

SUBCHAPTER B—PERSONNEL

PART 11—APPOINTMENT OF FOREIGN SERVICE OFFICERS

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AUTHORITY: 22 U.S.C. 3926, 3941.

§ 11.1 Junior Foreign Service officer career candidate appointments.

(a) *General considerations*—(1) *Authority*. Pursuant to sections 302 and 306 of the Foreign Service Act of 1980 (hereinafter referred to as the Act), all Foreign Service officers shall be appointed by the President, by and with the advice and consent of the Senate. All appointments shall be made to a class and not to a particular post. No person shall be eligible for appointment as a Foreign Service officer unless that person is a citizen of the United States. Such appointment is initially to career candidate status with subsequent commissioning to career status governed by the provisions of Volume 3 (Personnel), Foreign Affairs Manual, section 570. In accordance with section 102(b) of the Act, all references in these regulations to Foreign Service officers shall, with respect to the United States Information Agency, be deemed to refer to Foreign Service information officers.

(2) *Veterans' preference*. Pursuant to section 301 of the Act, and notwithstanding the provisions of section 3320 of title 5 of the United States Code, the

fact that an applicant is a veteran or disabled veteran, as defined in section 2108 (3A), (3B), or (3C) of such title, shall be considered as an affirmative factor in the selection of candidates for appointment as Foreign Service officer career candidates.

(3) *Policy*. Appointment as a Junior Foreign Service officer Career Candidate of class 6, 5, or 4, is governed by these regulations. Successful applicants will be appointed as Career Candidates for a period not to exceed 5 years. Under precepts of the Commissioning and Tenure Board, Career Candidates may be granted tenure and converted to career Foreign Service officer status. Those who are not granted tenure prior to the expiration of their Career Candidate appointments will be separated from the Career Candidate program no later than the expiration date of their appointments. Separated candidates who originally were employees of a department or agency will be entitled to reemployment rights in their former department or agency in accordance with section 310 of the Act.

(b) *Written examination*. The following regulations apply to the written examination.

(1) *Purpose*. The written examination is designed to enable the Board of Examiners for the Foreign Service to test the applicant's intelligence, breadth and quality of knowledge, and understanding in relation to the requirements of Foreign Service work.

(2) *Eligibility*. Prior to each written examination, the Board of Examiners will establish a closing date for the receipt of applications for designation to take the examination. No person will be designated to take the examination who has not, as of that closing date, filed an application with the Board. To be designated to take the written examination, an applicant, as of the date of the examination, must be a citizen of the United States and at least 20 years of age.

(3) *When and where given*. The written examination will be given periodically, normally at least once a year, in designated cities in the United States and

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at Foreign Service posts, on dates established by the Board of Examiners and publicly announced.

(4) *Grading.* The several parts of the written examination will be weighted and graded according to standards established by the Board of Examiners. The number of candidates who pass each written examination will be governed by the projected hiring needs of the participating foreign affairs departments and agencies in subsequent years.

(c) *Oral examination.* The following regulations apply to the oral examination:

(1) *Purpose.* The oral examination is designed to enable the Board of Examiners for the Foreign Service to test the candidate's competence to perform the work of a Foreign Service officer at home and abroad, potential for growth in the Foreign Service, and suitability to serve as a representative of the United States abroad. The oral examination for the Junior Career Candidate Program will consist of an assessment procedure publicly announced by the Board of Examiners and herein-after referred to as the oral examination.

(2) *Eligibility—(i) Through written examination.* (A) Candidates whose weighted score on the written examination is at or above the passing level set by the Board of Examiners will be eligible for selection to take the oral examination. All eligible candidates normally will be invited to take the oral examination.

(B) Should the total number of eligible candidates substantially exceed the projected hiring needs of the Foreign Service, the Board of Examiners may establish and publicly announce a higher written examination score than the passing level as the basis for selection to take the oral examination.

(C) The Board of Examiners may authorize special consideration to be given in the selection of candidates, from among those eligible, for the purpose of meeting language requirements, Affirmative Action goals, or for other purposes which the Board with the concurrence of the prospective hiring agencies may from time to time approve and publicly announce.

