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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, 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 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.