

vidual, rather than the position, that is subject to the subchapter.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

1983—Subsecs. (c), (d). Pub. L. 98-94 added subsec. (c), and redesignated former subsec. (c) as (d).

SAVINGS PROVISIONS DEFERRED ANNUITIES UNDER LAWS REPEALED BY PUB. L. 90-83

Pub. L. 90-83, §10(a), Sept. 11, 1967, 81 Stat. 222, provided that: “The right to a deferred annuity on satisfaction of the conditions attached thereto is continued notwithstanding the repeal by this Act of the law conferring the right.”

**§ 8339. Computation of annuity**

(a) Except as otherwise provided by this section, the annuity of an employee retiring under this subchapter is—

(1) 1½ percent of his average pay multiplied by so much of his total service as does not exceed 5 years; plus

(2) 1¾ percent of his average pay multiplied by so much of his total service as exceeds 5 years but does not exceed 10 years; plus

(3) 2 percent of his average pay multiplied by so much of his total service as exceeds 10 years.

However, when it results in a larger annuity, 1 percent of his average pay plus \$25 is substituted for the percentage specified by paragraph (1), (2), or (3) of this subsection, or any combination thereof.

(b) The annuity of a Congressional employee, or former Congressional employee, retiring under this subchapter is computed under subsection (a) of this section, except, if he has had—

(1) at least 5 years’ service as a Congressional employee or Member or any combination thereof; and

(2) deductions withheld from his pay or has made deposit covering his last 5 years of civilian service;

his annuity is computed with respect to his service as a Congressional employee, his military service not exceeding 5 years, and any Member service, by multiplying 2½ percent of his average pay by the years of that service.

(c) The annuity of a Member, or former Member with title to Member annuity, retiring under this subchapter is computed under subsection (a) of this section, except, if he has had at least 5 years’ service as a Member or Congressional employee or any combination thereof, his annuity is computed with respect to—

(1) his service as a Member and so much of his military service as is creditable for the purpose of this paragraph; and

(2) his Congressional employee service;

by multiplying 2½ percent of his average pay by the years of that service.

(d)(1) The annuity of an employee retiring under section 8335(b) or 8336(c) of this title is—

(A) 2½ percent of his average pay multiplied by so much of his total service as does not exceed 20 years; plus

(B) 2 percent of his average pay multiplied by so much of his total service as exceeds 20 years.

(2) The annuity of an employee retiring under this subchapter who was employed by the Panama Canal Company or Canal Zone Government on September 30, 1979, is computed with respect to the period of continuous Panama Canal service from that date, disregarding any break in service of not more than 3 days, by adding—

(A) 2½ percent of the employee’s average pay multiplied by so much of that service as does not exceed 20 years; plus

(B) 2 percent of the employee’s average pay multiplied by so much of that service as exceeds 20 years.

(3) The annuity of an employee retiring under this subchapter who is employed by the Panama Canal Commission at any time during the period beginning October 1, 1990, and ending December 31, 1999, is computed, with respect to any period of service with the Panama Canal Commission, by adding—

(A) 2½ percent of the employee’s average pay multiplied by so much of that service as does not exceed 20 years; plus

(B) 2 percent of the employee’s average pay multiplied by so much of that service as exceeds 20 years.

(4)(A) In the case of an employee who has service as a law enforcement officer or firefighter to which paragraph (2) of this subsection applies, the annuity of that employee is increased by \$8 for each full month of that service which is performed in the Republic of Panama.

(B) In the case of an employee retiring under this subchapter who—

(i) was employed as a law enforcement officer or firefighter by the Panama Canal Company or Canal Zone Government at any time during the period beginning March 31, 1979, and ending September 30, 1979; and

(ii) does not meet the age and service requirements of section 8336(c) of this title;

the annuity of that employee is increased by \$12 for each full month of that service which occurred before October 1, 1979.

(C) An annuity increase under this paragraph does not apply with respect to service performed after completion of 20 years of service (or any combination of service) as a law enforcement officer or firefighter.

(5) For the purpose of this subsection—

(A) “Panama Canal service” means—

(i) service as an employee of the Panama Canal Commission; or

(ii) service at a permanent duty station in the Canal Zone or Republic of Panama as an employee of an Executive agency conducting operations in the Canal Zone or Republic of Panama; and

(B) “Executive agency” includes the Smithsonian Institution.

(6) The annuity of an employee retiring under section 8336(j) of this title is computed under subsection (a) of this section, except that with respect to service on or after December 21, 1972, the employee’s annuity is—

(A) 2½ percent of the employee’s average pay multiplied by so much of the employee’s service on or after that date as does not exceed 20 years; plus

(B) 2 percent of the employee's average pay multiplied by so much of the employee's service on or after that date as exceeds 20 years.

(7) The annuity of an employee who is a judge of the United States Court of Appeals for the Armed Forces, or a former judge of such court, retiring under this subchapter is computed under subsection (a) of this section, except, with respect to his service as a judge of such court, his service as a Member, his congressional employee service, and his military service (not exceeding 5 years) creditable under section 8332 of this title, his annuity is computed by multiplying 2½ percent of his average pay by the years of that service.

(e) The annuity of an employee retiring under section 8336(e) of this title is computed under subsection (a) of this section. That annuity may not be less than 50 percent of the average pay of the employee unless such employee has received, pursuant to section 8342 of this title, payment of the lump-sum credit attributable to deductions under section 8334(a) of this title during any period of employment as an air traffic controller and such employee has not deposited in the Fund the amount received, with interest, pursuant to section 8334(d)(1) of this title.

(f) The annuity computed under subsections (a) through (e), (n), (q), (r), and (s) may not exceed 80 percent of—

- (1) the average pay of the employee; or
- (2) the greatest of—
  - (A) the final basic pay of the Member;
  - (B) the average pay of the Member; or
  - (C) the final basic pay of the appointive position of a former Member who elects to have his annuity computed or recomputed under section 8344(d)(1) of this title.

(g) The annuity of an employee or Member retiring under section 8337 of this title is at least the smaller of—

- (1) 40 percent of his average pay; or
- (2) the sum obtained under subsections (a) through (c), (n), (q), (r), or (s) after increasing his service of the type last performed by the period elapsing between the date of separation and the date he becomes 60 years of age.