(D) The nature and applicability of all criteria utilized to select eligible candidates to take the oral examination will be developed by the Board of Examiners in consultation with the prospective hiring agencies and publicly announced in advance of each examination by the Board.

(E) Candidates who are selected to take the oral examination will be notified of the period of time after the date of the written examination, as determined by the Board of Examiners, within which the oral examination must be conducted. That period will normally be 1 year, but it may be extended or shortened in special circumstances by the Board. The candidacy of anyone whose candidacy has not been extended by the Board, and who has not again passed the written examination in the meantime, will be terminated 2 years after the end of the month in which the written examination was held. Time spent outside the United States and its territories, for reasons acceptable to the Board of Examiners, will not be counted against this 2-year period. The candidacy of anyone for whom the 2-year period is extended by the Board because of being abroad will be terminated automatically if the candidate fails to appear for the oral examination within 3 months after first returning to the United States. If a candidate fails to appear for the oral examination on an agreed date within the period of eligibility without an excuse acceptable to the Board, the candidacy will automatically terminate.

(ii) *Through affirmative action.* Members of the minority groups specified by the Equal Opportunity Act of 1972, as amended, may be selected by the Board of Examiners for admission to the oral examination in accordance with the Affirmative Action Programs of the participating departments and agencies. Such candidates must be at least 21 years of age, citizens of the United States, and holders of at least a bachelor's degree from an accredited college or university. Affirmative Action Program applicants will be evaluated on a highly competitive basis, in accordance with criteria established by the Board in conjunction with the participating departments and agencies

and publicly announced, to determine those to be selected for the oral examination.

(iii) *Through the mustang program.* (A) Employees of the Department of State in classes FS-9 through FS-4 and grades GS-1 through GS-12 who are at least 21 years of age and who have at least 3 years of service with the Department may be selected by the Board of Examiners for admission to the oral examination for the Junior Career Candidate Program in accordance with the Mustang Program of the Department. Such Mustang candidates must: (1) Complete successfully an appropriate Foreign Service Institute-sponsored or approved university or correspondence course relevant to officer-level responsibility in the chosen Foreign Service field of specialization; (2) submit an autobiography of approximately 1000 words; and (3) be recommended by a Qualifications Evaluation Panel of the Board of Examiners for selection for the oral examination.

(B) Employees of the Department of State in classes FS-3 and GS-13 and above are eligible for the Mid-Level Career Candidate Program and should apply under that program if they wish to be considered for conversion to Foreign Service officer status (see § 11.10).

(iv) *Through the upward mobility program.* Admission to the oral examination through the Upward Mobility Program of the United States Information Agency is governed by procedures established by that agency.

(3) *When and where given.* The oral examination cycle will be held each year in Washington, DC, and in selected cities in the United States. If circumstances permit, oral examinations may also be held at selected Foreign Service posts when approved by the Board of Examiners.

(4) *Examining panel.* The oral examination will be given by a panel of deputy examiners approved by the Board of Examiners from a roster of Foreign Service officers; Foreign Service information officers; career officers from the Department of State, the United States Information Agency, and the Department of Commerce; and qualified private citizens who, by prior service as members of departmental or agency Foreign Service selection

boards or other appropriate activities, have demonstrated special qualifications to serve as deputy examiners. Service as a deputy examiner shall be limited to a maximum of 5 years, unless a further period is specifically authorized by the Board. Examination panels shall be chaired by a career officer of the Foreign Service. Determinations of duly constituted panels of deputy examiners are final unless modified by specific action of the Board of Examiners.

(5) *Grading.* Candidates taking the oral examination will be graded numerically according to standards established and publicly announced by the Board of Examiners. The candidacy of anyone whose score is at or above the passing level set by the Board will be continued. The candidacy of anyone whose score is below the passing level will be terminated and may not be considered again until the candidate has passed a new written examination. An Affirmative Action, Mustang, or Upward Mobility candidate who fails the oral examination may not be considered again until 1 year after that date.

(d) *Background investigation.* Candidates who pass the oral examination will be eligible for selection by the Board for the background investigation. The background investigation shall be conducted to determine the candidate's suitability for appointment to the Foreign Service. Should the total number of eligible candidates substantially exceed the anticipated needs of the Foreign Service, the Board of Examiners may authorize priorities to be established, on the basis of combined written and oral examination scores and Affirmative Action considerations, for scheduling the background investigation.

