former spouse.

“(B)(i) The requirement described in clause (ii) shall not apply to an election made by an employee or Member under section 8339(j)(3) of title 5, United States Code (as amended by section 2(3)(A) of this Act), in order to provide a survivor annuity under section 8341(h) of such title (as amended by section 2(4)(G) of this Act) in the case of a former spouse referred to in subparagraph (A) if the election meets the requirements of clause (iii).

“(ii) The requirement referred to in clause (i) is the requirement prescribed in section 8339(j)(3) of title 5, United States Code, for an employee or Member to make an election in the case of a former spouse under such section 8339(j)(3) at the time of retirement or, if later, within 2 years after the date on which the marriage of the former spouse to the employee or Member is dissolved.

“(iii) Clause (i) applies to an election which is made by an employee or Member who retires on or after May 7, 1985, and before the date of the enactment of the Federal Employees Benefits Improvement Act of 1986 [Feb. 27, 1986], and is received by the Office of Personnel Management within the 2-year period beginning on the date of the enactment of such Act.

“(C) A survivor annuity shall be paid a former spouse as provided in section 8341(h) of title 5, United States Code (as amended by section 2(4)(G) of this Act), pursuant to an election made in the case of such former spouse under this paragraph.

“(D) The amendments made by paragraphs (6) and (7) of section 2 of this Act [amending sections 8345 and 8348 of this title] shall apply in the case of survivor annuities and elections authorized by this paragraph.

“(6) The amendment made by section 2(4)(A) of this Act [amending section 8341 of this title] (relating to the definition of a widow or widower) and the amendment made by section 2(4)(G) of this Act (but only to the extent that it amends title 5, United States Code, by adding a new section 8341(i)) shall apply with respect to any marriage occurring on or after the date of the enactment of this Act [Nov. 8, 1984].

“(b)(1) Notwithstanding subsection (a)(1) of this section, a former spouse of an employee or Member who retired before May 7, 1985, or who died after becoming eligible to retire and before such date, is entitled to a survivor annuity under section 8341(b) of title 5, United States Code, as amended by this Act, if—

“(A) the retired employee or Member elects, in writing, within eighteen months after the date of enactment of this Act, according to procedures prescribed by the Office of Personnel Management, to have the annuity of such employee or Member reduced under section 8339(j) of title 5, United States Code, as amended by this Act, and, except as provided in paragraph (3) of this subsection, to deposit in the Civil Service Retirement and Disability Fund an amount determined by the Office, as nearly as may be administratively feasible, to reflect the amount by which such employee or Member’s annuity would have been reduced had the reduction been in effect since such employee or Member’s annuity commenced, plus interest computed at the annual rate of six 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; or

“(B) where the employee or Member dies or died on or before the one hundred and eightieth day after the date of enactment of this Act or does not make the election described in subparagraph (A)—

“(i) the former spouse’s marriage to the employee or Member was dissolved after September 14, 1978, and before May 8, 1987;

“(ii) the former spouse was married to the employee or Member for at least ten years during periods of creditable service under section 8332 of title 5, United States Code;

“(iii) the former spouse has not remarried before age fifty-five after September 14, 1978;

“(iv) the former spouse files an application for the survivor annuity with the Office on or before May 7, 1989; and

“(v) the former spouse is at least fifty years of age on May 7, 1987.

A survivor annuity under subparagraph (B) shall commence on the day after the employee or Member dies or the first day of the second month after the former spouse’s application is received by the Office, whichever occurs later.

“(2) Except as provided in paragraph (3), if a retired employee or Member who makes an election under subparagraph (A) of paragraph (1) does not make the deposit required by such subparagraph, the Office shall collect the amount of the deposit by offset against the employee or Member’s annuity, up to a maximum of 25 per centum of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset.

“(3) An election made by an individual under subparagraph (A) of paragraph (1) of this subsection to provide a survivor annuity for any person prospectively voids any election previously made by such individual with respect to such person under section 8339(k)(1) of title 5, United States Code, as amended by this Act, or any similar prior provision of law. Notwithstanding the provisions of such subparagraph (A), an individual who made such an election under such section 8339(k)(1) (or prior provision) shall not be required to make the deposit described in such subparagraph.

“(4)(A) A former spouse of an employee or Member referred to in the matter before subparagraph (A) in paragraph (1) of this section shall be entitled to a survivor annuity under subparagraph (B) of such paragraph if—

“(i) the former spouse satisfies the requirements of clauses (ii) through (v) of such subparagraph (B); and

“(ii) there is no surviving spouse of the employee or Member and no other former spouse of such employee or Member who is entitled to receive a survivor annuity under subchapter III of chapter 83 of title 5, United States Code, based on the service of such employee or Member which is creditable under such subchapter and there is no other person who has been designated to receive a survivor annuity under such subchapter by reason of an insurable interest in such employee or Member.

“(B) For the purposes of this paragraph, the term ‘surviving spouse’ means a widow or a widower as de-

defined in paragraphs (1) and (2), respectively, of section 8341(a) of title 5, United States Code.

“(5) A survivor annuity provided under this subsection shall be 55 per centum of the annuity of the retired employee or Member (or of that portion of the annuity which such employee or Member may have designated for this purpose under paragraph (1)(A) of this subsection), as determined under section 8339(a)-(i) and (n) of title 5, United States Code, increased by—

“(A) the total percent increase the retired employee or Member was receiving under section 8340 of such title at death, or

“(B) in the case of a retired employee or Member whose date of death precedes the one hundred and eightieth day after the date of enactment of this Act [Nov. 8, 1984], the total percent increase the retired employee or Member would have received under such section 8340 had such individual died on the one hundred and eightieth day after such date of enactment, and shall not be subject to reduction under section 8341(h)(2) of such title, as amended by this Act.

“(c) Notwithstanding subsection (a)(1) of this section, an employee or Member who retired before the one hundred and eightieth day after the date of enactment of this Act [Nov. 8, 1984] and who is married to a spouse acquired after retirement for whom such employee or Member was unable to provide a survivor annuity because—

“(1) the employee or Member was married at the time of retirement and elected not to provide a survivor annuity for the employee or Member’s spouse at the time of retirement, or

“(2) the employee or Member failed to notify the Office of the employee or Member’s post-retirement marriage within one year after the marriage,

may elect in writing, within one year after the date of enactment of this Act, in accordance with procedures prescribed by the Office, to provide for a survivor annuity for such spouse under section 8341(b) of title 5, United States Code, as amended by this Act, to have the retired employee or Member’s annuity reduced under section 8339(j) of such title, as so amended, and to deposit in the Civil Service Retirement and Disability Fund an amount determined by the Office, as nearly as may be administratively feasible, to reflect the amount by which such employee or Member’s annuity would have been reduced had the election been continuously in effect since the annuity commenced, plus interest. For the purposes of the preceding sentence, the annual rate of interest 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 shall be 6 percent. If the retired employee or Member does not make such deposit, the Office shall collect such amount by offset against such employee or Member’s annuity, up to a maximum of 25 percent of the net annuity otherwise payable to such employee or Member, and such employee or Member is deemed to consent to such offset. The Office shall provide for general public notice of the right to make an election under this subsection. In cases to which paragraph (2) of this subsection applies, the retired employee or Member shall provide the Office with such documentation as the Office shall decide is appropriate, that such employee or Member attempted to elect a reduced annuity with survivor benefit for such employee or Member’s current spouse and that such employee or Member’s election was rejected by the Office because it was untimely filed.

“(d) A deposit required by subsection (b)(1)(A) or (c) of this section may be made by the surviving former spouse or spouse, as applicable, of the retired employee or Member.

“(e) The Office shall determine at the end of each fiscal year—

“(1) the cost of survivor annuities provided under subsections (b) and (c) of this section, less an amount determined appropriate by the Office to reflect the value of any deposits made under subsection (b)(1)(A), (c), or (d), and

“(2) the cost of administering subsections (b) and (c).

The Office shall notify the Secretary of the Treasury of the amounts so determined. The Secretary of the Treasury, before closing the account for the fiscal year in question, shall credit to the Civil Service Retirement and Disability Fund, out of any money in the Treasury not otherwise appropriated, such amounts, which shall be available in the same manner as provided under subparagraphs (A) and (B) of section 8348(a)(1) of title 5, United States Code, as amended by this Act.

“(f) Any individual—

“(1) who is entitled to a survivor annuity under subsection (b) of this section or pursuant to an election authorized by reason of the application of subsection (a)(5) of this section,

“(2) as to whom a court order or decree referred to in section 8345(j) of title 5, United States Code (or similar provision of law under a retirement system for Government employees other than the Civil Service Retirement System) has been issued before May 7, 1985, or

“(3) who is entitled (other than as described in paragraph (2)) to an annuity or any portion of an annuity as a former spouse under a retirement system for Government employees as of May 7, 1985,

shall be considered to have satisfied section 8901(10)(C) of title 5, United States Code, as amended by this Act. Notwithstanding subsection (a)(2) of this section, any such individual who otherwise meets the definition of a former spouse under section 8901 of title 5, United States Code, as so amended, may, within 12 months after the date of the enactment of the Federal Employees Benefits Improvement Act of 1986 [Feb. 27, 1986], enroll in an approved health benefits plan described by section 8903 of such title, under the conditions set forth in section 8905(c) of such title, as so amended (other than the conditions prescribed in subparagraphs (A) and (B) of paragraph (1) of such section 8905(c)).

“(g)(1) For purposes of subsections (a)(1), (b), (c), (d), and (e), ‘employee’, ‘Member’, and ‘former spouse’ each has the meaning given that term under section 8331 of title 5, United States Code, as amended by this Act.

“(2) For purposes of subsection (a)(2), ‘employee’ and ‘annuitant’ each has the meaning given that term under section 8901 of title 5, United States Code.

“(h) Section 827 of the Foreign Service Act of 1980 [22 U.S.C. 4067] and section 292 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees [50 U.S.C. 403 note] shall not apply with respect to either the amendments made by section 2 [amending sections 8331, 8334, 8339, 8341, 8342, 8345, and 8348 of this title] or the preceding provisions of this section.”

[Section 501(b) of Pub. L. 99-556 provided that: “The amendments made by this section [amending note above] shall be effective as of May 7, 1985.”]

[Section 9(b) of Pub. L. 99-549 provided that: “The amendments made by this section [amending note above] shall be effective as of May 7, 1985.”]

[The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in Pub. L. 98-615, set out above, is Pub. L. 88-643, Oct. 13, 1964, 78 Stat. 1043, which was revised generally by Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196, is known as the Central Intelligence Agency Retirement Act and is classified generally to chapter 38 (§2001 et seq.) of Title 50, War and National Defense.]

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 5(a) of Pub. L. 96-179 provided that: “The amendments made by the first section [amending this section] and section 2 of this Act [amending section 8901 of this title] shall take effect on the date of the enactment of this Act [Jan. 2, 1980], except that no benefits under chapter 89 of title 5, United States Code,

made available by reason of such amendments shall be payable for any period before October 1, 1979.”

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

Section 3 of Pub. L. 95-318 provided that: “The foregoing provisions of this Act [amending this section and enacting provisions set out as notes under this section] shall take effect on—

“(1) the first day of the month following the date of the enactment of this Act [July 10, 1978], or

“(2) October 1, 1978, whichever date is later.”

EFFECTIVE DATE OF 1978 AMENDMENT; SURVIVOR ANNUITIES SUBJECT TO REDUCTION, ETC.

For effective date of amendment by Pub. L. 95-317 as first day of first month which begins on or after date of enactment of Pub. L. 95-317, which was approved July 10, 1978, or Oct. 1, 1978, whichever is later, and provisions respecting eligibility of an individual to a survivor annuity, or the reduction therefor, see section 4 of Pub. L. 95-317, set out as a note under section 8339 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 1(b) of Pub. L. 93-260 provided that: “The amendments made by subsection (a) of this section [amending this section] shall not apply in the cases of employees, Members, or annuitants who died before the date of enactment of this Act [Apr. 9, 1974]. The rights of such individuals and their survivors shall continue in the same manner and to the same extent as if such amendments had not been enacted.”