However, if an employee or Member retiring under section 8337 of this title is receiving retired pay or retainer pay for military service (except that specified in section 8332(c)(1) or (2) of this title) or pension or compensation from the Department of Veterans Affairs in lieu of such retired or retainer pay, the annuity of that employee or Member shall be computed under subsection (a), (b), (c), (n), (q), (r), or (s), as appropriate, excluding credit for military service from that computation. If the amount of the annuity so computed, plus the retired or retainer pay which is received, or which would be received but for the pension or compensation from the Department of Veterans Affairs in lieu of such retired or retainer pay, is less than the smaller of the annuity otherwise payable under paragraph (1) or (2) of this subsection, an amount equal to the difference shall be added to the annuity payable under subsection (a), (b), (c), (n), (q), (r), or (s), as appropriate.

(h) The annuity computed under subsections (a), (b), (d)(5), and (f) of this section for an em-

ployee retiring under section 8336(d), (h), (j), or (o) of this title is reduced by ¼ of 1 percent for each full month the employee is under 55 years of age at the date of separation. The annuity computed under subsections (c) and (f) of this section for a Member retiring under the second or third sentence of section 8336(g) of this title or the third sentence of section 8338(b) of this title is reduced by ½ of 1 percent for each full month not in excess of 60 months, and ¼ of 1 percent for each full month in excess of 60 months, the Member is under 60 years of age at the date of separation. The annuity computed under subsections (a), (d)(6), and (f) of this section for a judge of the United States Court of Appeals for the Armed Forces retiring under the second sentence of section 8336(k) of this title or the third sentence of section 8338(c) of this title is reduced by ½ of 1 percent for each full month not in excess of 60 months, and ¼ of 1 percent for each full month in excess of 60 months, the judge is under 60 years of age at the date of separation.

(i) For the purposes of subsections (a)–(h), (n), (q), (r), or (s), the total service of any employee or Member shall not include any period of civilian service after July 31, 1920, for which retirement deductions or deposits have not been made under section 8334(a) of this title unless—

- (1) the employee or Member makes a deposit for such period as provided in section 8334(c) or (d)(1) of this title; or
- (2) no deposit is required for such service, as provided under section 8334(g) of this title or under any statute.

(j)(1) The annuity computed under subsections (a)–(i), (n), (q), (r), and (s) (or a portion of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management) for an employee or Member who is married at the time of retiring under this subchapter is reduced as provided in paragraph (4) of this subsection in order to provide a survivor annuity for the spouse under section 8341(b) of this title, unless the employee or Member and the spouse jointly waive the spouse's right to a survivor annuity in a written election filed with the Office at the time that the employee or Member retires. Each such election shall be made in accordance with such requirements as the Office shall, by regulation, prescribe, and shall be irrevocable. The Office shall provide, by regulation, that an employee or Member may waive the survivor annuity without the spouse's consent if the employee or Member establishes to the satisfaction of the Office—

(A) that the spouse's whereabouts cannot be determined, or

(B) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's consent would otherwise be inappropriate.

(2) If an employee or Member has a former spouse who is entitled to a survivor annuity as provided in section 8341(h) of this title, the annuity of the employee or Member computed under subsections (a)–(i), (n), (q), (r), and (s) (or any designated portion of the annuity, in the

event that the former spouse is entitled to less than 55 percent of the employee or Member's annuity) is reduced as provided in paragraph (4) of this subsection.

(3) An employee or Member who has a former spouse may elect, under procedures prescribed by the Office, to have the annuity computed under subsections (a)-(i), (n), (q), (r), and (s) or a portion thereof reduced as provided in paragraph (4) of this subsection in order to provide a survivor annuity for such former spouse under section 8341(h) of this title, unless all rights to survivor benefits for such former spouse under this subchapter based on marriage to such employee or Member were waived under paragraph (1) of this subsection. An election under this paragraph shall be made 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, subject to a deposit in the Fund by the retired employee or Member of an amount determined by the Office, as nearly as may be administratively feasible, to reflect the amount by which the annuity of such employee or Member would have been reduced if the election had been continuously in effect since the date 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 since the date the annuity commenced shall be 6 percent. The Office shall, by regulation, provide for payment of the deposit required under this paragraph by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under this paragraph, except that the total reductions in the annuity of an employee or Member to pay deposits required by the provisions of this paragraph, paragraph (5), or subsection (k)(2) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), (q), and (r), including adjustments under section 8340. The reduction, which shall be effective on the same date as the election under this paragraph, shall be permanent and unaffected by any future termination of the entitlement of the former spouse. Such reduction shall be independent of and in addition to the reduction required under the first sentence of this paragraph. An election under this paragraph—

(A) shall not be effective to the extent that it—

(i) conflicts with—

(I) any court order or decree referred to in subsection (h)(1) of section 8341 of this title, which was issued before the date of such election; or

(II) any agreement referred to in such subsection which was entered into before such date; or

(ii) would cause the total of survivor annuities payable under subsections (b), (d), (f), and (h) of section 8341 of this title based on the service of the employee or Member to exceed 55 percent of the annuity to which the employee or Member is entitled under subsections (a)-(i), (n), (q), (r), and (s); and

(B) shall not be effective, in the case of an employee or Member who is then married, unless it is made with the spouse's written consent.

The Office shall provide by regulation that subparagraph (B) of this paragraph may be waived for either of the reasons set forth in the last sentence of paragraph (1) of this subsection. In the case of a retired employee or Member whose annuity is being reduced in order to provide a survivor annuity for a former spouse, an election to provide or increase a survivor annuity for any other former spouse (and to continue an appropriate reduction) may be made within the same period that, and subject to the same conditions under which, an election could be made under paragraph (5)(B) of this subsection for a current spouse (subject to the provisions of this paragraph relating to consent of a current spouse, if the retired employee or Member is then married). The opportunity to make an election under the preceding sentence is in addition to any opportunity otherwise afforded under this paragraph.

(4) In order to provide a survivor annuity or combination of survivor annuities under subsections (b), (d), (f), and (h) of section 8341 of this title, the annuity of an employee or Member (or any designated portion or portions thereof) is reduced by 2½ percent of the first \$3,600 thereof plus 10 percent of so much thereof as exceeds \$3,600.

(5)(A) Any reduction in an annuity for the purpose of providing a survivor annuity for the current spouse of a retired employee or Member shall be terminated for each full month—

(i) after the death of the spouse, or

(ii) after the dissolution of the spouse's marriage to the employee or Member, except that an appropriate reduction shall be made thereafter if the spouse is entitled, as a former spouse, to a survivor annuity under section 8341(h) of this title.