(e) *Medical examination—(1) Eligibility.* Candidates who pass the oral examination, and their dependents, will be eligible for selection by the Board of Examiners for the medical examination.

(2) *Purpose.* The medical examination shall be conducted to determine the candidate's physical fitness to perform the duties of a Foreign Service officer on a worldwide basis and, for candidates and dependents, to determine the presence of any physical, neurological, or mental condition of such a

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nature as to make it unlikely that they would be able to function on a worldwide basis.

(3) *Conduct.* The medical examination may be conducted by medical officers of the Department of State, the Armed Forces, the Public Health Service, accredited colleges and universities, or by private physicians.

(4) *Determination.* The Medical Director of the Department of State will determine, on the basis of the report of the physician(s) who conducted the medical examination, whether the candidate has met the required medical standards for appointment (see section 1930, Volume 3, Foreign Affairs Manual).

(5) *Waiver of worldwide availability requirement.* When authorized and requested by the candidate, the Director General of the Foreign Service, or the Director General's delegatee, will review the case of any Department of State Foreign Service candidate who has been denied an unlimited medical clearance for assignment worldwide, and determine whether or not the candidate should be appointed despite the medical disqualification. Decisions of the Director General of the Foreign Service, or the Director General's delegatee, are final and are not subject to further appeal by the candidate.

(f) *Final review panel.* After the results of the medical examination and background investigation are received, the candidate's entire file will be reviewed and graded by a Final Review Panel, consisting of two or more deputy examiners of the Board of Examiners. Candidates who have completed the examination process; have passed their medical examination, or have obtained a waiver from the Director General of the Foreign Service, or his or her delegatee, or the equivalent in accordance with the procedures of the other participating agencies; and on the basis of their background investigation, have been found suitable to represent the United States abroad, will have their names placed on the functional rank-order register(s), or a special register, for the agency or agencies for which they have been found qualified. Thereafter, they will be considered for employment based on the needs of the individual foreign affairs

agencies. The candidacy of any candidate who is determined by the Final Review Panel to be unqualified for appointment shall be terminated and the candidate so informed.

(g) *Certification for appointment—(1) Eligibility.* (i) A candidate will not be certified as eligible for appointment as a Foreign Service Officer Career Candidate of class FS-6 unless that candidate is at least 21 years of age and a citizen of the United States.

(ii) Career Candidate appointments shall be made before the candidate's 60th birthday. Appointments by the United States Information Agency shall be made before the candidate's 58th birthday. The maximum age for appointment under this program is based on the requirement that all career candidates shall be able to: (A) Complete at least two full tours of duty, exclusive of orientation and training, (B) complete the requisite eligibility period for tenure consideration, and (C) complete the requisite eligibility period to receive retirement benefits, prior to reaching the mandatory retirement age of 65 prescribed by the Act.

(iii) A candidate may be certified as eligible for direct appointment to classes FS-5 or FS-4 if the Board of Examiners determines in accordance with published criteria that, in addition to meeting the requirements for class FS-6, the candidate has additional special experience and skills for which there is a need in the Foreign Service.

(iv) Recommended candidates who meet the requirements of this section will be certified for appointment by the Board, in accordance with the needs of the foreign affairs agencies, in the order of their standing on their respective registers.

(2) *Functional rank-order registers.* The Board of Examiners may maintain separate rank-order registers for Career Candidates in administrative, consular, economic, and political functions of the Department of State; for Career Candidates in the information/cultural function of the United States Information Agency; for Career Candidates in the foreign commercial function of the Department of Commerce; and for functions of other participating foreign affairs agencies. Appointments from

each functional register will be made in rank order according to the needs of the relevant agency.

(3) *Special programs.* (i) Qualified minority candidates who apply and qualify under the Department of State Affirmative Action Junior Officer Program (AAJOP) may be placed on a separate register and offered appointment from that register to meet Affirmative Action hiring goals established by the Secretary.