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by Pub. L. 92-297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92-297, set out as an Effective Date note under section 3381 of this title.

Section 2 of Pub. L. 92-243 provided that: “The amendment made by the first section of this Act [amending this section] is effective upon enactment [Mar. 9, 1972]. Upon application to the Civil Service Commission, it also applies to a child of an employee or Member who died or retired before such date of enactment [Mar. 9, 1972] but no annuity shall be paid by reason of the amendment for any period prior to the date of enactment.”

EFFECTIVE DATE OF 1969 AMENDMENTS

Section 2 of Pub. L. 91-189 provided that: “The provisions of section 8341(e) of title 5, United States Code, as amended by section 206(b) of Public Law 91-93 (83 Stat. 140), shall be effective as of October 20, 1969.”

Amendment by Pub. L. 91-93 inapplicable in cases of persons retired or otherwise separated prior to Oct. 20, 1969, their rights and of their survivors continued as if such amendment had not been enacted, see section 207(a) of Pub. L. 91-93 set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT; RECOMPUTATION AND REDUCTION OF SURVIVOR ANNUITIES

Section 207(c) of Pub. L. 91-93 provided that:

“(1) The amendment made by section 206(b) of this Act [amending this section] shall become effective on the first day of the first month which begins on or after the date of enactment of this Act [Oct. 20, 1969].

“(2) The annuity of each surviving child who, immediately prior to the effective date of such amendment [amending this section] is receiving an annuity

under section 8341(e) of title 5, United States Code, or under a comparable provision of any prior law, or who hereafter becomes entitled to receive annuity under the Act of May 29, 1930, as amended from and after February 28, 1948, shall be recomputed effective on such date, or computed from commencing date if later, in accordance with such amendment. No increase allowed and in force prior to such date shall be included in the computation or recomputation of any such annuity. This paragraph shall not operate to reduce any annuity."

ADDITIONAL ELECTIONS UNDER CIVIL SERVICE
RETIREMENT SPOUSE EQUITY ACT OF 1984

Section 201(d) of Pub. L. 99-251 provided that:

"(1) Notwithstanding the time limitation prescribed in subparagraph (A) of section 4(b)(1) of the Civil Service Retirement Spouse Equity Act of 1984 [Pub. L. 98-615, §4(b)(1)(A), set out as a note above], an election may be made under such subparagraph before the expiration of the 12-month period beginning on the date on which the regulations under paragraph (3) of this subsection first take effect.

"(2) Any retired employee or Member who has made an election under section 4(b)(1)(A) of the Civil Service Retirement Spouse Equity Act of 1984 [set out as a note above] (as in effect at the time of such election) before the regulations under paragraph (3) of this subsection become effective may modify such election by designating, in writing, that only a portion of such employee or Member's annuity is to be used as the base for the survivor annuity for the former spouse for whom the election was made. A modification under this subparagraph shall be subject to the deadline under paragraph (1) of this subsection.

"(3) The Office of Personnel Management shall prescribe regulations to carry out this subsection, including regulations under which an appropriate refund shall be made in the case of a modification under paragraph (2) of this subsection."

RESTORATION OF SURVIVOR ANNUITIES FOR CERTAIN
WIDOWS AND WIDOWERS REMARRYING BEFORE JULY
18, 1966, AND WHERE MEMBER DIED BEFORE JANUARY
8, 1971

Section 1 of Pub. L. 95-318, eff. Oct. 1, 1978, provided that:

"(a) Upon application to the Civil Service Commission, the annuity of—

"(1) a surviving spouse of an employee which was terminated under the provisions of section 8341 (b) or (d) of title 5, United States Code, or of any prior applicable law, because of the remarriage of such spouse before July 18, 1966, and

"(2) a surviving spouse of a Member who died before January 8, 1971, which was terminated under any such provision, because of the remarriage of such spouse, shall be restored in accordance with the provisions of subsection (b) of this section.

"(b)(1) In the case of a remarriage occurring after the surviving spouse became sixty years of age, the annuity shall be restored to such spouse under subsection (a) of this section only if any lump sum paid on termination of the annuity is returned to the Civil Service Retirement and Disability Fund. If such amount is paid, the annuity shall be so restored commencing on the effective date of this section at the rate which would have been in effect if the annuity had not been terminated.

"(2) In the case of a remarriage occurring before the surviving spouse became sixty years of age, the annuity shall be restored to such spouse under subsection (a) of this section only if—

"(A) such spouse elects to receive this annuity instead of a survivor benefit to which the spouse may be entitled under subchapter III of chapter 83 of such title 5 or under another retirement system for Government employees by reason of the marriage; and

"(B) any lump sum paid on termination of the annuity is returned to such fund.

If the requirements of the preceding sentence are satisfied, such annuity shall be so restored commencing on the effective date of this section or on the first day of the month following the date the remarriage is dissolved by death, annulment, or divorce, whichever date is later, at the rate which was in effect when the annuity was terminated."

INCREASE IN ANNUITY PAYABLE TO SURVIVING SPOUSES
OF MEMBERS, EMPLOYEES, OF ANNUITIES BASED ON
SEPARATION OCCURRING PRIOR TO OCT. 20, 1969

Section 2(b) of Pub. L. 93-273, Apr. 26, 1974, 88 Stat. 93, provided that: "In lieu of any increase based on an increase under subsection (a) of this section, an annuity payable from the Civil Service Retirement and Disability Fund to the surviving spouse of an employee, Member, or annuitant, which is based on a separation occurring prior to October 20, 1969 shall be increased by \$132."

Section 3 of Pub. L. 93-273, Apr. 26, 1974, 88 Stat. 93 provided in part that annuity increases under this pension shall apply to annuities which commence before, on, or after Apr. 26, 1974, but that no increase in annuity shall be paid for any period prior to the first day of the first month which begins on or after the ninetieth day after Apr. 26, 1974, or the date on which the annuity commences, whichever is later. See section 3 of Pub. L. 93-273, set out as a note under section 8345 of this title.

REMARRIAGE PROVISIONS

Section 205 of Pub. L. 91-93 provided that: "The provisions of subsection (b)(1), (d)(3), and (g) of section 8341 of title 5, United States Code, also shall apply in the case of any widow or widower—

"(1) of an employee who died, retired, or was otherwise finally separated before July 18, 1966;

"(2) who shall have remarried on or after such date; and

"(3) who, immediately before such remarriage, was receiving annuity from the Civil Service Retirement and Disability Fund;

except that no annuity shall be paid by reason of this section for any period prior to the enactment of this section. No annuity shall be terminated solely by reason of the enactment of this section. Notwithstanding the prohibition contained in the first sentence of this section on the payment of annuity for any period prior to the enactment of this section, in any case in which the Civil Service Commission determines that—

"(1) the remarriage of any widow or widower described in such sentence was entered into by the widow or widower in good faith and in reliance on erroneous information provided by Government authority prior to that remarriage that the then existing survivor annuity of the widow or widower would not be terminated because of the remarriage; and

"(2) such annuity was terminated by law because of that remarriage;

then payment of annuity may be made by reason of this section in such case, beginning as of the effective date of the termination because of the remarriage."

§ 8342. Lump-sum benefits; designation of beneficiary; order of precedence

(a) Subject to subsection (j) of this section, an employee or Member who—

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

(B) is transferred to a position in which he is not subject to this subchapter, or chapter 84 of this title, and remains in such a position for at least thirty-one consecutive days;

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

(3) is not reemployed in a position in which he is subject to this subchapter, or chapter 84

of this title, at the time he files the application; and

(4) will not become eligible to receive an annuity within thirty-one days after filing the application,

is entitled to be paid the lump-sum credit. Except as provided in section 8343a or 8334(d)(2) of this title, the receipt of the payment of the lump-sum credit by the employee or Member voids all annuity rights under this subchapter based on the service on which the lump-sum credit is based, until the employee or Member is reemployed in the service subject to this subchapter. In applying this subsection to an employee or Member who becomes subject to chapter 84 (other than by an election under title III of the Federal Employees' Retirement System Act of 1986) and who, while subject to such chapter, files an application with the Office for a payment under this subsection—

(i) entitlement to payment of the lump-sum credit shall be determined without regard to paragraph (1) or (3) if, or 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; and

(ii) if, or to the extent that, the lump-sum credit so relates to service of a type referred to in clause (i), it shall (notwithstanding section 8331(8)) consist of—

(I) the amount by which any unrefunded amount described in section 8331(8)(A) or (B) relating to such service, exceeds 1.3 percent of basic pay for such service; and

(II) interest on the amount payable under subclause (I), computed in a manner consistent with applicable provisions of section 8331(8).

(b) Under regulations prescribed by the Office, a present or former employee or Member may designate a beneficiary or beneficiaries for the purpose of this subchapter.

(c) Lump-sum benefits authorized by subsections (d)–(f) of this section shall be paid to the person or persons 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 person:

First, to the beneficiary or beneficiaries designated by the employee or Member in a signed and witnessed writing received in the Office before his death. 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 his death.

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

(d) If an employee or Member dies—

(1) without a survivor; or

(2) with a survivor or survivors and the right of all survivors terminates before a claim for survivor annuity is filed;

or if a former employee or Member not retired dies, the lump-sum credit shall be paid.

(e) If all annuity rights under this subchapter 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.

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

(g) Annuity accrued and unpaid on the termination, except by death, of the annuity of an annuitant or survivor annuitant shall be paid to that individual. 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:

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

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

(h) Amounts deducted and withheld from the basic pay of an employee or Member from the first day of the first month which begins after he has performed sufficient service (excluding service which the employee or Member elects to eliminate for the purpose of annuity computation under section 8339 of this title) to entitle him to the maximum annuity provided by section 8339 of this title, together with interest on the amounts at the rate of 3 percent a year compounded annually from the date of the deductions to the date of retirement or death, shall be applied toward any deposit due under section 8334 of this title, and any balance not so required is deemed a voluntary contribution for the purpose of section 8343 of this title.

(i) An employee who—

(1) is separated from the service before July 12, 1960; and

(2) continues in the service after July 12, 1960, without break in service of 1 workday or more;

is entitled to the benefits of subsection (h) of this section.

(j)(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 and 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 8341(h) or section 8345(j); 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 8341(h) or to any portion of an annuity under section 8345(j).

(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) of this subsection 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 such orders or decrees.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 579; Pub. L. 90-83, §1(81), Sept. 11, 1967, 81 Stat. 217; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 97-253, title III, §303(c), Sept. 8, 1982, 96 Stat. 794; Pub. L. 97-346, §3(f), Oct. 15, 1982, 96 Stat. 1648; Pub. L. 98-615, §2(5), Nov. 8, 1984, 98 Stat. 3201; Pub. L. 99-251, title II, §208, Feb. 27, 1986, 100 Stat. 25; Pub. L. 99-335, title II, §204(b)(2), 207(h), June 6, 1986, 100 Stat. 592, 596; Pub. L. 100-238, title I, §105(b), Jan. 8, 1988, 101 Stat. 1746; Pub. L. 101-508, title VII, §7001(b)(2)(D), Nov. 5, 1990, 104 Stat. 1388-329; Pub. L. 106-361, §3(a), Oct. 27, 2000, 114 Stat. 1402.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2261.	July 31, 1956, ch. 804, §401 "Sec. 11" 70 Stat. 755. July 12, 1960, Pub. L. 86-622, §1(a), 74 Stat. 409. Oct. 4, 1961, Pub. L. 87-350, §3, 75 Stat. 771.

In subsection (a), the words "before October 1, 1956" are substituted for "prior to the effective date of the Civil Service Retirement Act Amendments of 1956" on authority of §406 of the Act of July 31, 1956, ch. 804, 70 Stat. 761.