(B) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse of a retired employee or Member shall be terminated for each full month after the former spouse remarries before reaching age 55 or dies. This reduction shall be replaced by an appropriate reduction or reductions under paragraph (4) of this subsection if the retired employee or Member has (i) another former spouse who is entitled to a survivor annuity under section 8341(h) of this title, (ii) a current spouse to whom the employee or Member was married at the time of retirement and with respect to whom a survivor annuity was not jointly waived under paragraph (1) of this subsection, or (iii) a current spouse whom the employee or Member married after retirement and with respect to whom an election has been made under subparagraph (C) of this paragraph or subsection (k)(2) of this section.

(C)(i) Upon remarriage, a retired employee or Member who was married at the time of retirement (including an employee or Member whose annuity was not reduced to provide a survivor annuity for the employee or Member's spouse or former spouse as of the time of retirement) may irrevocably elect during such marriage, in a



signed writing received by the Office within 2 years after such remarriage or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8341(h) of this title (or of the last such surviving former spouse, if there was more than one), a reduction in the employee or Member's annuity under paragraph (4) of this subsection for the purpose of providing an annuity for such employee or Member's spouse in the event such spouse survives the employee or Member.

(ii) Such election and reduction shall be effective the first day of the second month after the election is received by the Office, but not less than 9 months after the date of the remarriage, and the retired employee or Member shall deposit in the Fund an amount determined by the Office of Personnel Management, as nearly as may be administratively feasible, to reflect the amount by which the annuity of such retired employee or Member would have been reduced if the election had been in effect since the date of retirement or, if later, the date the previous reduction in such retired employee or Member's annuity was terminated under subparagraph (A) or (B) of this paragraph, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which an annuity would have been reduced if the election had been in effect on and after the applicable date referred to in such sentence shall be 6 percent.

(iii) The Office shall, by regulation, provide for payment of the deposit required under clause (ii) by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under clause (ii), except that total reductions in the annuity of an employee or Member to pay deposits required by the provisions of this paragraph or paragraph (3) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), (q), and (r), including adjustments under section 8340. The reduction required by this clause, which shall be effective on the same date as the election under clause (i), shall be permanent and unaffected by any future termination of the marriage. Such reduction shall be independent of and in addition to the reduction required under clause (i).

(iv) Notwithstanding any other provision of this subparagraph, an election under this subparagraph may not be made for the purpose of providing an annuity in the case of a spouse by remarriage if such spouse was married to the employee or Member at the time of such employee or Member's retirement, and all rights to survivor benefits for such spouse under this subchapter based on marriage to such employee or Member were then waived under paragraph (1) of this subsection or a similar prior provision of law.

(v) An election to provide a survivor annuity to a person under this subparagraph—

(I) shall prospectively void any election made by the employee or Member under subsection (k)(1) of this section with respect to such person; or

(II) shall, if an election was made by the employee or Member under such subsection (k)(1) with respect to a different person, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subparagraph.

(vi) The deposit provisions of clauses (ii) and (iii) of this subparagraph shall not apply if—

(I) the employee or Member makes an election under this subparagraph after having made an election under subsection (k)(1) of this section; and

(II) the election under such subsection (k)(1) becomes void under clause (v) of this subparagraph.

(k)(1) At the time of retiring under section 8336 or 8338 of this title, an employee or Member who is found to be in good health by the Office may elect a reduced annuity instead of an annuity computed under subsections (a)–(i), (n), (q), (r), and (s) and name in writing an individual having an insurable interest in the employee or Member to receive an annuity under section 8341(c) of this title after the death of the retired employee or Member. The 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 named is younger than the retiring employee or Member. However, the total reduction may not exceed 40 percent. An annuity which is reduced under this paragraph or any similar prior provision of law shall, effective the first day of the month following the death of the individual named under this paragraph, be recomputed and paid as if the annuity had not been so reduced. In the case of a married employee or Member, an election under this paragraph on behalf of the spouse may be made only if any right of such spouse to a survivor annuity based on the service of such employee or Member is waived in accordance with subsection (j)(1) of this section.

(2)(A) An employee or Member, who is unmarried at the time of retiring under a provision of law which permits election of a reduced annuity with a survivor annuity payable to such employee or Member's spouse and who later marries, may irrevocably elect, in a signed writing received in the Office within 2 years after such employee or Member marries or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8341(h) of this title (or of the last such surviving former spouse, if there was more than one), a reduction in the retired employee or Member's current annuity as provided in subsection (j) of this section.

(B)(i) The election and reduction shall take effect on the first day of the first month beginning after the expiration of the 9-month period beginning on the date of marriage. Any such election to provide a survivor annuity for a person—

(I) shall prospectively void any election made by the employee or Member under paragraph (1) of this subsection with respect to such person; or

(II) shall, if an election was made by the employee or Member under such paragraph with

§ 1132(b)(3), Dec. 28, 2001, 115 Stat. 1244; Pub. L. 107-135, title I, § 122(a), Jan. 23, 2002, 115 Stat. 2451; Pub. L. 108-92, § 1(a), Oct. 3, 2003, 117 Stat. 1160; Pub. L. 108-176, title II, § 226(b)(1), Dec. 12, 2003, 117 Stat. 2530; Pub. L. 110-161, div. E, title V, § 535(b)(3), Dec. 26, 2007, 121 Stat. 2076; Pub. L. 111-84, div. A, title XIX, § 1901(a), Oct. 28, 2009, 123 Stat. 2615.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (j), is the date of enactment of Pub. L. 106-571, which was approved Dec. 28, 2000.

The date of enactment of this paragraph, referred to in subsec. (b)(2)(B)(i), is the date of enactment of Pub. L. 111-84, which was approved Oct. 28, 2009.

AMENDMENTS

2009—Subsecs. (k) to (m). Pub. L. 111-84 redesignated subsec. (k), relating to inclusion of unused sick leave in computing an annuity of a registered nurse with the Veterans Health Administration, as (l), designated existing provisions as par. (1), added par. (2), and redesignated former subsec. (l) as (m).

2007—Subsec. (h)(2). Pub. L. 110-161 substituted “air traffic controller, or customs and border protection officer” for “or air traffic controller.” in concluding provisions.

2003—Subsecs. (e) to (h). Pub. L. 108-176, § 226(b)(1), added subsec. (e) and redesignated former subsecs. (e) to (g) as (f) to (h), respectively. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 108-176, § 226(b)(1)(A), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Pub. L. 108-176, § 226(b)(1)(A), which directed the redesignation of the second subsec. (i) as (l), could not be executed because of the redesignation of the second subsec. (i) as (k) by Pub. L. 108-92, § 1(a)(1). See below.

Pub. L. 108-92, § 1(a)(1), redesignated second subsec. (i), relating to inclusion of unused sick leave in computing an annuity of a registered nurse with the Veterans Health Administration, as (k).