(ii) Qualified minority candidates who apply and qualify under the Comprehensive Minority Recruitment and Training Program (COMRAT) of the United States Information Agency may be placed on a separate register and offered appointment from that register in accordance with the Affirmative Action Program established by that agency.

(iii) Mustang and Upward Mobility candidates who are career employees of the Department of State or the United States Information Agency will be certified by the Board of Examiners for direct appointment on an individual basis after satisfactorily completing all aspects of the examination process.

(4) *Postponement of entrance on duty.* Postponement of entrance on duty because of civilian Federal Government service abroad (to a maximum of 2 years of such service), including Peace Corps volunteer service, or required active regular or reserve military service (to a maximum of the limit of such required service), may be authorized by the Board.

(5) *Foreign language requirement.* A candidate may be certified for appointment to classes FS-6, FS-5, or FS-4 without first having passed an examination in a foreign language, but the appointment will be subject to the condition that the newly appointed Career Candidate may not be converted to career Foreign Service officer status unless, within a specified period of time, adequate proficiency in a foreign language is achieved. For limitations on promotion, see section 874, Volume 3, Foreign Affairs Manual.

(h) *Termination of eligibility—(1) Time limit.* Candidates who have qualified but have not been appointed because of lack of openings will be removed from the rank-order register 18 months after

the date of placement on the rank-order register. Time spent in civilian Federal Government service abroad (to a maximum of 2 years of such service), including Peace Corps volunteer service, or in required active regular or reserve military service (to a maximum of the limit of such required service), will not be counted as part of the 18-month eligibility period.

(2) *Extension.* The Board of Examiners may extend the eligibility period when such extension is, in its judgment, justified in the interest of the Foreign Service.

(i) *Travel expenses.* The travel and other personal expenses of candidates incurred in connection with the written and oral examinations will not be borne by the Government. However, the participating foreign affairs departments and agencies may issue round-trip invitational travel orders to bring candidates to Washington, DC, at Government expense, when it is determined by the agencies that this is necessary in the interest of the Foreign Service.

(Secs. 206(a) and 301(b), Foreign Service Act of 1980 (secs. 206(a) and 301(b), Pub. L. 96-465, 94 Stat. 2079 and 2083 (22 U.S.C. 3926 and 3941)))

[48 FR 13162, Mar. 30, 1983, as amended at 67 FR 46109, July 12, 2002]

§ 11.2 Written examination for appointment to class 7 or 8.

The Board of Examiners for the Foreign Service has established the following rules regarding the written examination:

(a) *When and where given.* The written examination will be given annually or semiannually, if required, in designated cities in the United States and at Foreign Service posts on dates established by the Board of Examiners for the Foreign Service. Applicants must indicate in their applications whether they are applying for the Department of State or for the U.S. Information Agency. Candidates who pass the written examination successfully may request a transfer of their applications to the other agency.

(b) *Designation to take written examination.* No person will be permitted to take a written examination for appointment as a Foreign Service officer

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or Foreign Service information officer who has not been specifically designated by the Board of Examiners to take that particular examination. Prior to each written examination, the Board will establish a closing date for the receipt of applications for designation to take the examination. No person will be designated for the examination who has not, as of that closing date, filed an application with the Board. To be designated for the written examination, a candidate, as of the date of the examination, must be a citizen of the United States and shall be at least 21 years of age, except that an applicant who has been awarded a bachelor's degree by a college or university, or has successfully completed the junior year at a college or university, may qualify if at least 20 years of age.

(c) *Content.* The written examination is designed to permit the Board to test the candidate's intelligence, breadth and quality of knowledge, and understanding. It will consist of three parts: (1) A general ability test, (2) an English expression test, and (3) a general background test.

(d) *Grading.* The several parts of the written examination are weighted in accordance with the rules established by the Board of Examiners.

(22 U.S.C. 1221 *et seq.*)

[37 FR 19356, Sept. 20, 1972, as amended at 38 FR 13640, May 24, 1973]

§ 11.3 Oral examination for appointment to class 7 or 8.

The Board of Examiners for the Foreign Service has established the following rules regarding the oral examination:

(a) *When and where given.* The oral examination will be given throughout the year at Washington and periodically in selected cities in the United States and, if circumstances permit, at selected Foreign Service posts.