In subsection (g), the words "the expiration of" are omitted as surplusage.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8342(a)	[No source].	[No source.]
8342(c)	5 App.: 2261(c).	Mar. 23, 1966, Pub. L. 89-373, §2, 80 Stat. 78.

1967 ACT—CONTINUED

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
	5 App.: 2251(j) (last sentence).	Apr. 25, 1966, Pub. L. 89-407, §1 (less words before 1st comma), 80 Stat. 131.

In subsection (a), the amendment is made for consistency within the subchapter and to reflect that it is the individual, rather than the position, that is subject to the subchapter.

In the last sentence of subsection (c), the words "this subsection" are substituted for "section 11" to reflect the codification of title 5, United States Code.

REFERENCES IN TEXT

The Federal Employees' Retirement System Act of 1986, referred to in subsec. (a), is Pub. L. 99-335, June 6, 1986, 100 Stat. 514, as amended. Title III of the Federal Employees' Retirement System Act of 1986 amended sections 3121 and 6103 of Title 26, Internal Revenue Code, section 1005 of Title 39, Postal Service, and section 410 of Title 42, The Public Health and Welfare, enacted provisions set out as notes under sections 8331, 8401, 8432, and 8472 of this title and section 6103 of Title 26, and amended provisions set out as a note under section 8331 of this title. Section 302 of that Act is set out as a note under section 8331 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8401 of this title and Tables.

AMENDMENTS

2000—Subsec. (j)(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) of this section—

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

"(B) shall be subject to the terms of a court decree of divorce, annulment, or legal separation or any court order or court approved property settlement agreement incident to such decree if—

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

"(ii) payment of the lump-sum credit would extinguish entitlement of the employee's or Member's spouse or former spouse to a survivor annuity under section 8341(h) of this title or to any portion of an annuity under section 8345(j) of this title."

1990—Subsec. (a). Pub. L. 101-508 inserted "or 8334(d)(2)" after "8343a" in second sentence.

1988—Subsec. (a). Pub. L. 100-238 amended last sentence of subsec. (a) generally. Prior to amendment, last sentence read as follows: "In applying this subsection with respect to an employee or Member who becomes subject to chapter 84 of this title, entitlement to payment of the lump-sum credit shall be determined without regard to paragraph (1) or (3) 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 inserted " , or chapter 84 of this title," in pars. (1)(B) and (3), substituted "Except as provided in section 8343a of this title, the" for "The" in second sentence, and inserted provisions regarding entitlement by an employee or Member who becomes subject to chapter 84 of this title to payment of a lump-sum credit.

Subsec. (j)(1)(B). Pub. L. 99-251 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "in any case in which there is a former spouse, shall be subject to the terms of a court order or decree issued with respect to such former spouse if—

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

“(ii) payment of the lump-sum credit would extinguish entitlement of the former spouse to a survivor annuity under section 8341(h) of this title or to any portion of an annuity under section 8345(j) of this title.”

1984—Subsec. (a). Pub. L. 98-615, §2(5)(A), substituted “Subject to subsection (j) of this section, an” for “An” in provisions preceding par. (1).

Subsec. (j). Pub. L. 98-615, §2(5)(B), added subsec. (j).

1982—Subsec. (a). Pub. L. 97-346 substituted “such a position” for “such position” in par. (1)(B).

Pub. L. 97-253, §303(c), substituted provisions that an employee or Member who is separated from the service for at least 31 consecutive days or is transferred to a position in which he is not subject to this subchapter for 31 days, and who files an application with the Office of Personnel Management for payment of a lump-sum credit, is not reemployed in a position subject to this subchapter at the time of filing, and will not be eligible for an annuity within 31 days of filing, is entitled to be paid the lump-sum credit and upon receipt of such payment, all annuity rights based on the service upon which the credit is based are voided until reemployment under this subchapter occurs for provisions that such employee or Member who was separated from the service, or was transferred to a position in which he did not continue subject to this subchapter, was entitled to be paid the lump-sum credit if his separation or transfer occurred and application for payment was filed with the Office of Personnel Management at least 31 days before the earliest commencing date of any annuity for which he was eligible, that the receipt of payment of the lump-sum credit by the individual voided all annuity rights under this subchapter until he was reemployed in the service subject to this subchapter, and that this subsection also applied to an employee or Member separated before October 1, 1956, after completing at least 20 years of civilian service.

1978—Subsecs. (a) to (c), (g). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission”.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective with respect to any annuity having a commencement date later than Dec. 1, 1990, see section 7001(b)(3) of Pub. L. 101-508, set out as a note under section 8334 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 this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions and specific applicability provisions, see section 4(a)(1) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 303(d)(2) of Pub. L. 97-253 provided that: “The amendment made by subsection (c) [amending this section] shall take effect October 1, 1982.”

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

REESTABLISHMENT OF RIGHT TO RECEIVE ANNUITY BY JUDGES WHO RECEIVED LUMP-SUM CREDIT

Pub. L. 96-504, §2, Dec. 5, 1980, 94 Stat. 2741, provided that: “A present or former justice or judge of the United States, as defined by section 451 of title 28, United States Code, who, prior to the effective date of this section [Dec. 5, 1980], voided his right to receive an annuity under subchapter III of chapter 83 of title 5,

United States Code, by applying for and receiving a refund of his lump-sum credit while serving as such a justice or judge may, upon application filed with the Office of Personnel Management within one year following the effective date of this section, reposit such refund with interest computed under section 8334(e) of such title 5 and thereby reestablish his right to receive an annuity under such subchapter effective on the date he otherwise was eligible to receive an annuity. The surviving spouse of any such justice or judge who dies before the effective date of this section may apply to make such reposit within one year following the effective date of this section and receive both (1) the amount of the annuity which the justice or judge would have been entitled to receive before his death had application been made by him for the annuity and (2) any survivor annuity the justice or judge could have provided under the provisions of law in effect at the time of separation from the service on which title to the annuity is based.”

§ 8343. Additional annuities; voluntary contributions

(a) Under regulations prescribed by the Office of Personnel Management, an employee or Member may voluntarily contribute additional sums in multiples of \$25, but the total may not exceed 10 percent of his basic pay for creditable service after July 31, 1920. The voluntary contribution account in each case is the sum of unrefunded contributions, plus interest at 3 percent a year through December 31, 1984, and thereafter at the rate computed under section 8334(e) of this title, compounded annually to—

(1) the date of payment under subsection (d) of this section, separation, or transfer to a position in which he does not continue subject to this subchapter, whichever is earliest; or

(2) the commencing date fixed for a deferred annuity or date of death, whichever is earlier, in the case of an individual who is separated with title to deferred annuity and does not claim the voluntary contribution account.

(b) The voluntary contribution account is used to purchase at retirement an annuity in addition to the annuity otherwise provided. For each \$100 in the voluntary contribution account, the additional annuity consists of \$7, increased by 20 cents for each full year, if any, the employee or Member is over 55 years of age at the date of retirement.

(c) A retiring employee or Member may elect a reduced additional annuity instead of the additional annuity described by subsection (b) of this section and designate in writing an individual to receive after his death an annuity of 50 percent of his reduced additional annuity. The additional annuity of the employee or Member making the election is reduced by 10 percent, and by 5 percent for each full 5 years the individual designated is younger than the retiring employee or Member. However, the total reduction may not exceed 40 percent.

(d) A present or former employee or Member is entitled to be paid the voluntary contribution account if he files application for payment with the Office before receiving an additional annuity. An individual who has been paid the voluntary contribution account may not again deposit additional sums under this section until, after a separation from the service of more than 3 calendar days, he again becomes subject to this subchapter.

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such regulations as each may prescribe, may exempt an air traffic controller having exceptional skills and experience as a controller from automatic separation until that controller becomes 61 years of age.

(d) When a department or agency lacks authority and wishes to secure an exemption from automatic separation for one of its employees other than a Presidential appointee, beyond the age(s) provided by statute, i.e., age 60 for a law enforcement officer, firefighter, nuclear materials courier, or customs and border protection officer, and age 61 for an air traffic controller, the department or agency head shall submit a recommendation to that effect to OPM.

(1) The recommendation shall contain:

(i) A statement that the employee is willing to remain in service;

(ii) A statement of facts tending to establish that his/her retention would be in the public interest;

(iii) The period for which the exemption is desired, which period may not exceed 1 year; and,

(iv) The reasons why the simpler method of retiring the employee and immediately reemploying him or her is not being used.

(2) The recommendation shall be accompanied by a medical certificate showing the physical fitness of the employee to perform his or her work.

(e) OPM may approve an exemption only before the automatic separation date applicable to the employee. For this reason, the department or agency shall forward the recommendation to OPM at least 30 days before this separation date.

[76 FR 41997, July 18, 2011]

§ 831.503 Retirement based on involuntary separation.

(a) *General.* An employee who would otherwise be eligible for retirement based on involuntary separation from the service is not entitled to an annuity under section 8336(d)(1) of title 5, United States Code, if the employee has declined a reasonable offer of another position.

(b) *Criteria for reasonable offer.* For the purposes of determining entitlement to annuity based on such invol-

untary separation, the offer of a position must meet all of the following conditions to be considered a reasonable offer:

(1) The offer must be made in writing;

(2) The employee must meet established qualification requirements; and

(3) The offered position must be—

(i) In the employee's agency, including an agency to which the employee with his or her function is transferred in a transfer of functions between agencies;

(ii) Within the employee's commuting area as defined in § 831.1202 of this part, unless geographic mobility is a condition of the employee's employment;

(iii) Of the same tenure and work schedule; and

(iv) Not lower than the equivalent of two grades or pay levels below the employee's current grade or pay level, without consideration of the employee's eligibility to retain his or her current grade or pay under part 536 of this chapter or other authority. In movements between pay schedules or pay systems, the comparison rate of the grade or pay level that is two grades below that of the current position will be compared with the comparison rate of the grade or pay level of the offered position. For this purpose, "comparison rate" has the meaning given that term in § 536.103 of this chapter, except paragraph (2) of that definition should be used for the purpose of comparing grade or levels of work in making reasonable offer determinations in all situations not covered by paragraph (1) of that definition.

[48 FR 38786, Aug. 26, 1983. Redesignated and amended at 58 FR 49179, Sept. 22, 1993; 70 FR 31315, May 31, 2005; 73 FR 66156, Nov. 7, 2008]

Subpart F—Survivor Annuities

SOURCE: 50 FR 20070, May 13, 1985, unless otherwise noted.

ORGANIZATION AND STRUCTURE OF REGULATIONS ON SURVIVOR ANNUITIES

§ 831.601 Purpose and scope.

(a) This subpart explains the annuity benefits payable in the event of the

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death of employees, retirees, and Members; the actions that employees, retirees, Members, and their current spouses, former spouses, and eligible children must take to qualify for survivor annuities; and the types of evidence required to demonstrate entitlement to provide survivor annuities or qualify for survivor annuities.

(b) Unless otherwise specified, this subpart, except §§ 831.682 and 831.683 and the provisions relating to children's survivor annuities, only applies to employees and Members who retire under a provision of law that permits election of a reduced annuity to provide a survivor annuity.

[55 FR 9099, Mar. 12, 1990, as amended at 58 FR 52880, Oct. 13, 1993]

§ 831.602 Relation to other regulations.

(a) Part 838 of this chapter contains information about former spouses' entitlement to survivor annuities based on provisions in court orders or court-approved property settlement agreements.

(b) Subpart T of this part contains information about entitlement to lump-sum death benefits.

(c) Parts 870, 871, 872 and 873 of this chapter contain information about coverage under the Federal Employees' Group Life Insurance Program.

(d) Part 890 of this chapter contains information about coverage under the Federal Employees Health Benefits Program.

(e) Section 831.109 contains information about the administrative review rights available to a person who has been denied a survivor annuity or an opportunity to make an election under this subpart.