Subsec. (j). Pub. L. 108-176, § 226(b)(1)(A), redesignated subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 108-176, § 226(b)(1)(A), redesignated subsec. (j) as (k).

Pub. L. 108-92, § 1(a)(1), redesignated second subsec. (i), relating to inclusion of unused sick leave in computing an annuity of a registered nurse with the Veterans Health Administration, as (k).

Subsec. (l). Pub. L. 108-92, § 1(a)(2), added subsec. (l).

2002—Subsec. (i). Pub. L. 107-135 added subsec. (i) relating to inclusion of unused sick leave in computing an annuity of a registered nurse with the Veterans Health Administration.

2001—Subsec. (j). Pub. L. 107-107 added subsec. (j).

2000—Subsec. (g). Pub. L. 106-553 inserted “member of the Supreme Court Police,” after “law enforcement officer,” in concluding provisions.

Subsec. (i). Pub. L. 106-571 added subsec. (i).

1999—Subsec. (g)(2). Pub. L. 106-65 substituted “military technician (dual status)” for “military reserve technician” in concluding provisions.

1998—Subsec. (g)(2). Pub. L. 105-261 inserted “nuclear materials courier,” after “firefighter,” in concluding provisions.

1997—Subsec. (h). Pub. L. 105-61 added subsec. (h).

1994—Subsec. (d). Pub. L. 103-283 substituted “(a), (b), or (c)” for “(a) or (b)”.

1986—Subsec. (f)(2). Pub. L. 99-556 inserted “8412(g) or” in subpars. (A) and (B).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-84, div. A, title XIX, § 1901(c), Oct. 28, 2009, 123 Stat. 2615, provided that: “The amendments made by this section [amending this section and section 8422 of this title] shall apply with respect to any annuity, entitlement to which is based on a death or other separation from service occurring on or after the date of enactment of this Act [Oct. 28, 2009].”

ration from service occurring on or after the date of enactment of this Act [Oct. 28, 2009].”

EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110-161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110-161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2003 AMENDMENTS

Amendment by Pub. L. 108-176 effective on 60th day after Dec. 12, 2003, and applicable with respect to any annuity entitlement based on an individual’s separation from service occurring on or after such effective date, and any service performed by any such individual before, on, or after such effective date, subject to special rule relating to deposit requirement, see section 226(c) of Pub. L. 108-176, set out as a note under section 8401 of this title.

Pub. L. 108-92, § 2, Oct. 3, 2003, 117 Stat. 1160, provided that: “The amendments made by this Act [amending this section and section 8422 of this title] shall apply with respect to any annuity entitlement to which is based on a separation from service occurring on or after the date of enactment of this Act [Oct. 3, 2003].”

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-135, title I, § 122(c), Jan. 23, 2002, 115 Stat. 2451, provided that: “The amendments made by this section [amending this section and section 8422 of this title] shall take effect 60 days after the date of the enactment of this Act [Jan. 23, 2002] and shall apply to individuals who separate from service on or after that effective date.”

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-107 applicable only to separations from service as an employee of the United States on or after Dec. 28, 2001, see section 1132(c) of Pub. L. 107-107, set out as a note under section 8332 of this title.

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 1998 AMENDMENT

Amendment by Pub. L. 105-261 effective at the beginning of the first pay period that begins after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105-261, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by 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.

CLARIFICATION RELATING TO CONSIDERATION OF PRE-1987 SERVICE AS AN AIR TRAFFIC CONTROLLER FOR RETIREMENT PURPOSES

See section 2 of Pub. L. 100-92, set out as a note under section 8332 of this title.

**§ 8416. Survivor reduction for a current spouse**

(a)(1) If an employee or Member is married at the time of retiring under this chapter, the re-

duction described in section 8419(a) shall be made unless the employee or Member and the spouse jointly waive, by written election, any right which the spouse may have to a survivor annuity under section 8442 based on the service of such employee or Member. A waiver under this paragraph shall be filed with the Office under procedures prescribed by the Office.

(2) Notwithstanding paragraph (1), an employee or Member who is married at the time of retiring under this chapter may waive the annuity for a surviving spouse without the spouse's consent if the employee or Member establishes to the satisfaction of the Office (in accordance with regulations prescribed by the Office)—

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

(B) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's consent would otherwise be inappropriate.

(3) Except as provided in subsection (d), a waiver made under this subsection shall be irrevocable.

(b)(1) Upon remarriage, a retired employee or Member who was married at the time of retirement (including an employee or Member whose annuity was not reduced to provide a survivor annuity for the employee's or Member's spouse or former spouse as of the time of retirement) may irrevocably elect during such marriage, in a signed writing received by the Office within 2 years after such remarriage or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8445 (or of the last such surviving former spouse, if there was more than one), a reduction in the employee's or Member's annuity under section 8419(a) for the purpose of providing an annuity for such employee's or Member's spouse in the event such spouse survives the employee or Member.

(2) The election and reduction shall be effective the first day of the second month after the election is received by the Office, but not less than 9 months after the date of the remarriage.

(3) An election to provide a survivor annuity to an individual under this subsection—

(A) shall prospectively void any election made by the employee or Member under section 8420 with respect to such individual; or

(B) shall, if an election was made by the employee or Member under section 8420 with respect to a different individual, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subsection.

(4) Any election under this subsection made by an employee or Member on behalf of an individual after the retirement of such employee or Member shall not be effective if—

(A) the employee or Member was married to such individual at the time of retirement; and

(B) the annuity rights of such individual based on the service of such employee or Member were then waived under subsection (a).

(c)(1) An employee or Member who is unmarried at the time of retiring under this chapter

and who later marries may irrevocably elect, in a signed writing received by the Office within 2 years after such employee or Member marries or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8445 (or of the last such surviving former spouse, if there was more than one), a reduction in the current annuity of the retired employee or Member, in accordance with section 8419(a).

(2) The election and reduction shall take effect the first day of the first month beginning 9 months after the date of marriage. Any such election to provide a survivor annuity for an individual—

(A) shall prospectively void any election made by the employee or Member under section 8420 with respect to such individual; or

(B) shall, if an election was made by the employee or Member under section 8420 with respect to a different individual, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subsection.

(d)(1) An employee or Member—

(A) who is married on the date of retiring under this chapter, and

(B) with respect to whose spouse a waiver under subsection (a) has been made,

may, during the 18-month period beginning on such date, elect to have a reduction made under section 8419 in order to provide a survivor annuity under section 8442 for such spouse.

