

Department of State

§ 20.4

Creditable service or *service* means employment or other periods that are counted under sections 816, 817, or 854 in determining retirement benefits.

Disability annuitant means a participant in FSRDS or FSPS entitled to a disability annuity under section 808 of the Act or subchapter V, chapter 84, title 5 U.S.C., and a *disability annuity* means a Foreign Service annuity computed under those sections.

FSRDS means the Foreign Service Retirement and Disability System established by subchapter I, chapter 8, of the Act.

FSPS means the Foreign Service Pension System established by subchapter II, chapter 8, of the Act.

Former spouse means a former wife or husband of a participant or former participant who was married to such participant for not less than 10 years during service of the participant which is creditable under chapter 8 of the Act with at least 5 years occurring while the employee was a member of the Foreign Service and who retired from the Foreign Service Retirement System.

Full annuity equals the annuity the former participant would be eligible to receive except for deductions made to provide survivor benefits or because of payment of a portion of the annuity to others.

Participant means a person who contributes to the Fund identified in §20.2. Such person may participate in either FSRDS or FSPS.

Principal means a participant or former participant whose service forms the basis for a benefit for a former spouse under this part.

Pro rata share, in the case of a former spouse of a participant or former participant, means the percentage obtained by dividing the number of months during which the former spouse was married to the participant during the creditable service of the participant by the total number of months of such creditable service. In the total period, 30 days constitutes a month and any period of less than 30 days is not counted. When making this calculation for a former spouse married to a participant during a period the participant earned extra service credit under section 817 of the Act, the number of months of such extra service credit

earned during that period of the marriage shall be added to the total number of months of the marriage.

§ 20.2 Funding.

Benefits under this part are paid from the Fund maintained by the Secretary of the Treasury pursuant to section 802 of the Act but are not authorized to be paid except to the extent provided therefor. Appropriations for such Fund are authorized by section 821(a) of the Act.

§ 20.3 Qualifications.

To be eligible for retirement or survivor benefits under this part, a former spouse must—

(a) Have been a former spouse on February 14, 1981;

(b) After becoming a former spouse, not have remarried before attaining age 55;

(c) In the case of any retirement benefit under §20.5; elect this benefit instead of any survivor annuity for which the former spouse may simultaneously be eligible under this or another retirement system for Government employees; and

(d) Submit an application to the Department of State by June 22, 1990, in accordance with §20.9 unless that date is extended as authorized by that section. The deadline for submission of an application for survivor benefits under §20.5 will be deemed to have been met if the former spouse submits an application for retirement benefits within the deadline.

§ 20.4 Retirement benefits.

(a) *Type of benefits.* (1) A former spouse who meets the qualification requirements of §20.3 is entitled to a share of any Foreign Service annuity (other than a disability annuity) or any supplemental annuity computed under section 806(a), 823 or 824 of the Act to which the principal is entitled under FSRDS and to any Foreign Service annuity (other than a disability annuity) or annuity supplement computed under section 824 or 855 of the Act of 5 U.S.C. 8415 to which the principal is entitled under FSPS.

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(2) A former spouse of a disability annuitant is entitled to a share of benefits to which the annuitant would qualify under paragraph (a) of this section, he or she not been disabled based on the actual age and service of the annuitant.

(b) *Share.* The share of a participant's benefits to which a qualified former spouse is entitled is—

(1) 50 percent of the benefits described in § 20.4(a) if the former spouse was married to the participant throughout the latter's creditable service; or

(2) A pro rata share of 50 percent of such benefits if the former spouse was not married to the participant throughout such creditable service.

(c) *Reduction of benefits.* If retirement benefits of a principal are reduced because of reemployment, attainment of eligibility for Social Security benefits or for any other reason, the amount of the share payable to a former spouse is correspondingly reduced during the period of the reduction.

(d) *Commencement, Termination and Suspension.* (1) Entitlement to retirement benefits under this section (except for a former spouse of a disability annuitant) shall commence on the latter of—

(i) The day the principal becomes entitled to benefits described in § 20.4(a); or

(ii) December 22, 1987.

(2) Entitlement to retirement benefits under this section for a former spouse of a disability annuitant shall commence on the latter of—

(i) The date the principal would qualify for benefits (other than a disability annuity) described in § 20.4(a) on the basis of the principal's actual age and service;

(ii) The date the disability annuity begins; or

(iii) December 22, 1987.

(3) Entitlement to retirement benefits under this section shall terminate or be suspended on the earlier of—

(i) Last day of the month before the former spouse dies or remarries before attaining age 55;

(ii) Date benefits of the principal terminate or are suspended because of death, recall, reemployment, recovery from disability or for any other reason.

(4) Entitlement to benefits under this section shall be resumed for a former spouse, following their suspension, or the date they are resumed for the principal.

§ 20.5 Survivor benefits.

(a) *Type of benefits.* A former spouse who meets the eligibility requirements of § 20.3 is entitled to survivor benefits equal to one of the following; whichever is applicable:

(1) 55 percent of the full annuity to which the principal was entitled on the commencement or recomputation date of the annuity in the case of a principal who dies while in receipt of a Foreign Service annuity computed under section 806, 808, 823, 824, or 855 of the Act of 5 U.S.C. 8415;

(2) 55 percent of the annuity to which the principal was entitled at death in the case of a principal who dies while in receipt of a Foreign Service annuity computed under 5 U.S.C. 8452;

(3) 55 percent of the full annuity to which the principal would have been entitled if he or she retired (or returned to retirement status) on the date of death computed—depending on the provision that would be used to compute an annuity for a surviving spouse of the principal—under section 806(a), 823, 824, or 855(b) of the Act of 5 U.S.C. 8415 and using the actual service of the principal, in the case of a principal who dies while in active service, including service on recall or reemployment while annuity is suspended or reduced; or,

(4) 55 percent of the full annuity computed under 5 U.S.C. 8413(b) that the principal could have elected to receive commencing on the date of death or, if later, commencing on the date the principal would have attained the minimum retirement age described in 5 U.S.C. 8412(h), in the case of a principal while entitled to a deferred annuity under 5 U.S.C. 8413(b), but before commencement of that annuity. A survivor annuity under this paragraph may not commence before the date the principal would have attained the minimum retirement age.

(b) *Effect of Election of Alternate Form Annuity.* If a principal elects an alternate form annuity under section 829 of