(f) Subparts C and U of this part contain information about service credit deposits by survivors of employees or Members.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31931, Sept. 8, 1986; 58 FR 43493, Aug. 17, 1993]

§ 831.603 Definitions.

As used in this subpart—

CSRS means subchapter III of chapter 83 of title 5, United States Code.

Current spouse means a living person who is married to the employee, Mem-

ber, or retiree at the time of the employee's, Member's, or retiree's death.

Current spouse annuity means a recurring benefit under CSRS that is payable (after the employee's, Member's, or retiree's death) to a current spouse who meets the requirements of § 831.642.

Deposit means a deposit required by the Civil Service Retirement Spouse Equity Act of 1984, Pub. L. 98-615, 98 Stat. 3195. *Deposit*, as used in this subpart does not include a service credit deposit or redeposit under sections 8334(c) or (d) of title 5, United States Code.

First regular monthly payment means the first annuity check payable on a recurring basis (other than an estimated payment or an adjustment check) after OPM has initially adjudicated the regular rate of annuity payable under CSRS and has paid the annuity accrued since the time of retirement. The "first regular monthly payment" is generally preceded by estimated payments before the claim can be adjudicated and by an adjustment check (including the difference between the estimated rate and the initially adjudicated rate).

Former spouse means a living person who was married for at least 9 months to an employee, Member, or retiree who performed at least 18 months of creditable service in a position covered by CSRS and whose marriage to the employee was terminated prior to the death of the employee, Member, or retiree. Except in §§ 831.682 and 831.683, *former spouse* includes only persons who were married to an employee or Member on or after May 7, 1985, or who were the spouse of a retiree who retired on or after May 7, 1985, regardless of the date of termination of the marriage.

Former spouse annuity means a recurring benefit under CSRS that is payable to a former spouse after the employee's, Member's, or retiree's death.

Fully reduced annuity means the recurring payments under CSRS received by a retiree who has elected the maximum allowable reduction in annuity to provide a current spouse annuity and/or a former spouse annuity or annuities.

Insurable interest annuity means the recurring payments under CSRS to a retiree who has elected a reduction in

annuity to provide a survivor annuity to a person with an insurable interest in the retiree.

Marriage means a marriage recognized in law or equity under the whole law of the jurisdiction with the most significant interest in the marital status of the employee, Member, or retiree unless the law of that jurisdiction is contrary to the public policy of the United States. If a jurisdiction would recognize more than one marriage in law or equity, the Office of Personnel Management (OPM) will recognize only one marriage, but will defer to the local courts to determine which marriage should be recognized.

Member means a Member of Congress.

Net annuity means the net annuity as defined in § 838.103 of this chapter.

Partially reduced annuity means the recurring payments under CSRS to a retiree who has elected less than the maximum allowable reduction in annuity to provide a current spouse annuity or a former spouse annuity.

Present value factor means the amount of money (earning interest at an assumed rate) required at the time of retirement to fund an annuity that starts out at the rate of \$1 a month and is payable in monthly installments for the annuitant's lifetime based on mortality rates for non-disability annuitants under the Civil Service Retirement System; and increases each year at an assumed rate of inflation. Interest, mortality, and inflation rates used in computing the present value are those used by the Board of Actuaries of the Civil Service Retirement System for valuation of the System, based on dynamic assumptions. The present value factors are unisex factors obtained by averaging six distinct present value factors, weighted by the total dollar value of annuities typically paid to new retirees at each age.

Qualifying court order means a court order that awards a former spouse annuity and that satisfies the requirements of section 8341(h) of title 5, United States Code, for awarding a former spouse annuity.

Retiree means a former employee or Member who is receiving recurring payments under CSRS based on service by the employee or Member. "Retiree," as used in this subpart, does not in-

clude a current spouse, former spouse, child, or person with an insurable interest receiving a survivor annuity.

Self-only annuity means the recurring unreduced payments under CSRS to a retiree with no survivor annuity to anyone.

Time of retirement means the effective commencing date for a retired employee's or Member's annuity.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31931, Sept. 8, 1986; 57 FR 33597, July 29, 1992; 58 FR 52880, Oct. 13, 1993]

ELECTIONS AT THE TIME OF RETIREMENT

§ 831.611 Election at time of retirement of fully reduced annuity to provide a current spouse annuity.

(a) A married employee or Member retiring under CSRS will receive a fully reduced annuity to provide a current spouse annuity unless—

(1) The employee or Member, with the consent of the current spouse, elects a self-only annuity, a partially reduced annuity, or a fully reduced annuity to provide a former spouse annuity, in accordance with § 831.612(b) or § 831.614; or

(2) The employee or Member elects a self-only annuity, a partially reduced annuity or a fully reduced annuity to provide a former spouse annuity, and current spousal consent is waived in accordance with § 831.608.

(b) Qualifying court orders that award former spouse annuities prevent payment of current spouse annuities to the extent necessary to comply with the court order and § 831.614.

(c) The maximum rate of a current spouse annuity is 55 percent of the rate of the retiring employee's or Member's self-only annuity if the employee or Member is retiring based on a separation from a position under CSRS on or after October 11, 1962. The maximum rate of a current spouse annuity is 50 percent of the rate of the retiring employee's or Member's self-only annuity if the employee or Member is retiring based on a separation from a position covered under CSRS between September 30, 1956, and October 11, 1962.

(d)(1) The amount of the reduction to provide a current spouse annuity equals 2½ percent of the first \$3600 of the designated survivor base plus 10

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percent of the portion of the designated survivor base which exceeds \$3600, if—

(i) The employee's or Member's separation on which the retirement is based was on or after October 11, 1962; or

(ii) The reduction is to provide a current spouse annuity (under § 831.631) for a spouse acquired after retirement.

(2) The amount of the reduction to provide a current spouse annuity under this section for former employees or Members whose retirement is based on separations before October 11, 1962, equals 2½ percent of the first \$2400 of the designated survivor base plus 10 percent of the portion of the designated survivor base which exceeds \$2400.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31931, Sept. 8, 1986; 58 FR 52880, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.612 Election at time of retirement of a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity.

(a) An unmarried employee or Member retiring under CSRS may elect a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity or annuities.

(b) A married employee or Member retiring under CSRS may elect a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity or annuities instead of a fully reduced annuity to provide a current spouse annuity, if the current spouse consents to the election in accordance with § 831.614 or spousal consent is waived in accordance with § 831.618.

(c) An election under paragraph (a) or (b) of this section is void to the extent that it—

(1) Conflicts with a qualifying court order; or

(2) Would cause the total of current spouse annuities and former spouse annuities payable based on the employee's or Member's service to exceed 55 percent (or 50 percent if based on a separation before October 11, 1962) of the self-only annuity to which the employee or Member would be entitled.

(d) Any reduction in an annuity to provide a former spouse annuity will terminate on the first day of the month after the former spouse remarries before age 55 or dies, or the former

spouse's eligibility for a former spouse annuity terminates under the terms of a qualifying court order, unless—

(1) The retiree elects, within 2 years after the former spouse's death or remarriage, to continue the reduction to provide or increase a former spouse annuity for another former spouse, or to provide or increase a current spouse annuity; or

(2) A qualifying court order requires the retiree to provide another former spouse annuity.

(e) The maximum rate of a former spouse annuity under this section or § 831.632 is 55 percent of the rate of the retiring employee's or Member's self-only annuity if the employee or Member is retiring based on a separation from a position under CSRS on or after October 11, 1962. The maximum rate of a former spouse annuity under this section or § 831.632 is 50 percent of the rate of the retiring employee's or Member's self-only annuity if the employee or Member is retiring based on a separation from a position covered under CSRS between September 30, 1956, and October 11, 1962.

(f)(1) The amount of the reduction to provide one or more former spouse annuities or a combination of a current spouse annuity and one or more former spouse annuities under this section equals 2½ percent of the first \$3600 of the total designated survivor base plus 10 percent of the portion of the total designated survivor base which exceeds \$3600, if—

(i) The employee's or Member's separation on which the retirement is based was on or after October 11, 1962; or

(ii) The reduction is to provide a former spouse annuity (under § 831.632) for a former spouse from whom the employee or Member was divorced after retirement.

(2) The amount of the reduction to provide one or more former spouse annuities or a combination of a current spouse annuity and one or more former spouse annuities under this section for employees or Members whose retirement is based on separations before October 11, 1962, equals 2½ percent of the

first \$2400 of the total designated survivor base plus 10 percent of the portion of the total designated survivor base which exceeds \$2400.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31931, Sept. 8, 1986; 55 FR 9100, Mar. 12, 1990; 58 FR 52880, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.613 Election of insurable interest annuity.

(a) At the time of retirement, an employee or Member in good health, who is applying for a non-disability annuity, may elect an insurable interest annuity. Spousal consent is not required, but an election under this section does not exempt a married employee or Member from the provisions of § 831.611(a).

(b) An insurable interest annuity may be elected by an employee or Member electing a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity or a former spouse annuity or annuities.

(c)(1) In the case of a married employee or Member, an election under this section may not be made on behalf of a current spouse unless that current spouse has consented to an election not to provide a current spouse annuity in accordance with § 831.611(a)(1).

(2) A consent (to an election not to provide a current spouse annuity in accordance with § 831.611(a)(1)) required by paragraph (c)(1) of this section to be eligible to be the beneficiary of an insurable interest annuity is cancelled if—

(i) The retiree fails to qualify to receive the insurable interest annuity; or

(ii) The retiree changes his or her election to receive an insurable interest annuity under § 831.621; or

(iii) The retiree elects a fully or partially reduced annuity to provide a current spouse annuity under § 831.685.

(3) An election of a partially reduced annuity under § 831.622(b) or § 831.685 to provide a current spouse annuity for a current spouse who is the beneficiary of an insurable interest annuity is void unless the spouse consents to the election.

(4) If a retiree who had elected an insurable interest annuity to benefit a current spouse elects a fully reduced annuity to provide a current spouse an-

nuity (or, with the consent of the current spouse, a partially reduced annuity to provide a current spouse annuity) under § 831.622(b) or § 831.685, the election of the insurable interest annuity is cancelled.

(5)(i) A retiring employee or Member may not elect a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity and an insurable interest annuity to benefit the same former spouse.

(ii) If a retiring employee or Member who is required by court order to provide a former spouse annuity elects an insurable interest annuity to benefit the former spouse with the court-ordered entitlement—

(A) If the benefit based on the election is greater than or equal to the benefit based on the court order, the election of the insurable interest annuity will satisfy the requirements of the court order as long as the insurable interest annuity continues.

(B) If the benefit based on the election is less than the benefit based on the court order, the election of the insurable interest annuity is void.

(iii) An election under § 831.632 of a fully reduced annuity or a partially reduced annuity to benefit a former spouse by a retiree who elected and continues to receive an insurable interest annuity to benefit that former spouse is void.

(d) To elect an insurable interest annuity, an employee or Member must indicate the intention to make the election on the application for retirement; submit evidence to demonstrate that he or she is in good health; and arrange and pay for the medical examination that shows that he or she is in good health. A report of the medical examination, signed and dated by a licensed physician, must be furnished to OPM on such forms and at such time and place as OPM may prescribe.

(e) An insurable interest annuity may be elected to provide a survivor benefit only for a person who has an insurable interest in the retiring employee or Member.

(1) An insurable interest is presumed to exist with—

(i) The current spouse;

(ii) The current same-sex domestic partner;

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annuity paid to the beneficiary of the insurable interest election.

(h)(1) Except as provided in § 831.612(d), if a retiree who is receiving a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity has also elected an insurable interest annuity to benefit a current spouse and if the eligible former spouse remarries before age 55, dies, or loses eligibility under the terms of the court order, and no other former spouse is entitled to a survivor annuity based on an election made in accordance with § 831.632 or a qualifying court order, the retiree may elect, within 2 years after the former spouse's remarriage, death, or loss of eligibility under the terms of the court order, to convert the insurable interest annuity to a fully reduced annuity to provide a current spouse annuity, effective on the first day of the month following the event causing the former spouse to lose eligibility.