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

(B) The amount to be deposited under this subparagraph is equal to the sum of—

(i) the difference (for the period between the date on which the annuity of the former employee or Member commences and the date on which reductions pursuant to the election under this subsection commence) between the amount paid to the former employee or Member from the Fund under this chapter and the amount which would have been paid if such election had been made at the time of retirement; and

(ii) the costs associated with providing for the election under this subsection.

The amount to be deposited under clause (i) shall include interest, computed at the rate of 6 percent a year.

(3) An annuity which is reduced pursuant to an election by a former employee or Member under this subsection shall be reduced by the same percentage as was in effect under section 8419 as of the date of the employee's or Member's retirement.

(4) Rights and obligations under this chapter resulting from an election under this subsection shall be the same as the rights and obligations which would have resulted had the election been made at the time of retirement.

(5) The Office shall inform each employee and Member who is eligible to make an election

under this subsection of the right to make such election and the procedures and deadlines applicable in making any such election.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 528.)

**§ 8417. Survivor reduction for a former spouse**

(a) If an employee or Member has a former spouse who is entitled to a survivor annuity as provided in section 8445, the reduction described in section 8419(a) shall be made.

(b)(1) An employee or Member who has a former spouse may elect, under procedures prescribed by the Office, a reduction in the annuity of the employee or Member under section 8419(a) in order to provide a survivor annuity for such former spouse under section 8445.

(2) An election under this subsection shall be made at the time of retirement or, if the marriage is dissolved after the date of retirement, within 2 years after the date on which the marriage of the former spouse to the employee or Member is so dissolved.

(3) An election under this subsection—

(A) shall not be effective to the extent that it—

(i) conflicts with—

(I) any court order or decree referred to in section 8445(a) which was issued before the date of such election; or

(II) any agreement referred to in such section 8445(a) which was entered into before such date; or

(ii) would cause the total of survivor annuities payable under sections 8442 and 8445, respectively, based on the service of the employee or Member to exceed the amount which would be payable to a widow or widower of such employee or Member under such section 8442 (determined without regard to any reduction to provide for an annuity under such section 8445); and

(B) shall not be effective, in the case of an employee or Member who is then married, unless it is made with the spouse's written consent.

The Office shall by regulation provide that subparagraph (B) may be waived for either of the reasons set forth in section 8416(a)(2).

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 530.)

**§ 8418. Survivor elections; deposit; offsets**

(a)(1) An individual who makes an election under subsection (b) or (c) of section 8416 or section 8417(b) which is required to be made within 2 years after the date of a prescribed event shall deposit into the Fund an amount determined by the Office (as nearly as may be administratively feasible) to reflect the amount by which the annuity of such individual would have been reduced if the election had been in effect since the date of retirement (or, if later, and in the case of an election under such section 8416(b), since the date the previous reduction in the annuity of such individual was terminated under paragraph (1) or (2) of section 8419(b)), plus interest.

(2) Interest under paragraph (1) shall be computed at the rate of 6 percent a year.

(b) The Office shall, by regulation, provide for payment of the deposit required under subsection (a) by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under subsection (a), except that the total reductions in the annuity of an employee or Member to pay deposits required by this section shall not exceed 25 percent of the annuity computed under section 8415 or section 8452, including adjustments under section 8462. The reduction required by this subsection, which shall be effective at the same time as the election under section 8416(b) and (c) or section 8417(b), shall be permanent and unaffected by any future termination of the marriage or the entitlement of the former spouse. Such reduction shall be independent of and in addition to the reduction required under section 8416(b) and (c) or section 8417(b).

(c) Subsections (a) and (b) shall not apply if—

(1) the employee or Member makes an election under section 8416(b) or (c) after having made an election under section 8420; and

(2) the election under such section 8420 becomes void under subsection (b)(3) or (c)(2) of such section 8416.

(d) The Office shall prescribe regulations under which the survivor of an employee or Member may make a deposit under this section.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 530; amended Pub. L. 103-66, title XI, §11004(b), Aug. 10, 1993, 107 Stat. 412.)

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103-66, §11004(b)(1), struck out “, before the expiration of the 2-year period involved,” after “into the Fund”.

Subsec. (b). Pub. L. 102-66, §11004(b)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “If the electing individual does not make the deposit required under subsection (a), the Office shall collect such amount by offset against such individual's annuity, up to a maximum of 25 percent of the net annuity otherwise payable, and the individual is deemed to consent to such offset.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 effective on first day of first month beginning at least 30 days after Aug. 10, 1993, and applicable to all deposits required under section 8339(j)(3) or (5), 8339(k)(2), or 8418 of this title, on which no payment has been made prior to such effective date, with provision for partial deposit, see section 11004(c) of Pub. L. 103-66, set out as a note under section 8339 of this title.

**§ 8419. Survivor reductions; computation**

(a)(1) Except as provided in paragraph (2), the annuity of an annuitant computed under section 8415, or under section 8452 (including subsection (a)(2) of such section, if applicable) or one-half of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management, shall be reduced by 10 percent if a survivor annuity, or a combination of survivor annuities, under section 8442 or 8445 (or both) are to be provided for.

(2)(A) If no survivor annuity under section 8442 is to be provided for, but one or more survivor



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spouse annuity, or a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity, or an insurable interest annuity may elect, no later than 18 months after the time of retirement, an annuity reduction or an increased annuity reduction to provide a current spouse annuity.

(2) A current spouse annuity based on an election under paragraph (b)(1) 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) To make an election under paragraph (b)(1) of this section, the retiree must pay, in full, a deposit determined under § 831.662, plus interest, at the rate provided under § 831.105(g), no later than 18 months after the time of retirement.

(4) If a retiree makes an election under paragraph (b)(1) 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 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) An election under paragraph (b)(1) of this section, cancels any spousal consent under § 831.611 to the extent of the election.

(6) An election under paragraph (b)(1) of this section is void unless it is filed with OPM before the retiree dies.

(7) If a retiree who had elected a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity or former spouse annuities makes an election under paragraph (b)(1) of this section which 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 not exceed the maximum allowable under § 831.641.

[51 FR 31932, Sept. 8, 1986, as amended at 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

### POST-RETIREMENT ELECTIONS

#### **§ 831.631 Post-retirement election of fully reduced annuity or partially reduced annuity to provide a current spouse annuity.**

(a) Except as provided in paragraph (c) of this section, in cases of retirees who retired before May 7, 1985, and married after retirement but before February 27, 1986:

(1) A retiree who was unmarried at the time of retirement may elect, within 1 year after a post-retirement marriage, a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity.