(b) *Eligibility.* If a candidate's weighted average on the written examination is 70 or higher, the candidate will be eligible to take the oral examination. Candidates eligible for the oral examination will be given an opportunity and will be required to take the oral examination within 9 months after the date of the written examination. If a

candidate fails to appear for the oral examination on an agreed date within the 9-month period, the candidacy will automatically terminate, except that time spent outside the United States and its territories, for reasons acceptable to the Board of Examiners, will not be counted against the 9-month period. The candidacy of anyone for whom the 9-month period is extended because of being abroad will be automatically terminated if the candidate fails to appear for the oral examination within 3 months after first returning to the United States: *Provided*, That the candidacy of anyone who has not returned and been examined in the meantime will be canceled 2 years after the end of the month in which the written examination was held.

(c) *Examining process.* (1) The oral examination will be given by a panel of deputy examiners approved by the Board of Examiners from a roster of Foreign Service officers, officers from the Department of State, and other Government agencies, and qualified private citizens who by prior service as members of selection boards or through other appropriate activities have demonstrated special qualifications for this work. Service as deputy examiners shall be limited to a maximum of 5 years, unless a further period is specifically authorized by the Board.

(2) The examination will be conducted in the light of all available information concerning the candidate and will be designed to determine the candidate's: (i) Competence to perform the work of a Foreign Service officer at home and abroad; (ii) potential for growth in the Service; and (iii) suitability to serve as a representative of the United States abroad. Panels examining candidates for the Department of State will be chaired by a Foreign Service officer of the Department. Panels examining candidates for the U.S. Information Agency will be chaired by a Foreign Service officer of that Agency. Determinations of duly constituted panels of deputy examiners are final, unless modified by specific action of the Board of Examiners for the Foreign Service.

(3) *Grading:* Candidates appearing for the oral examination will be graded

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“recommended” or “not recommended.” If recommended, the panel will assign a grade which will be advisory to the Final Review Panel in determining the candidate’s standing on the rank-order register of eligibles. The candidacy of anyone who is graded “not recommended” is automatically terminated and may not be considered again until the candidate has passed a new written examination.

(4) An investigation shall be conducted of candidates who have been graded “recommended” by the oral examining panel to determine loyalty to the Government of the United States and attachment to the principles of the Constitution.

(22 U.S.C. 1221 *et seq.*)

[37 FR 19356, Sept. 20, 1972, as amended at 38 FR 13640, May 24, 1973]

§ 11.4 Medical examination for appointment to class 7 or 8.

The Board of Examiners for the Foreign Service has established the following rules regarding the medical examination of candidates.

(a) A candidate graded “recommended” on the oral examination will be eligible for the physical examination.

(b) The medical examination is designed to determine the candidate’s physical fitness to perform the duties of a Foreign Service officer on a worldwide basis and to determine the presence of any physical, nervous, or mental disease or defect of such a nature as to make it unlikely that the candidate would become a satisfactory officer. The Executive Director of the Board of Examiners for the Foreign Service, with the concurrence of the Deputy Assistant Secretary for Medical Services, may make such exceptions to these physical requirements as are in the interest of the Service. All such exceptions shall be reported to the Board of Examiners for the Foreign Service at its next meeting.

(c) The medical examination will be conducted by medical officers of the Armed Forces, the Public Health Service, the Department, accredited colleges and universities, or, with the approval of the Board of Examiners, by private physicians.

(d) The Deputy Assistant Secretary for Medical Services will determine, on the basis of the report of the physician(s) who conducted the medical examination, whether the candidate has met the standards set forth in paragraph (b) of this section.

(22 U.S.C. 1221 *et seq.*)

[37 FR 19356, Sept. 20, 1972]

§ 11.5 Certification for appointment to class 7 or 8.

(a) Candidates will not be certified as eligible for appointment as Foreign Service officers of class 8 unless they are at least 21 years of age, is a citizen of the United States, and, if married, married to a citizen of the United States. A candidate may be certified as eligible for direct appointment to class 7 if, in addition to meeting these specifications, the candidate also has additional qualifications of experience, education, and age which the Board of Examiners for the Foreign Service currently defines as demonstrating ability and special skills for which there is a need in the Foreign Service. Recommended candidates who meet these requirements will be certified for appointment, in accordance with the needs of the Service, in the order of their standing on their respective registers.