(2) An election under paragraph (h)(1) of this section cancels any consent not to receive a current spouse annuity required by paragraph (c) of this section for the current spouse to be eligible for an annuity under this section.

(3) When a former spouse receiving an annuity under section 8341(h) of title 5, United States Code, loses eligibility to that annuity, a beneficiary of an insurable interest annuity who was the current spouse at both the time of the retiree's retirement and death may, within 2 years after the former spouse's death, remarriage, or loss of eligibility under the terms of the court order, elect to receive a current spouse annuity instead of the annuity he or she had been receiving. The election is effective on the first day of the month following the event causing the former spouse to lose eligibility.

(i) Upon the death of the current spouse, a retiree whose annuity is reduced to provide both a current spouse annuity and an insurable interest benefit for a former spouse is not permitted to convert the insurable interest annuity to a reduced annuity to provide a former spouse annuity.

(j) An employee or Member may name only one natural person as the named beneficiary of an insurable interest annuity. OPM will not accept

the designation of contingent beneficiaries and such a designation is void.

(k)(1) An election under this section is prospectively voided by an election of a reduced annuity to provide a current spouse annuity under § 831.631 that would benefit the same person.

(2)(i) If the spouse is not the beneficiary of the election under this section, a retiree may prospectively void an election under this section at the time the retiree elects a reduced annuity to provide a current spouse annuity under § 831.631.

(ii) A retiree's election to void an election under paragraph (k)(2)(i) of this section must be filed at the same time as the election under § 831.631.

(3) An annuity reduction under this section terminates on the first day of the month after the beneficiary of the insurable interest annuity dies.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31931, Sept. 8, 1986; 52 FR 10216, Mar. 31, 1987; 55 FR 9100, Mar. 12, 1990; 58 FR 52880, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993; as amended at 66 FR 66711, Dec. 27, 2001; 77 FR 42911, July 20, 2012]

§ 831.614 Election of a self-only annuity or partially reduced annuity by married employees and Members.

(a) A married employee may not elect a self-only annuity or a partially reduced annuity to provide a current spouse annuity without the consent of the current spouse or a waiver of spousal consent by OPM in accordance with § 831.618.

(b) Evidence of spousal consent or a request for waiver of spousal consent must be filed on a form prescribed by OPM.

(c) The form will require that a notary public or other official authorized to administer oaths certify that the current spouse presented identification, gave consent, signed or marked the form, and acknowledged that the consent was given freely in the notary's or official's presence.

(d) The form described in paragraph (c) of this section may be executed before a notary public, an official authorized by the law of the jurisdiction where executed to administer oaths, or

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an OPM employee designated for that purpose by the Associate Director.

[50 FR 20070, May 13, 1985, as amended at 55 FR 9100, Mar. 12, 1990; 58 FR 52880, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.615 [Reserved]

§ 831.616 Elections by previously retired retiree with new title to an annuity.

(a) A reemployed retiree (after 5 or more years of reemployed annuitant service) who elects a redetermined annuity under section 8344 of title 5, United States Code, is subject to §§ 831.611 through 831.622 at the time of the redetermination.

(b) A disability retiree who recovers from disability or is restored to earning capacity is subject to §§ 831.611 through 622 at the time that he or she retires under section 8336 or 8338 of title 5, United States Code.

(c) A retiree who is dropped from the retirement rolls and subsequently gains a new annuity right by fulfilling the requirements of section 8333(b) of title 5, United States Code, is subject to §§ 831.611 through 831.622 when he or she retires under that new annuity right.

[50 FR 20070, May 13, 1985, as amended at 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.617 [Reserved]

§ 831.618 Waiver of spousal consent requirement.

(a) The spousal consent requirement will be waived upon a showing that the spouse's whereabouts cannot be determined. A request for waiver on this basis must be accompanied by—

(1) A judicial determination that the spouse's whereabouts cannot be determined; or

(2) (i) Affidavits by the employee or Member and two other persons, at least one of whom is not related to the employee or Member, attesting to the inability to locate the current spouse and stating the efforts made to locate the spouse; and

(ii) Documentary corroboration such as tax returns filed separately or news-

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paper stories about the spouse's disappearance.

(b) The spousal consent requirement will be waived based on exceptional circumstances if the employee or Member presents a judicial determination finding that—

(1) The case before the court involves a Federal employee who is in the process of retiring from Federal employment and the spouse of that employee;

(2) The nonemployee spouse has been given notice and an opportunity to be heard concerning this order;

(3) The court has considered sections 8339(j)(1) of title 5, United States Code, and this section as they relate to waiver of the spousal consent requirement for a married Federal employee to elect an annuity without a reduction to provide a survivor benefit to a spouse at retirement; and

(4) The court finds that exceptional circumstances exist justifying waiver of the nonemployee spouse's consent.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31932, Sept. 8, 1986; 55 FR 9100, Mar. 12, 1990. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.619 Marital status at time of retirement.

An employee or Member is unmarried at the time of retirement for all purposes under this subpart only if the employee or Member was unmarried on the date that the annuity begins to accrue.

[50 FR 20070, May 13, 1985. Redesignated at 58 FR 52882, Oct. 13, 1993]

CHANGES OF SURVIVOR ELECTIONS

§ 831.621 Changes of election before final adjudication.

An employee or Member may name a new survivor or change his election of type of annuity if, not later than 30 days after the date of the first regular monthly payment, the named survivor dies or the employee or Member files with OPM a new written election. All required evidence of spousal consent or justification for waiver of spousal consent, if applicable, must accompany any new written election under this section.

[50 FR 20070, May 13, 1985. Redesignated at 58 FR 52882, Oct. 13, 1993]

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the total designated survivor base plus 10 percent of the portion of the total designated survivor base which exceeds \$3600, if—

(i) The employee's or Member's separation on which the retirement is based was on or after October 11, 1962; or

(ii) The reduction is to provide a former spouse annuity (under § 831.632) for a former spouse whom the employee or Member married after retirement.

(2) The amount of the reduction to provide one or more former spouse annuities or a combination of a current spouse annuity and one or more former spouse annuities under this section for employees or Members whose retirement is based on separations before October 11, 1962, equals 2½ percent of the first \$2400 of the total designated survivor base plus 10 percent of the portion of the total designated survivor base which exceeds \$2400.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31932, Sept. 8, 1986; 52 FR 3209, Feb. 3, 1987; 55 FR 9100, Mar. 12, 1990; 56 FR 16262, Apr. 22, 1991; 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

ELIGIBILITY

§ 831.641 Division of a survivor annuity.

(a) Except as provided in §§ 831.682 and 831.683, the maximum combined total of all current and former spouse annuities (not including any benefits based on an election of an insurable interest annuity) payable based on the service of a former employee or Member equals 55 percent (or 50 percent if based on a separation before October 11, 1962) of the rate of the self-only annuity that otherwise would have been paid to the employee, Member, or retiree.

(b) By using the elections available under this subpart or to comply with a court order under subpart Q, a survivor annuity may be divided into a combination of former spouse annuities and a current spouse annuity so long as the aggregate total of current and former spouse annuities does not exceed the maximum limitation in paragraph (a) of this section.

(c) Upon termination of former spouse annuity payments because of death or remarriage of the former

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spouse, or by operation of a court order, the current spouse will be entitled to a current spouse annuity or an increased current spouse annuity if—

(1) The employee or Member died while employed in a position covered under CSRS; or

(2) The current spouse was married to the employee or Member continuously from the time of retirement and did not consent to an election not to provide a current spouse annuity; or

(3) The current spouse married a retiree after retirement and the retiree elected, under § 831.631, to provide a current spouse annuity for that spouse in the event that the former spouse annuity payments terminate.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31933, Sept. 8, 1986; 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52282, Oct. 13, 1993]

§ 831.642 Marriage duration requirements.

(a) The surviving spouse of a retiree who retired on or after May 7, 1985, or of a retiree who retired before May 7, 1985, but married that surviving spouse on or after November 8, 1984, or of an employee or Member who dies while serving in a position covered by CSRS on or after May 7, 1985, or of an employee or Member who died while serving in a position covered by CSRS before May 7, 1985, but married that surviving spouse on or after November 8, 1984, can qualify for a current spouse annuity only if—

(1) The surviving spouse and the employee, Member, or retiree had been married for at least 9 months, as explained in paragraph (b) of this section; or

(2) A child was born of the marriage, as explained in paragraph (c) of this section; or

(3) The death of the employee, Member, or retiree was accidental as explained in paragraph (d) of this section.

(b) For satisfying the 9-month marriage requirement of paragraph (a)(1) of this section, the aggregate time of all marriages between the spouse applying for a current spouse annuity and the employee, Member, or retiree is included.

(c) For satisfying the child-born-of-the-marriage requirement of paragraph

(a)(2) of this section, any child, including a posthumous child, born to the spouse and the employee, Member, or retiree is included. This includes a child born out of wedlock or of a prior marriage between the same parties.

(d)(1) A death is accidental if it results from homicide or from bodily injuries incurred solely through violent, external, and accidental means. The term "accidental" does not include a death—

(i) Caused wholly or partially, directly or indirectly, by disease or bodily or mental infirmity, or by medical or surgical treatment or diagnosis thereof; or

(ii) Caused wholly or partially, directly, or indirectly, by ptomaine, by bacterial infection, except only septic infection of and through a visible wound sustained solely through violent, external, and accidental means; or

(iii) Caused wholly or partially, directly or indirectly, by hernia, no matter how or when sustained; or

(iv) Caused by or the result of intentional self-destruction or intentionally self-inflicted injury, while sane or insane; or

(v) Caused by or as a result of the self-administration or illegal or illegally obtained drugs.

(2) A State judicial or administrative adjudication of the cause of death for criminal or insurance purposes is conclusive evidence of whether a death is accidental.

(3) A death certificate showing the cause of death as accident or homicide is *prima facie* evidence that the death was accidental.

[50 FR 20070, May 13, 1985; 50 FR 21031, May 22, 1985, as amended at 51 FR 31933, Sept. 8, 1986; 56 FR 16263, Apr. 22, 1991. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.643 Time for filing applications for death benefits.

(a) A survivor of a deceased employee, Member, or retiree, may file an application for annuity, personally or through a representative, at any time within 30 years after the death of the employee, Member, or retiree.

(b) A former spouse claiming eligibility for an annuity based on § 831.683 may file an application at any time be-

tween November 8, 1984 and May 7, 1989. Within this period, the date that the first correspondence indicating a desire to file a claim is received by OPM will be treated as the application date for meeting timeliness deadlines and determining the commencing date of the survivor annuity under § 831.683 if the former spouse is eligible on that date.

[55 FR 9102, Mar. 12, 1990, as amended at 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.644 Remarriage.

(a)(1) If a recipient of a current spouse annuity remarried before November 8, 1984, the current spouse annuity terminates on the last day of the month before the recipient remarried before attaining age 60.

(2) If a recipient of a current spouse annuity remarries on or after November 8, 1984, a current spouse annuity terminates on the last day of the month before the recipient remarries before attaining age 55.

(b) A former spouse annuity or eligibility for a future former spouse annuity terminates on the last day of the month before the month in which the former spouse remarries before attaining age 55.

(c) If a current spouse annuity is terminated because of remarriage of the recipient, the annuity is reinstated on the day of the termination of the remarriage by death, annulment, or divorce if—

(1) The surviving spouse elects to receive this annuity instead of a survivor benefit to which he or she may be entitled, under CSRS or another retirement system for Government employees, by reason of the remarriage; and

(2) Any lump sum paid on termination of the annuity is repaid (in a single payment or by withholding payment of the annuity until the amount of the lump sum has accrued).