(2) A retiree who was married and elected a fully reduced annuity or a partially reduced annuity at the time of retirement may elect, within 1 year after a postretirement marriage, to provide a current spouse annuity. If a retiree elects a fully reduced annuity or a partially reduced annuity under this paragraph, the election must equal the election made at the time of retirement.

(3) The reduction under paragraphs (a)(1) or (a)(2) of this section commences on the first day of the month beginning 1 year after the date of the post-retirement marriage.

(b) Except as provided in paragraph (c) of this section, in cases involving retirees who retired on or after May 7, 1985, or married on or after February 27, 1986—

(1) A retiree who was unmarried at the time of retirement may elect, within 2 years after a post-retirement marriage, a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity.

(2) A retiree who was married at the time of retirement may elect, within 2 years after a post-retirement marriage—

(i) A fully reduced annuity or a partially reduced annuity to provide a current spouse annuity if—

(A) The retiree was awarded a fully reduced annuity under § 831.611 at the time of retirement; or

(B) The election at the time of retirement was made with a waiver of spousal consent in accordance with § 831.618; or

(C) The marriage at the time of retirement was to a person other than



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the spouse who would receive a current spouse annuity based on the post-retirement election; or

(ii) A partially reduced annuity to provide a current spouse annuity no greater than the current spouse annuity elected for the current spouse at retirement if—

(A) The retiree elected a partially reduced annuity under § 831.614 at the time of retirement;

(B) The election at the time of retirement was made with spousal consent in accordance with § 831.614; and

(C) The marriage at the time of retirement was to the same person who would receive a current spouse annuity based on the post-retirement election.

(3)(i) Except as provided in paragraph (b)(3)(ii) or (b)(4) of this section, a retiree making an election under this section must deposit an amount 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 the reduction elected under paragraphs (b)(1) or (b)(2) of this section had been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date when each difference occurred.

(ii) An election under this section may be made without deposit, if that election prospectively voids an election of an insurable interest annuity.

(4)(i) An election under this section is irrevocable when received by OPM.

(ii) An election under this section is effective when the marriage duration requirements of § 831.642 are satisfied.

(iii) If an election under paragraph (b)(1) or (b)(2) of this section does not become effective, no deposit under paragraph (b)(3) of this section is required.

(iv) If payment of the deposit under paragraph (b)(3) of this section is not required because the election never became effective and if some or all of the deposit has been paid, the amount paid will be returned to the retiree, or, if the retiree has died, to the person who would be entitled to any lump-sum benefits under the order of precedence in section 8342 of title 5, United States Code.

(5) Any reduction in an annuity to provide a current spouse annuity will

terminate effective on the first day of the month after the marriage to the current spouse ends, unless—

(i) The retiree elects, within 2 years after a divorce terminates the marriage, to continue the reduction to provide for a former spouse annuity; or

(ii) A qualifying court order requires the retiree to provide a former spouse annuity.

(c)(1) Qualifying court orders prevent payment of current spouse annuities to the extent necessary to comply with the court order and § 831.641.

(2) If an election under this section causes the total of all current and former spouse annuities provided by a qualifying court order or elected under § 831.612, § 831.632, or this section to exceed the maximum survivor annuity permitted under § 831.641, OPM will accept the election but will pay the portion in excess of the maximum only when permitted by § 831.641(c).

(d) The amount of the reduction to provide a current spouse annuity under this section equals 2½ percent of the first \$3600 of the designated survivor base plus 10 percent of the portion of the designated survivor base which exceeds \$3600.

[55 FR 9101, Mar. 12, 1990, as amended at 56 FR 16263, Apr. 22, 1991; 58 FR 52881, Oct. 13, 1993. Redesignated at 58 FR 52882, Oct. 13, 1993]

**§ 831.632 Post-retirement election of fully reduced annuity or partially reduced annuity to provide a former spouse annuity.**

(a)(1) Except as provided in paragraphs (b) and (c) of this section, when the marriage of a retiree who retired on or after May 7, 1985, terminates after retirement, he or she may elect in writing a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity. Such an election must be filed with OPM within 2 years after the retiree's marriage to the former spouse terminates.

(2) Except as provided in paragraphs (b) and (c) of this section, a retiree who retired before May 7, 1985, and whose marriage was terminated on or after May 7, 1985, may elect in writing a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity if the retiree while

married to the former spouse had elected, prior to May 7, 1985, a reduced annuity to provide a current spouse annuity for that spouse. Such an election must be filed with OPM within 2 years after the retiree's marriage to the former spouse terminates.

(3) Except as provided in paragraphs (b) and (c) of this section, a retiree who retired on or after May 7, 1985, and before February 27, 1986, and whose marriage terminated before May 7, 1985, may elect in writing a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity. Such an election must be made no later than February 27, 1988.

(b)(1) Qualifying court orders prevent payment of former spouse annuities to the extent necessary to comply with the court order and § 831.641.

(2) A retiree who elects a fully or partially reduced annuity to provide a former spouse annuity may not elect to provide a former spouse annuity in an amount that either—

(i) Is smaller than the amount required by a qualifying court order; or

(ii) Would cause the sum of all current and former spouse annuities based on a retiree's elections under §§ 831.611, 831.612, 831.631 and this section to exceed 55 percent of the rate of the retiree's self-only annuity if the retiree's retirement was based on a separation from a position under CSRS on or after October 11, 1962, or 50 percent of the rate of the retiree's self-only annuity if the retiree's retirement was based on a separation from a position under CSRS before October 11, 1962.

(3) An election under this section is void—

(i) In the case of a married retiree, if the current spouse does not consent to the election on a form as described in § 831.614(c) and spousal consent is not waived by OPM in accordance with § 831.618; or

(ii) To the extent that it provides a former spouse annuity for the spouse who was married to the retiree at the time of retirement in an amount that is inconsistent with any joint designation or waiver made at the time of retirement under § 831.611 (a)(1) or (a)(2); or

(iii) In the case of an election under paragraph (a)(2) of this section, to the

extent that it provides a former spouse annuity that exceeds the proportion of the retiree's annuity to which the former spouse would have been entitled as a current spouse annuity as of May 7, 1985.

(c) An election under this section is not permitted unless the retiree agrees to deposit the amount 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 the reduction elected under paragraph (a) of this section had been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date when each difference occurred.

(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 event causing the former spouse to lose eligibility, 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)(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 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

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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 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

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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

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spousal consent, if applicable, must accompany any new written election under this section.