(b) Separate registers for Department of State candidates will be maintained for the administrative, consular, commercial/economic, and political functional specialties. Successful candidates for the U.S. Information Agency will have their names placed on a separate rank-order register and appointments will be made according to the needs of the Agency. Postponement of entrance on duty for required active military service, or required alternative service, civilian Government service abroad (to a maximum of 2 years of such civilian service), or Peace Corps volunteer service, will be authorized. A candidate may be certified for appointment to class 7 or 8 without first having passed an examination in a foreign language, but the appointment will be subject to the condition that the newly appointed officer may not receive more than one promotion unless,

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within a specified period of time, adequate proficiency in a foreign language is achieved.

(22 U.S.C. 1221 *et seq.*)

[37 FR 19356, Sept. 20, 1972, as amended at 38 FR 13640, May 24, 1973]

§ 11.6 Final Review Panel.

After the results of the medical examination and background investigation are received, the candidate's entire file will be reviewed by a Final Review Panel, consisting of two or more deputy examiners. Candidates who have been graded "recommended" by oral examining panels, who have passed their medical examination, and who, on the basis of investigation have been found to be loyal to the Government of the United States and personally suitable to represent it abroad, will have their names placed on a rank-order register for the functional specialty for which they have been qualified. Their standing on the register will be determined by the Final Review Panel after taking into account the grade assigned by the oral examining panel and any information developed subsequent to the oral examination concerning the applicant. The candidacy of anyone who is determined by the Final Review Panel to be unqualified for appointment shall be terminated and the candidate so informed.

(22 U.S.C. 1221 *et seq.*)

[37 FR 19356, Sept. 20, 1972]

§ 11.7 Termination of eligibility.

(a) Candidates who have qualified but have not been appointed because of lack of vacancies will be dropped from the rank-order register 30 months after the date of the written examination: *Provided, however,* That reasonable time spent in civilian Government service abroad (to a maximum of 2 years such service), including service as a Peace Corps volunteer, in required active military service, or in required alternative service, subsequent to establishing eligibility for appointment will not be counted in the 30-month period.

(b) The Chairman of the Board of Examiners may extend the eligibility period when such extension is, in his judgment, justified in the interests of

the Service. The Chairman shall report the approved extensions to the Board of Examiners.

(22 U.S.C. 1221 *et seq.*)

[37 FR 19356, Sept. 20, 1972]

§ 11.8 Travel expenses of candidates.

The travel and other personal expenses of candidates incurred in connection with the written and oral examinations will not be borne by the Government, except that the Department may issue round-trip invitational travel orders to bring candidates to Washington at Government expense when it is determined that it is necessary in ascertaining a candidate's qualifications and adaptability for appointment.

(22 U.S.C. 1221 *et seq.*)

[37 FR 19356, Sept. 20, 1972]

§ 11.10 Mid-level Foreign Service officer career candidate appointments. [Reserved]

§ 11.11 Mid-level Foreign Service officer career candidate appointments.

(a) *General considerations*—(1) *Authority.* Pursuant to sections 302 and 306 of the Foreign Service Act of 1980 (hereinafter referred to as the Act), all Foreign Service officers shall be appointed by the President, by and with the advice and consent of the Senate. All appointments shall be made to a class and not to a particular post. No person shall be eligible for appointment as a Foreign Service officer unless that person is a citizen of the United States. Such appointment is initially to career candidate status, with subsequent commissioning to career status governed by Volume 3 (Personnel), Foreign Affairs Manual section 570.

(2) *Veterans' preference.* Pursuant to section 301 of the Act, and notwithstanding the provisions of section 3320 of title 5 of the United States Code, the fact that an applicant is a veteran or disabled veteran, as defined in section 2108(3A), (3B), and (3C) of such title, shall be considered as an affirmative factor in the selection of candidates for appointment as Foreign Service officer career candidates (22 U.S.C. 1234).