(d) (1) If present or future entitlement to a former spouse annuity is terminated because of remarriage before age 55, the entitlement will not be reinstated upon termination of the remarriage by death or divorce.

(2) If present or future entitlement to a former spouse annuity is terminated because of remarriage before age 55, the entitlement will not be reinstated

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upon annulment of the remarriage unless—

(i) The decree of annulment states that the marriage is without legal effect retroactively from the marriage’s inception; and

(ii) The former spouse’s entitlement is based on section 4(b)(1)(B) or section (4)(b)(4) of Pub. L. 98–615.

(3) If a retiree who is receiving a reduced annuity to provide a former spouse annuity and who has remarried that former spouse (before the former spouse attained age 55) dies, the retiree will be deemed to have elected to continue the reduction to provide a current spouse annuity unless the retiree requests (or has requested) in writing that OPM terminate the reduction.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31935, Sept. 8, 1986. Redesignated at 58 FR 52882, Oct. 13, 1993, as amended at 60 FR 14202, Mar. 16, 1995]

§ 831.645 Elections between survivor annuities.

(a) A current spouse annuity cannot be reinstated under § 831.644 unless—

(1) The surviving spouse elects to receive the reinstated current spouse annuity instead of any other payments (except any accrued but unpaid annuity and any unpaid employee contributions) to which he or she may be entitled under CSRS, or any other retirement system for Government employees, by reason of the remarriage; and

(2) Any lump sum paid on termination of the annuity is returned to the Civil Service Retirement and Disability Fund.

(b) A current spouse is entitled to a current spouse annuity based on an election under § 831.631 only upon electing this current spouse annuity instead of any other payments (except any accrued but unpaid annuity and any unpaid employee contributions) to which he or she may be entitled under CSRS, or any other retirement system for Government employees.

(c) A former spouse who marries a retiree is entitled to a former spouse annuity based on an election by that retiree under § 831.632, or § 831.682, or a qualifying court order terminating that marriage to that retiree only upon electing this former spouse annuity instead of any other payments (except

any accrued but unpaid annuity and any unpaid employee contributions) to which he or she may be entitled under CSRS, or any other retirement system for Government employees.

(d) As used in this section, “any other retirement system for Government employees” does not include Survivor Benefit Payments from a military retirement system or social security benefits.

[55 FR 9103, Mar. 12, 1990, as amended at 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

PAYMENT OF SURVIVOR ANNUITIES

§ 831.651 Commencing and terminating dates of survivor annuities.

(a) Except as provided in paragraph (b) of this section, current spouse annuities, former spouse annuities, children’s survivor annuities, and survivor annuities for beneficiaries of insurable interest annuities under CSRS begin to accrue on the day after death of the employee, Member, or retiree.

(b)(1) A current spouse annuity begins to accrue—

(i) Upon attainment of age 50 when, under section 12 of the Civil Service Retirement Act Amendments of February 29, 1948, the annuity is deferred until age 50; or

(ii) Upon OPM’s receipt of a claim for an annuity authorized for unremarried widows and widowers by section 2 of the Civil Service Retirement Act Amendments of June 25, 1958, 72 Stat. 218.

(2) A former spouse annuity begins to accrue—

(i) For annuities under § 831.683, on the later of the day after date of death of the retiree or the first day of the second month after the date the application for annuity is received in OPM; or

(ii) For annuities when a former spouse annuity is authorized by court order under section 8341(h) of title 5, United States Code, on the later of the day after the date of death of the employee, Member, or retiree or the first day of the second month after the court order awarding the former spouse annuity and the supporting documentation required by § 838.721 or

§ 838.1005 of this chapter are received in OPM.

(c) A survivor annuity terminates at the end of the month preceding death or any other terminating event.

(d) A current spouse annuity terminated for reasons other than death may be restored under conditions defined in sections 8341(e)(2) and 8341(g) of title 5, United States Code.

(e) A survivor annuity accrues on a daily basis, one-thirtieth of the monthly rate constituting the daily rate. An annuity does not accrue for the 31st day of any month, except in the initial month if the survivor's (of a deceased employee) annuity commences on the 31st day. For accrual purposes, the last day of a 28-day month constitutes 3 days and the last day of a 29-day month constitutes 2 days.

(f) Initial cost-of-living increases on current and former spouse annuities, and annuities to beneficiaries of insurable interest annuities are prorated under section 8340(c) of title 5, United States Code.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31933, Sept. 8, 1986; 55 FR 9102, Mar. 12, 1990; 57 FR 33597, July 29, 1992; 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

SURVIVOR ELECTION DEPOSITS

§ 831.661 Deposits not subject to waiver.

(a) The deposits required to elect fully or partially reduced annuities under §§ 831.622, 831.631, 831.632, 831.682, 831.684, or 831.685 are not annuity overpayments and their collection is not subject to waiver. They are subject to reconsideration only to determine whether the amount has been correctly computed.

(b) [Reserved]

[50 FR 20070, May 13, 1985, as amended at 51 FR 31935, Sept. 8, 1986; 57 FR 33597, July 29, 1992; 58 FR 52881, Oct. 13, 1993. Redesignated and amended at 58 FR 52882, Oct. 13, 1993]

§ 831.662 Deposits required to change an election after final adjudication.

The amount of the deposit required under § 831.622 or § 831.685 equals the sum of the monthly differences between the annuity paid to the retiree and the annuity that would have been

paid if the additional annuity reduction elected under § 831.622 or § 831.685 had been in effect since the time of retirement, plus 24.5 percent of the increase in the designated base (computed as of the time of retirement) on which the survivor annuity is calculated.

[51 FR 31935, Sept. 8, 1986, as amended at 58 FR 52881, Oct. 13, 1993. Redesignated and amended at 58 FR 52882, Oct. 13, 1993]

§ 831.663 Actuarial reduction in annuity of retirees who make post-retirement elections to provide a current spouse annuity or a former spouse annuity.

(a) *Applicability of this section.* This section applies to all retirees who are required to pay deposits under § 831.631 or § 831.632 and have not paid any portion of the deposit prior to October 1, 1993, or from annuity accruing before that date.

(b) *Other methods of payment not available.* Retirees described in paragraph (a) of this section must have a permanent annuity reduction computed under paragraph (d) of this section.

(c) *Commencing date of the reduction.* A reduction under this section commences on the same date as the annuity reduction under § 831.631 or § 831.632.

(d) *Computing the amount of the reduction.* The annuity reduction under this section is equal to the lesser of—

(1) The amount of the deposit under § 831.631 or § 831.632 divided by the present value factor for the retiree's age on the commencing date of the reduction under paragraph (c) of this section (plus any previous reduction(s) in the retiree's annuity required under this section § 831.664); or

(2) Twenty-five percent of the rate of the retiree's self-only annuity on the commencing date of the reduction under paragraph (c) of this section.

(e) *Termination of the reduction.* (1) The reduction under this section terminates on the date that the retiree dies.

(2) If payment of a retiree's annuity is suspended or terminated and later reinstated, or if a new annuity becomes payable, OPM will increase the amount of the original reduction computed under paragraph (d) of this section by any cost-of-living adjustments under section 8340 of title 5, United States

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Code, occurring between the commencing date of the original reduction and the commencing date of the reinstated or new annuity (but the adjusted reduction may not exceed 25 percent of the rate of the reinstated or new self-only annuity).

[58 FR 52882, Oct. 13, 1993]

§ 831.664 Post-retirement survivor election deposits that were partially paid before October 1, 1993.

(a) *Applicability of this section.* This section applies to all retirees who are required to pay deposits under § 831.631, § 831.632, § 831.682, or § 831.684 and have paid some portion (but not all) of the deposit prior to October 1, 1993, or from annuity accruing before that date.

(b) *Other methods of payment not available.* Retirees described in paragraph (a) of this section must have a permanent annuity reduction computed under paragraph (d) of this section.

(c) *Commencing date of the reduction.* A reduction under this section commences on October 1, 1993.

(d) *Computing the amount of the reduction.* The annuity reduction under this section is equal to the lesser of—

(1) The amount of the principal balance remaining to be paid on October 1, 1993, divided by the present value factor for the retiree's age on October 1, 1993; or

(2) Twenty-five percent of the rate of the retiree's self-only annuity on October 1, 1993.

(e) *Termination of the reduction.* (1) The reduction under this section terminates on the date that the retiree dies.

(2) If payment of a retiree's annuity is suspended or terminated and later reinstated, or if a new annuity becomes payable, OPM will increase the amount of the original reduction computed under paragraph (d) of this section by any cost-of-living adjustments under section 8340 of title 5, United States Code, occurring between the commencing date of the original reduction and the commencing date of the reinstated or new annuity (but the adjustment reduction may not exceed 25 percent of the rate of the reinstated or new self-only annuity).

[58 FR 52883, Oct. 13, 1993]

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§ 831.665 Payment of deposits under § 831.631, § 831.632, § 831.682, or § 831.684 under pre-October 1, 1993, law or when the retiree has died prior to October 1, 1993.

(a) If a retiree fails to make a deposit required under § 831.682 or § 831.684 within 60 days after the date of the notice required by § 831.682(e) or § 831.684(c), the deposit will be collected by offset from his or her annuity in installments equal to 25 percent of the retiree's net annuity (as defined in § 838.103 of this chapter).

(b) If a retiree fails to make a deposit required by § 831.631 or § 831.632 within 2 years after the date of the post-retirement marriage or divorce, the deposit will be collected by offset from his or her annuity in installments equal to 25 percent of the retiree's net annuity (as defined in § 838.103 of this chapter).

(c) If a retiree dies before a deposit required under §§ 831.631, 831.632, 831.682, or 831.684 is fully made, the deposit will be collected from the survivor annuity (for which the election required the deposit) before any payments of the survivor annuity are made.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31935, Sept. 8, 1986; 57 FR 33597, July 29, 1992; 58 FR 52881, Oct. 13, 1993. Redesignated and amended at 58 FR 52882, Oct. 13, 1993]

CHILDREN'S ANNUITIES

§ 831.671 Proof of eligibility for a child's annuity.

(a) *Proof of paternity.* (1) A judicial determination of parentage conclusively establishes the paternity of a child.

(2) Except as provided in paragraph (a)(1) of this section, a child born to the wife of a married person is presumed to be the child of the wife's husband. This presumption may be rebutted only by clear and convincing evidence that the husband is not the father of the child.

(3) When paternity is not established under paragraph (a)(1) or (a)(2) of this section, paternity is determined by a preponderance of the credible evidence as defined in § 1201.56(c)(2) of this title.

(b) *Proof of adoption.* (1) An adopted child is—

(i) A child adopted by the employee or retiree before the death of the employee or retiree; or

(ii) A child who lived with the employee or retiree and for whom a petition for adoption was filed by the employee or retiree and who is adopted by the current spouse of the employee or retiree after the death of the employee or retiree.

(2) The only acceptable evidence to prove status as an adopted child under paragraph (b)(1)(i) of this section is a copy of the judicial decree of adoption.

(3) The only acceptable evidence to prove status as an adopted child under paragraph (b)(1)(ii) of this section is copies of—

(i) The petition for adoption filed by the employee or retiree (clearly showing the date filed); and

(ii) The judicial decree of adoption.

(c) *Dependency.* To be eligible for survivor annuity benefits, a child must have been dependent on the employee or retiree at the time of the employee's or retiree's death.

(d) *Proof of dependency.* (1) A child is presumed to have been dependent on the deceased employee or retiree if he or she is—

(i) A legitimate child; or

(ii) An adopted child; or

(iii) A stepchild or recognized natural child who lived with the employee or retiree in a regular parent-child relationship at the time of the employee's or retiree's death; or

(iv) A recognized natural child for whom a judicial determination of support was obtained; or

(v) A recognized natural child to whose support the employee or retiree made regular and substantial contributions.