[56 FR 65419, Dec. 17, 1991]

## § 842.609 [Reserved]

### § 842.610 Changes of election after final adjudication.

(a) Except as provided in § 842.611, § 842.612, or paragraph (b) of this section, an employee or Member may not revoke or change the election or name another survivor later than 30 days after the date of the first regular monthly payment.

(b)(1) Except as provided in § 842.605 and paragraphs (b)(2) and (b)(3) of this section, a retiree who was married at the time of retirement and has elected a self-only annuity, a one-half reduced annuity to provide a current spouse annuity, a fully reduced annuity or a one-half reduced annuity to provide a former spouse annuity, or an insurable interest rate may elect, no later than 18 months after the time of retirement, an annuity reduction or an increased annuity reduction to provide a current spouse annuity.

(2) A current spouse annuity based on an election under paragraph (b)(1) 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 § 842.613.

(3) To make an election under paragraph (b)(1) of this section, the retiree must pay, in full no later than 18 months after the time of retirement, a deposit equal to 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 paragraph (b)(1) of this section had been in effect since the time of retirement, plus—

(i) If the election under paragraph (b)(1) of this section changes the annuity from a self only annuity to a fully reduced annuity, 24.5 percent of the retiree's annual annuity, plus 6 percent interest on both; or

(ii) If the election under paragraph (b)(1) of this section changes the annuity from a self only annuity to a one-

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half reduced annuity or from a one-half reduced annuity to a fully reduced annuity, 12.25 percent of the retiree's annual annuity, plus 6 percent interest on both.

(4) If a retiree makes an election under paragraph (b)(1) 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 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 30 days after OPM sends the notice of the amount of the deposit.

(5) An election under paragraph (b)(1) of this section cancels any spousal consent under § 842.603.

(6) An election under paragraph (b)(1) of this section is void unless filed with OPM before the retiree dies.

(7) If a retiree who had elected a fully reduced annuity or a one-half reduced annuity to provide a former spouse annuity (or annuities) makes an election under paragraph (b)(1) of this section which would cause the combined current spouse annuity and former spouse annuity (or annuities) to exceed the maximum allowed under § 842.613, the former spouse annuity (or annuities) must be reduced to not exceed the maximum allowable under § 842.613.

[52 FR 2061, Jan. 16, 1987, as amended at 56 FR 65419, Dec. 17, 1991; 57 FR 54680, Nov. 20, 1992]

### § 842.611 Post-retirement election of a fully reduced annuity or one-half reduced annuity to provide a former spouse annuity.

(a) Except as provided in paragraphs (b) and (c) of this section, when a retiree's marriage terminates after retirement, the retiree may elect in writing a fully reduced annuity or a one-half reduced annuity to provide a former spouse annuity. Such an election must be filed with OPM within 2 years after the retiree's marriage to the former spouse terminates.

(b)(1) Qualifying court orders prevent payment of former spouse annuities to the extent necessary to comply with the court order and § 842.613.



(2) A retiree who elects a fully reduced annuity or a one-half reduced annuity to provide a former spouse annuity may not elect to provide a former spouse annuity in an amount that either—

(i) Is smaller than the amount required by a qualifying court order; or

(ii) Would cause the sum of all current and former spouse annuities based on a retiree's elections under §§ 842.603, 842.604, 842.612 and this section to exceed the maximum allowed under § 842.613.

(3) An election under this section is void—

(i) In the case of a married retiree, if the current spouse does not consent to the election on a form as described in § 842.606(c) and spousal consent is not waived by OPM in accordance with § 842.607; or

(ii) To the extent that it provides a former spouse annuity for the spouse who was married to the retiree at the time of retirement in an amount that is inconsistent with any joint designation or waiver made at the time of retirement under § 842.603(a)(1) or (a)(2).

(c) An election under this section is not permitted unless the retiree agrees to deposit the amount 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 the reduction elected under paragraph (a) of this section had been in effect continuously since the time of retirement, plus 6 percent annual interest (computed under § 841.107 of this chapter) from the date when each difference occurred.

(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 event causing the former spouse to lose eligibility, 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 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—

(1) Ten percent of the employee's or Member's annuity if the employee or Member elects a fully reduced annuity; or

(2) Five percent of the employee's or Member's annuity if the employee or Member elects a one-half reduced annuity.

[52 FR 2061, Jan. 16, 1987, as amended at 57 FR 54680, Nov. 20, 1992]

**§ 842.612 Post-retirement election of a fully reduced annuity or one-half reduced annuity to provide a current spouse annuity.**

(a) Except as provided in paragraph (c) of this section, a retiree who was unmarried at the time of retirement may elect, within 2 years after a post-retirement marriage, a fully reduced annuity or a one-half reduced annuity to provide a current spouse annuity.

(b) Except as provided in paragraph (c) of this section, a retiree who was married at the time of retirement may elect, within 2 years after a post-retirement marriage—

(1) A fully reduced annuity or a one-half reduced annuity to provide a current spouse annuity if—

(i) The retiree was awarded a fully reduced annuity under § 842.603 at the time of retirement; or

(ii) The election at the time of retirement was made with a waiver of spousal consent in accordance with § 842.607; or

(iii) The marriage at the time of retirement was to a person other than the spouse who would receive a current spouse annuity based on the post-retirement election; or

(2) A one-half reduced annuity to provide a current spouse annuity if—

(i) The retiree elected a one-half reduced annuity under § 842.606 at the time of retirement;

(ii) The election at the time of retirement was made with spousal consent in accordance with § 842.606; and

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(iii) The marriage at the time of retirement was to the same person who would receive a current spouse annuity based on the post-retirement election.

(c)(1) Qualifying court orders prevent payment of current spouse annuities to the extent necessary to comply with the court order and § 842.613.

(2) If an election under this section causes the total of all current and former spouse annuities provided by a qualifying court order or elected under § 842.604, § 842.611, or this section to exceed the maximum survivor annuity permitted under § 842.613, OPM will accept the election but will pay the portion in excess of the maximum only when permitted by § 842.613(c).

(d)(1) Except as provided in paragraph (d)(2) or (e)(3) of this section, a retiree making an election under this section must deposit an amount 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 the reduction elected under paragraphs (a) or (b) of this section had been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 841.606 of this chapter, from the date when each difference occurred.

(2) An election under this section may be made without deposit, if that election prospectively voids an election of an insurable interest annuity.

(e)(1) An election under this section is irrevocable when received by OPM.

(2) An election under this section is effective when the marriage duration requirements of § 843.303 of this chapter are satisfied.

(3) If an election under paragraph (a) or (b) of this section does not become effective, no deposit under paragraph (d) of this section is required.