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(3) *Purpose and policy.* The Mid-Level Career Candidate Program of the Department of State supplements the Junior Foreign Service Officer Career Candidate Program to meet total requirements for Foreign Service officers at the mid-level. The purposes of the Mid-Level Program are: (i) To provide expanded opportunities and upward mobility for outstanding members of the Foreign Service with high potential who have been serving with particular success in other occupational categories; (ii) to permit the recruitment of a limited number of highly skilled and qualified personnel from outside the Foreign Service to meet specific needs which cannot be met from within the career Service; and (iii) to assist in meeting the Affirmative Action goals of the Department of State. This section governs appointments to generalist occupational categories (that is, administrative, consular, economic and political) at classes FS-3, 2, or 1. All appointments above FS-1, regardless of occupational category, are governed by § 11.30 (to be supplied). Appointments to Specialist occupational categories below the Senior Foreign Service are governed by § 11.20. Successful applicants under the Mid-Level Program will be appointed to career candidate status for a period not to exceed 5 years. Under precepts of the Commissioning and Tenure Board, career candidates may be granted tenure and converted to career Foreign Service officer status. Those who are not granted tenure prior to the expiration of their career candidate appointments will be separated from the Career Candidate Program no later than the expiration date of their appointments. As provided in section 310 of the Act, such separated candidates who had originally been employed by the Department of State with the consent of the head of their agency shall be entitled to reemployment rights in their former agency under section 3597 of title 5, United States Code.

(4) *Sources of candidates—(i) Department.* The great majority of mid-level entrants will be career employees of the Department of State and the Foreign Service of proven ability who possess high potential for advancement. On the basis of the needs of the Foreign

Service, the Department will approve the mid-level appointment of Foreign Service and Civil Service personnel on its rolls who apply, for whom the Bureau of Personnel issues a certificate of need, and who are found qualified by the Board of Examiners for the Foreign Service.

(ii) *Other Federal Government agencies.* Personnel with similar qualifications from other Federal Government agencies may also apply for the Mid-Level Program based on agreements between the Department and those agencies.

(iii) *Other.* Other candidates may be drawn from non-Government sources, including minority and women applicants for the Department's Mid-Level Affirmative Action Program.

(b) *Eligibility requirements—(1) Citizenship.* Each person appointed as a Foreign Service mid-level career candidate must be a citizen of the United States.

(2) *Service.* (i) On the date of application, a candidate must have completed a minimum of 9 years of professional work experience, including at least 3 years of service in a position of responsibility in a Federal Government agency or agencies. For this purpose, a position of responsibility is defined as one in the Foreign Service at class FS-5, in the Civil Service at GS-9, or in the Armed Forces as first lieutenant or lieutenant junior grade, or higher. Academic studies, particularly those related to Foreign Service work, may be substituted for part of the required experience. The duties and responsibilities of the position occupied by the candidate must have been similar to or closely related to that of a Foreign Service officer in terms of knowledge, skills, abilities, and overseas work experience. In addition, a candidate must currently be in, or have been in, a grade or class comparable to FS-4 or higher.

(ii) Candidates from outside the Department who at the time of application lack 3 years of service in a position of responsibility as defined in the preceding paragraph may, however, be considered if they are found to possess a combination of educational background, employment, experience, and skills needed by the Foreign Service at the mid-level.

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(3) *Age.* All career candidate appointments shall be made before the candidate's 60th birthday. The maximum age for appointment under this program is based on the requirement that all career candidates shall be able to (i) complete at least two full tours of duty, exclusive of orientation and training, (ii) complete the requisite eligibility period for tenure consideration, and (iii) complete the requisite eligibility period to receive retirement benefits, prior to reaching the mandatory retirement age of 65 prescribed by the Act.

(4) *Certification of need.* Before the Board of Examiners may process a candidacy, the Director General of the Foreign Service must certify that there is a continuing, long-term requirement, consistent with the projections of personnel flows and needs mandated by section 601(c)(2) of the Act, for a combination of professional work experience, educational background, skills, and capabilities possessed by the applicant which cannot reasonably be met from within the ranks of the career service, including by special training of career personnel and/or limited appointments pending completion of such training, if feasible. No applicant may be appointed in an occupational category or at a class level for which the Director General has not certified a need. Such certifications shall take into full account the latest published skills resources inventory and shall be based on a written assessment of the assignment and promotion effects on career members of the Foreign Service. A separate certification of need is not required for applicants under the Mid-Level Affirmative Action Program, as the hiring goals established by the Secretary constitute the certification for applicants under that Program. The exclusive employee representative will be advised promptly in writing on request of the number, nature, and dates of the certifications of need issued since the last request, including an affirmation that each such issuance has been in accordance with the requirements of this section.