(2) The following are examples of proofs of regular and substantial support. More than one of the following proofs may be required to show support of a child who did not live with the employee or retiree in a regular parent-child relationship and for whom a judicial determination of support was not obtained.

(i) Evidence of eligibility as a dependent child for benefits under other State or Federal programs;

(ii) Proof of inclusion of the child as a dependent on the decedent's income

tax returns for the years immediately before the employee's or retiree's death;

(iii) Cancelled checks, money orders, or receipts for periodic payments received from the employee or retiree for or on behalf of the child;

(iv) Evidence of goods or services that shows regular contributions of considerable value;

(v) Proof of coverage of the child as a family member under the employee's or retiree's Federal Employees Health Benefits enrollment; and

(vi) Other proof of a similar nature that OPM may find to be sufficient to demonstrate support or parentage.

(3) Survivor benefits may be denied—

(i) If evidence shows that the deceased employee or retiree did not recognize the claimant as his or her own despite a willingness to support the child; or

(ii) If evidence casts doubt upon the parentage of the claimant, despite the deceased employee's or retiree's recognition and support of the child.

[55 FR 9102, Mar. 12, 1990, as amended at 58 FR 43493, Aug. 17, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.672 Annuity for a child age 18 to 22 during full-time school attendance.

(a) *General requirements for an annuity.* (1) For a child age 18 to 22 to be eligible to receive an annuity as a full-time student, the child must also meet all other requirements applicable to qualify for an annuity by a child who has not attained age 18.

(2) In addition to the requirements of paragraph (a)(1) of this section, OPM must receive certification, in a form prescribed by OPM, that the child is regularly pursuing a full-time course of study in an accredited institution.

(b) *Full-time course of study.* (1) Generally, a full-time course of study is a noncorrespondence course which, if successfully completed, will lead to completion of the education within the period generally accepted as minimum for completion, by a full-time day student, of the academic or training program concerned.

(2) A certification by an accredited institution that the student's workload is sufficient to constitute a full-time

course of study for the program in which the student is enrolled is prima facie evidence that the student is pursuing a full-time course of study.

(c) *Certification of school attendance.*

(1) OPM may periodically request the recipient of a child's annuity payments to furnish certification of school attendance. The certification must be completed in the form prescribed by OPM.

(2) If OPM requests the recipient of a child's annuity payments to provide a self-certification of school attendance, the recipient must complete and sign the certification form.

(3) If OPM requests the recipient of a child's annuity payments to provide a certification by the school, the certification must be signed by an official who is either in charge of the school or in charge of the school's records. OPM will not accept certification forms signed by instructors, counselors, aides, roommates, or others not in charge of the school or the records.

(i) If the educational institution is above the high school level, the certification must be signed by the president or chancellor, vice president or vice chancellor, dean or assistant dean, registrar or administrator, assistant registrar or assistant administrator, or the equivalent.

(ii) If the educational institution is at the high school level, the certification must be signed by the superintendent of schools, assistant superintendent of schools, principal, vice principal, assistant principal, or the equivalent.

(iii) If the educational institution is a technical or trade school, the certification must be signed by the president, vice president, director, assistant director, or the equivalent.

(4) OPM will accept a facsimile signature of a school official only if it is accompanied by a raised seal of the institution or other evidence clearly demonstrating the authenticity of the certification and making unauthorized use of the signature stamp unlikely.

(d) *Continuation of annuity during interim breaks.* A child's annuity continues during interim breaks between school years if the following conditions are satisfied:

(1) The student must have been a full-time student at the end of the school term immediately before the break.

(2) The break between the end of the last term of full-time attendance and the return to full-time attendance must not exceed 5 months. (See § 831.107, concerning calculation of this time period.)

(3) The recipient of a child's annuity payments must show that the student has a bona fide intent to return to school as a full-time student immediately after the break. The full-time certification for the prior term and the certification (in a form prescribed by OPM) by the recipient of a child's annuity payments that the student intends to return to school (immediately after the break) as a full-time student constitute prima facie evidence of a bona fide intent to return to school.

(e) *Benefits after age 22.* (1) A student's eligibility for a child's annuity terminates based on reaching age 22 on—

(i) June 30 of the calendar year of the child's 22nd birthday if the child's birthday is before July 1; or

(ii) The last day of the month before the child's 22nd birthday if the child's birthday occurs after June 30 but before September 1 of the calendar year; or

(iii) June 30 of the year after the one in which the child attains age 22 if the child's birthday is after August 31 of the calendar year.

(2)(i) An otherwise eligible child who becomes a full-time student after his or her 22nd birthday but before the date the annuity terminates under paragraph (e)(1) of this section is eligible for annuity while he or she is a full-time student until the termination date under paragraph (e)(1) of this section.

(ii) An otherwise eligible child who is a full-time student, and whose parent dies after the child's 22nd birthday but before the date the annuity terminates under paragraph (e)(1) of this section, is eligible for annuity while he or she is a full-time student after the death of the parent until the termination date under paragraph (e)(1) of this section.

[58 FR 32052, June 8, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

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§ 831.673 Rates of child annuities.

(a) (1) The rate of annuity payable to a child survivor whose annuity commenced before February 27, 1986, is computed in accordance with the law in effect on the date when the annuity began to accrue, unless the rate of annuity is recomputed under paragraph (e) of this section on or after February 27, 1986.

(2) The rate of annuity payable to a child survivor whose annuity commenced on or after February 27, 1986, or was recomputed under paragraph (e) of this section on or after February 27, 1986, is computed under paragraph (b), (c), or (d) of this section.

(b) Except as provided in paragraph (a) of this section, the rate of annuity of a child survivor is computed under section 8341(e)(2) (i) through (iii) of title 5, United States Code, with adjustments in accordance with section 8340 of title 5, United States Code, when the deceased employee, Member or annuitant was never married to a natural or adoptive parent of that surviving child of the former employee or Member.

(c) Except as provided in paragraphs (a) and (b) of this section, the rate of annuity payable to a child survivor is computed under section 8341(e)(2) (A) through (C) of title 5, United States Code, with adjustments in accordance with section 8340 of title 5, United States Code, whenever a deceased employee, Member, or retiree is survived by a natural or adoptive parent of that surviving child of the employee, Member, or retiree.

(d) Except as provided in paragraph (a) of this section, the rate of annuity payable to a child survivor is computed under section 8341(e)(2) (i) through (iii) of title 5, United States Code, with adjustments in accordance with section 8340 of title 5, United States Code, when the deceased employee, Member, or retiree is not survived by a natural or adoptive parent of that surviving child of the former employee or Member.

(e) On the death of a natural or adoptive parent or termination of the annuity of a child, the annuity of any other child or children is recomputed and paid as though the parent or child had

not survived the former employee or Member.

[51 FR 31933, Sept. 8, 1986. Redesignated at 58 FR 52882, Oct. 13, 1993]

REGULATIONS PERTAINING TO NONCODIFIED STATUTES

§ 831.681 Annual notice required by Public Law 95-317.

At least once every 12 consecutive months, OPM will send a notice to all retirees to inform them about the survivor annuity elections available to them, under sections 8339(j), 8339(k)(2), and 8339(o) of title 5, United States Code.

[56 FR 16263, Apr. 22, 1991, as amended at 58 FR 43493, Aug. 17, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.682 Election by a retiree who re- tired before May 7, 1985, to provide a former spouse annuity.

(a) A retiree who retired before May 7, 1985, including a retiree receiving a fully reduced annuity to provide a current spouse annuity, may elect a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity.

(b) The election should be made by letter addressed to OPM. The election must—

- (1) Be in writing; and
- (2) Agree to pay any deposit due under paragraph (c) of this section; and
- (3) Be signed by the retiree; and
- (4) Be filed with OPM before September 8, 1987.

(c)(1)(i) If a retiree who is receiving an insurable interest annuity elects a fully reduced annuity or a partially reduced annuity under this section to benefit the same person, the insurable interest annuity terminates. A retiree who is receiving an insurable interest annuity at the time that an annuity is elected under this section does not owe any further deposit.

(ii) If a retiree who had been receiving an insurable interest annuity, which was terminated to elect a reduced annuity to provide a current spouse annuity for a spouse acquired after retirement, elects to provide a former spouse annuity for a former spouse who was the beneficiary of the insurable interest annuity, the retiree

must deposit an amount equal to the sum of the monthly differences between the self-only annuity and a fully reduced annuity or partially reduced annuity (with the same base as elected to provide the former spouse annuity) from the date the insurable interest annuity terminated, plus 6 percent annual interest, computed under § 831.105, from the date to which each monthly difference is attributable.

(2) A retiree who elects a fully reduced annuity or a partially reduced annuity under this section, to provide a former spouse annuity for a former spouse for whom the retiree had elected (during the marriage to that former spouse) a reduced annuity to provide a current spouse annuity, must deposit an amount equal to the sum of the monthly differences between the self-only annuity and the amount of annuity that would have been in effect had a fully reduced annuity or partially reduced annuity (with the same base as elected to provide the former spouse annuity) been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date to which each monthly difference is attributable, except that the retiree will not be charged for any period during which the survivor reduction was in effect for that former spouse.

(3) A retiree who elects a fully reduced annuity or a partially reduced annuity under this section, and is not covered under paragraph (c)(1) or (c)(2) of this section, must deposit an amount equal to the sum of the monthly difference between the self-only annuity and a fully reduced annuity or a partially reduced annuity (with the same base as elected to provide the former spouse annuity) since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date to which each monthly difference is attributable.

(d) If a retiree who is receiving a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity elects a fully reduced annuity or a partially reduced annuity under this section to provide a former spouse annuity, the annuity will be reduced separately to provide for the current and former spouse annuities. Each

separate reduction will be computed based on the self-only annuity, and the separate reductions are cumulative.

(e)(1) In response to a retiree's inquiry about providing a former spouse annuity under this section, OPM will send an application form. The application form will include a notice to retirees that filing the application constitutes an official election which cannot be revoked after 30 days after the annuity check in which the annuity reduction first appears.

(2) If the retiree returns the application electing a fully reduced annuity or a partially reduced annuity under this section, OPM will notify the retiree of—

(i) The rate of the fully reduced annuity or partially reduced annuity; and

(ii) The rate of the potential former spouse annuity; and

(iii) The amount of the deposit, including interest, that is due as of the date that the annuity reduction is scheduled to begin; and

(iv) The amount and duration of installment payments if no deposit is made.

(3) The notice under paragraph (e)(2) of this section will advise the retiree that the deposit will be collected in installments under § 831.665, unless lump-sum payment is made within 60 days from the date of the notice.

(4) OPM will reduce the annuity and begin collection of the deposit in installments effective with the first check payable more than 60 days after the date on the notice required under paragraph (e)(2) of this section.

(f)(1) A retiree who made an election under this section prior to September 9, 1986 may modify that election by designating a lesser portion of the retiree's annuity be used as the base for the annuity reduction and the former spouse annuity.

(2) Any modification under paragraph (f)(1) of this section must be in writing and received in OPM no later than the date provided for applications in paragraph (b)(4) of this section.

(g) The annuity reduction resulting in a fully reduced annuity or partially reduced annuity to provide a former spouse annuity under this section terminates on the first day of the month

after the former spouse remarries before age 55 or dies.

(h) A former spouse is eligible to receive only one survivor annuity based on the service of one employee or Member.

(i) If a former spouse is entitled to a former spouse annuity based on an election under this section, but absent that election would have been entitled to a former spouse annuity under § 831.683 (i.e., filed a timely application as well as meeting all other requirements), the amount of the former spouse annuity payable will equal 55 percent of the annuity of the retiree on whose service the survivor annuity is based.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31934, Sept. 8, 1986; 55 FR 9102, Mar. 12, 1990; 56 FR 16263, Apr. 22, 1991; 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.683 Annuities for former spouses of employees or Members retired before May 7, 1985.