(4) If payment of the deposit under paragraph (d) of this section is not required because the election never became effective and if some or all of the deposit has been paid, the amount paid will be returned to the retiree, or, if the retiree has died, to the person who would be entitled to any lump-sum benefits under the order of precedence in section 8424 of title 5, United States Code.

(f) Any reduction in an annuity to provide a current spouse annuity will

terminate effective on the first day of the month after the marriage to the current spouse ends, unless—

(1) The retiree elects, within 2 years after a divorce terminates the marriage, to continue the reduction to provide for a former spouse annuity; or

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

(g) The amount of the reduction to provide a current spouse annuity under this section equals—

(1) Ten percent of the employee's or Member's annuity if the employee or Member elects a fully reduced annuity; or

(2) Five percent of the employee's or Member's annuity if the employee or Member elects a one-half reduced annuity.

(h) 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.

[57 FR 54680, Nov. 20, 1992, as amended at 60 FR 14202, Mar. 16, 1995]

**§ 842.613 Division of a survivor annuity.**

(a) The maximum combined total of all current and former spouse annuities (not including any benefits based on an election of an insurable interest rate) payable based on the service of a former employee or Member equals 50 percent 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 I of part 841 of this chapter, 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 the 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 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 FERS; 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 §842.612, to provide a current spouse annuity for that spouse in the event that the former spouse annuity payments terminate.

**§ 842.614 Computation of partial annuity reduction.**

If a court order or the death of a current or former spouse results in providing less than the maximum permitted survivor reduction under §842.613, the reduction in the employee's annuity will be 10 percent of the amount of the employee's annuity on which the survivor benefits will be computed (called the "base").

**§ 842.615 Deposits required.**

(a) The deposits required to elect reduced annuities under §§ 842.610, 842.611, and 842.612 are not annuity overpayments and their collection is not subject to waiver.

(b) *Actuarial reduction in annuity of retirees who make post-retirement elections to provide a current spouse annuity or a former spouse annuity.* (1) The annuity reduction required by paragraph (b)(2) of this section applies to all retirees who are required to pay deposits under §842.611 or §842.612 and have not paid any portion of the deposit prior to October 1, 1993, or from annuity accruing before that date.

(2) Retirees described in paragraph (b)(1) of this section must have a permanent annuity reduction computed under paragraph (b)(4) of this section.

(3) A reduction under paragraph (b)(2) of this section commences on the same date as the annuity reduction under §842.611 or §842.612.

(4) The annuity reduction under paragraph (b)(2) of this section is equal to the lesser of—

(i) The amount of the deposit under §842.611 or §842.612 divided by the present value factor for the retiree's age on the commencing date of the reduction under paragraph (b)(3) of this section (plus any previous reduction(s) in the retiree's annuity required under paragraph (b)(2) or (c)(2) of this section); or

(ii) Twenty-five percent of the rate of the retiree's self-only annuity on the commencing date of the reduction (under paragraph (b)(3) of this section).

(5)(i) The reduction under paragraph (b)(2) or paragraph (c)(2) of this section terminates on the date that the retiree dies.

(ii) 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 (b)(4) or paragraph (c)(4) of this section by any cost-of-living adjustments under section 8462 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 adjusted reduction may not exceed 25 percent of the rate of the reinstated or new self-only annuity).

(c) *Post-retirement survivor election deposits that were partially paid before October 1, 1993.* (1) The annuity reduction required by paragraph (c)(2) of this section applies to all retirees who are required to pay deposits under §842.611 or §842.612 and have paid any portion (but not all) of the deposit prior to October 1, 1993, or from annuity accruing before that date.

(2) Retirees described in paragraph (c)(1) of this section must have a permanent annuity reduction computed under paragraph (c)(4) of this section.

(3) A reduction under paragraph (c)(2) of this section commences on October 1, 1993.

(4) The annuity reduction under paragraph (c)(2) of this section is equal to the lesser of—

(i) The amount of the principal balance remaining to be paid on October 1,

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1993, divided by the present value factor for the retiree's age on October 1, 1993; or

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

(5)(i) The reduction under paragraph (c)(2) of this section terminates on the date that the retiree dies.

(ii) 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 (b)(4) or paragraph (c)(4) of this section by any cost-of-living adjustments under section 8462 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 adjusted reduction may not exceed 25 percent of the rate of the reinstated or new self-only annuity).

(d) For retirees who die before October 1, 1993, any unpaid portion of the deposit required under § 842.611 or § 842.612 will be collected from the survivor annuity (for which the election required the deposit) before OPM pays any survivor annuity.

[52 FR 2061, Jan. 16, 1987, as amended at 58 FR 52883, Oct. 13, 1993]

### Subpart G—Alternative Forms of Annuities

SOURCE: 52 FR 2067, Jan. 16, 1987, unless otherwise noted.

#### § 842.701 Purpose.

This subpart explains the benefits available to employees and Members who elect alternative forms of annuity under section 8420a of title 5, United States Code.

#### § 842.702 Definitions.

In this subpart—

*Alternative form of annuity* means the benefit elected under § 842.705.

*Current spouse annuity* has the same meaning as in § 842.602.

*Date of final adjudication* means the date 30 days after the date of the first regular monthly payment as defined in § 831.603.

*Former spouse annuity* has the same meaning as in § 842.602.

*Present value factor* represents the amount of money (earning interest at an assumed rate) required at the time of retirement to fund an annuity that (a) 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; and (b) 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 for valuation of the System, based on dynamic assumptions. The present value factors are unisex factors obtained by averaging sex-distinct present value factors, weighted by the total dollar value of annuities typically paid to new retirees at each age.

*Time of retirement* has the same meaning as in § 842.602.

[52 FR 2067, Jan. 16, 1987, as amended at 53 FR 11635, Apr. 8, 1988]

#### § 842.703 Eligibility.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, an employee or Member who retires under any provision of subchapter II of chapter 84 of title 5, United States Code, may elect an alternative form of annuity instead of any other benefits under the subchapter.

(b) An employee or Member who, at the time of retirement has a former spouse who is entitled to a portion of the employee's or Member's retirement benefits or a former spouse annuity under a court order acceptable for processing as defined by § 838.103 of this chapter or a qualifying court order as defined in § 838.1003 of this chapter may not elect an alternative form of annuity.

(c) An employee or Member who is married at the time of retirement may not elect an alternative form of annuity unless the employee's or Member's spouse specifically consents to the election. OPM may waive spousal consent only under the conditions prescribed by § 842.607.

(d)(1)(i) An individual whose annuity commences after December 1, 1990, and