(a)(1) The former spouse of a retiree who retired before May 7, 1985 (or of an employee or Member who died before May 7, 1985, was employed in a position covered by CSRS at the time of death, and was eligible to retire at the time of death), is entitled, after the death of the retiree, employee, or Member, to a survivor annuity equal to 55 percent of the self-only annuity of the retiree on whose service the survivor annuity is based if the former spouse, at the time of application, meets all of the following requirements:

(i) The former spouse's marriage to the retiree, employee, or Member was dissolved after September 14, 1978, and before May 8, 1987. The date of dissolution of a marriage is the date when the marriage between the former spouse and the retiree, employee, or Member ended under the law of the jurisdiction that terminated the marriage, rather than the date when restrictions on remarriage ended. The date of entry of the decree terminating the marriage will be rebuttably presumed to be the date when the marriage was dissolved.

(ii) The former spouse was married to the retiree, employee, or Member for at least 10 years of the retiree's, employee's, or Member's creditable service.

Creditability of service is determined in accordance with section 8332 of title 5, United States Code, and subpart C of this part.

(iii) The former spouse has not remarried before reaching age 55.

(iv) The former spouse applies to OPM for a survivor annuity, in accordance with paragraph (b) of this section and § 831.643(b), before May 8, 1989.

(v) The former spouse is at least 50 years old on May 7, 1987, and when filing the application.

(2) A former spouse who is not eligible for an annuity under paragraph (a)(1) of this section and who is the former spouse of a retiree who retired before May 7, 1985 (or of an employee or Member who died before May 7, 1985, was employed in a position covered by CSRS at the time of death, and was eligible to retire at the time of death), is entitled, after the death of the retiree, employee, or Member, to a survivor annuity equal to 55 percent of the self-only annuity of the retiree on whose service the survivor annuity is based if the former spouse, at the time of application, meets all of the following requirements:

(i) The former spouse was married to the retiree, employee, or Member for at least 10 years of the retiree's, employee's, or Member's creditable service. Creditability of service is determined in accordance with section 8332 of title 5, United States Code, and subpart C of this part.

(ii) The former spouse has not remarried after September 14, 1978, before reaching age 55.

(iii) The former spouse applies to OPM for a survivor annuity, in accordance with paragraph (b) of this section and § 831.643(b), before May 8, 1989.

(iv) The former spouse is at least 50 years old on May 7, 1987, and when filing the application.

(v) No current spouse, other former spouse, or insurable interest designee is receiving or has been designated to receive a survivor annuity based on the service of the employee, Member, or retiree.

(3) If two or more eligible former spouses of a retiree, employee, or Member apply for annuities under paragraph (a)(2) of this section based on the service of the same retiree, employee,

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or Member, and neither meets the requirements of paragraph (a)(1) of this section, the former spouse whose application OPM receives first is entitled to the annuity.

(b)(1) Application must be filed on the form prescribed for that purpose by OPM. The application form will require the former spouse to certify under the penalty provided by section 1001 of title 18, United States Code, that he or she meets the requirements listed in paragraph (a) of this section.

(2) In addition to the application form required in paragraph (b)(1) of this section, the former spouse must submit proof of his or her age and the date when the marriage to the retiree commenced, and a certified copy of the divorce decree terminating the marriage to the retiree.

(3)(i) Former spouses applying for benefits under this section must meet the requirements of paragraph (a) of this section at the time of application.

(ii) An annuity under this section terminates on the last day of the month before the former spouse remarries before age 55 or dies, except that a remarriage before September 15, 1978, does not cause termination of a former spouse annuity under this section. A former spouse who is receiving a former spouse annuity under this section must notify OPM within 30 days after he or she remarries before age 55.

(c) Survivor annuities payable under this section commence on the later of the day after the date of death of the retiree or the first day of the second month after the application is filed under § 831.643(b).

(d) Cost-of-living adjustments under section 8340 of title 5, United States Code, are applicable to annuities payable under this section.

(e) If a former spouse is eligible for a former spouse annuity under this section and another current spouse annuity or former spouse annuity (under the Civil Service Retirement System or the Federal Employees Retirement System) resulting from the death of the same retiree, the annuity under this section will be paid instead of the

other current spouse annuity or former spouse annuity.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31933, Sept. 8, 1986; 55 FR 9103, Mar. 12, 1990; 56 FR 16263, Apr. 22, 1991; 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.684 Second chance elections to provide survivor benefits.

(a) A married retiree who retired before May 7, 1985, and is not currently receiving a fully or partially reduced annuity to provide a current spouse annuity may elect a fully or partially reduced annuity to provide a current spouse annuity for a spouse acquired after retirement if the following conditions are met:

(1) (i) The retiree was married at the time of retirement and did not elect a survivor annuity at that time; or

(ii) The retiree failed to elect a fully or partially reduced annuity within 1 year after a post-retirement marriage that occurred before November 8, 1984, and the retiree attempted to elect a fully or partially reduced annuity after the time limit expired and that request was disallowed as untimely.

(2) The retiree applies for a fully or partially reduced annuity under this section before November 9, 1985.

(3) The retiree agrees to pay the amount due under paragraph (d) of this section.

(b) Applications must be filed on the form prescribed by OPM, except filing the form is excused when the retiree dies before filing the required form if:

(1) The retiree made a written request, after November 8, 1984, to elect a fully or partially reduced annuity under this section, and

(2) The retiree was denied the opportunity to file the required form because the retiree, without fault, did not receive the form in sufficient time for the retiree to be reasonably expected to complete the form before death.

(c)(1) In response to a retiree's inquiry about providing a current spouse annuity under this section, OPM will send an application form. This application will include instructions to assist the retiree in estimating the amount of reduction in the annuity to provide the current spouse annuity and the amount of the required deposit. The application

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form will include a notice to retirees that filing the application constitutes an official election which cannot be revoked after 30 days after the annuity check in which the annuity reduction first appears.

(2) If the retiree returns the application electing a fully or partially reduced annuity under this section, OPM will notify the retiree of—

(i) The rate of the fully reduced annuity; and

(ii) The rate of the potential current spouse annuity; and

(iii) The amount of the deposit, including interest, that is due as of the date that the annuity reduction is scheduled to begin; and

(iv) The amount and duration of installment payments if no deposit is made.

(3) The notice under paragraph (c)(2) of this section will advise the retiree that the deposit will be collected in installments under § 831.665, unless lump-sum payment is made within 60 days from the date of this notice.

(4) OPM will reduce the annuity and begin collection of the deposit in installments effective with the first check payable more than 60 days after the date on the notice required under paragraph (c)(2) of this section.

(d) The retiree must state on the application form whether the application is made under paragraph (a)(1)(i) of this section or paragraph (a)(1)(ii) of this section. If the application is made under paragraph (a)(1)(ii) of this section, the retiree must prove that he or she had attempted to elect a fully reduced annuity and that OPM rejected that application because it was filed too late. The proof must consist of a copy of OPM's letter rejecting the previous election as untimely filed or an affidavit swearing or affirming that he or she made an untimely application which OPM rejected. The affidavit is sufficient documentation to provide proof of the retiree's attempt to elect a reduced annuity, unless the record contains convincing evidence to rebut the certification.

(e) A retiree who elects to provide a current spouse annuity under this section must agree to pay a deposit equal to the difference between the amount of annuity actually paid to the retiree

and the amount of annuity that would have been paid if a fully reduced annuity were being paid continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date when each difference occurred.

(f) The rate of a survivor annuity under this section will be computed under the laws in effect at the time of the retiree's separation from the Federal service.

[50 FR 20070, May 13, 1985, as amended at 51 FR 31935, Sept. 8, 1986; 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

§ 831.685 Changes in elections to provide a current spouse annuity by a retiree who retired before May 28, 1986.

(a) Except as provided in § 831.613 and paragraphs (b) and (c) of this section, a retiree who retired before May 28, 1986, was married at the time of retirement, and at the time of retirement did not elect a fully reduced annuity to provide a current spouse annuity may elect a fully reduced annuity or a greater partially reduced annuity to provide a current spouse annuity.

(b)(1) An election under paragraph (a) of this section may be made only by a retiree who is married to the same spouse to whom the retiree was married at the time of retirement.

(2) A current spouse annuity based on an election under paragraph (a) of this section cannot be paid if it will, when combined with any former spouse annuity or annuities that are required by court order, exceed the maximum survivor annuity permitted under § 831.641.

(3)(i) Except as provided in paragraph (b)(4) of this section, to make an election under paragraph (a) of this section, the retiree must pay the deposit computed under § 831.662, in full, no later than November 28, 1987.

(ii) Except as provided in paragraph (b)(4) of this section, failure to pay the deposit, in full, before November 29, 1987, voids an election made under paragraph (a) of this section.

(4) If a retiree makes an election under paragraph (a) of this section and is prevented from paying the deposit within the 18-month time limit because OPM did not send him or her a notice

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of the amount of the deposit at least 30 days before the time limit expires, the time limit for making the deposit will be extended to 30 days after OPM sends the notice of the amount of the deposit.

(5) For a retiree whose annuity commenced on or after May 7, 1985, an election under paragraph (a) of this section cancels any spouse consent under § 831.611 to the extent of the election.

(c) If a retiree who had elected a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity makes an election under paragraph (a) of this section that would cause the combined current spouse annuity and former spouse annuity (or annuities) to exceed the maximum allowed under § 831.641, the former spouse annuity (or annuities) must be reduced to conform with that allowed under § 831.641.

(d) An election under paragraph (a) of this section is void unless it is filed with OPM before the retiree dies.

[51 FR 31935, Sept. 8, 1986, as amended at 55 FR 9103, Mar. 12, 1990; 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

Subpart G—Computation of Annuities

§ 831.701 Effective dates of annuities.

(a) Except as provided in paragraphs (b) and (c) of this section, an annuity of an employee or Member commences on the first day of the month after—

(1) Separation from the service; or

(2) Pay ceases and the service and age requirements for title to annuity are met, if earlier than the date of separation.

(b) An annuity of—

(1) An employee involuntarily separated from service (except by removal for cause on charges of misconduct or delinquency) and eligible for an immediate annuity based on that involuntary separation;

(2) An employee or Member retiring due to a disability; and

(3) An employee or Member retiring after serving three 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 service and age or disability re-

quirements for title to annuity are met.

(c) An annuity granted under section 8338, title 5, United States Code, commences on the appropriate birthday of the employee or Member.

(d) Survivor annuities commence as provided in § 831.651.

(e) Except as provided in § 831.502, annuity terminates on the date of death or on the date of any other terminating event in each case when OPM terminates the annuity.

(f) Annuity accrues on a daily basis, one-thirtieth of the monthly rate constituting the daily rate. Annuity does not accrue for the thirty-first day of any month, except in the initial month if the employee's annuity commences on the 31st of a 31-day month. For accrual purposes, the last day of a 28-day month constitutes 3 days and the last day of a 29-day month constitutes 2 days.

[48 FR 38786, Aug. 26, 1983, as amended at 51 FR 31936, Sept. 8, 1986; 58 FR 52881, Oct. 13, 1993]

§ 831.702 Adjustment of annuities.

(a)(1) An annuity which includes creditable National Guard technician service performed prior to January 1, 1969, shall be reduced by the portion of any benefits under any State retirement system to which an annuitant is entitled (or on proper application would be entitled) for any month in which the annuitant is eligible for State benefits based on the same pre-1969, service.

(2) Any cost-of-living increases in the State benefit shall require a corresponding deduction in the civil service annuity.

(3) Any cost-of-living increase to a civil service annuity shall apply to the gross annuity before deduction for benefits under any State retirement system.

(b) In the adjudication of claims arising under subchapter III of chapter 83 of title 5, United States Code, OPM shall take appropriate action to obtain the data that it considers necessary to assure the proper annuity deduction. Upon request by OPM, an annuitant shall promptly submit this data.

[48 FR 38786, Aug. 26, 1983]