(c) *Recruitment*—(1) *From within the Department.* It is the Department's policy to encourage eligible personnel on its rolls to apply for appointment as

Mid-Level Foreign Service officer career candidates including, in particular, the following categories: (i) Members of the Foreign Service whose performance has been consistently of a high caliber, and whose background, experience, and general qualifications indicate that they can compete favorably with Foreign Service officers; and (ii) Civil Service personnel who are serving in positions to which Foreign Service officers are normally assigned, who have superior records, and whose general qualifications indicate that they can compete favorably with Foreign Service officers.

(2) *Other.* The Department also encourages highly qualified applicants from other agencies of the Federal Government, and from outside the Federal Government, who meet the statutory and other eligibility requirements, to apply for the Mid-Level Program. Appointments from these sources for available openings are made on a highly competitive basis to fill specific needs of the Foreign Service at the Mid-Level.

(d) *Methods of application*—(1) *Forms.* Application is made for a Mid-Level Foreign Service officer career candidate appointment but not for a specific class. Applicants for mid-level entry must complete Standard Form 171, "Personnel Qualifications Statement," and Form DSP-34, "Supplement to Application for Federal Employment," and forward them, together with an autobiography not exceeding four typewritten pages in length, to the Board of Examiners for the Foreign Service for consideration.

(2) *Qualifications evaluation panel.* The Board of Examiners establishes a file for each applicant, placing in it all available documentation of value in evaluating the applicant's potential for service as a Foreign Service officer. A Qualifications Evaluation Panel of deputy examiners of the Board of Examiners reviews the file to determine whether the applicant meets the statutory and other eligibility requirements, to assess the applicant's skills relative to the needs of the Foreign Service, and to recommend whether the applicant should be examined for possible appointment under the Mid-Level Program.

(e) *Examination for mid-level appointment.* The submission of an application to the Board of Examiners does not in itself entitle an applicant to examination. The decision whether to proceed with an examination will be made by the Board of Examiners after a thorough review of the candidate's qualifications and a determination of eligibility for appointment following receipt of a certification of need for that candidate.

(1) *Purpose.* The mid-level examination is designed to enable the Board of Examiners to determine a candidate's aptitude for the work of the Foreign Service at the mid-level and fitness for a Foreign Service career.

(2) *Class.* In determining the Foreign Service officer class for which a candidate will be examined, the Board of Examiner's presumption will be for the class which is equivalent to the candidate's current salary level. In evaluating qualifications and in conducting examinations, the Board of Examiners will determine whether the candidate's qualifications compare favorably with Foreign Service officers at the candidate's current salary level. However, the Board of Examiners, at its discretion, may certify a candidate for appointment as a career candidate at a class other than that equivalent to current salary level in those instances where the Board determines that the candidate's qualifications clearly warrant such action.

(3) *Written examination.* A written examination will not normally be required of candidates for mid-level appointment. However, if the volume of applications for a given class or classes, or a particular functional specialty, is such as to make it infeasible to examine all candidates orally within a reasonable time, such candidates may be required to take an appropriate written examination prescribed by the Board of Examiners. Candidates whose score on the written examination is at or above the passing level set by the Board of Examiners will be eligible for selection for the oral examination.

(4) *Oral examination*—(i) *Purpose.* The oral examination will be designed to enable the Board of Examiners to determine whether candidates are functionally qualified for work in the For-

ign Service at the mid-level, whether they have the potential to advance in the Foreign Service, and whether they have the background and experience to make a contribution to the Foreign Service.

(ii) *When and where given.* The oral examination is individually scheduled throughout the year and is normally given in Washington, DC. At the discretion of the Board of Examiners, it may be given in other American cities, or at Foreign Service posts, selected by the Board.

(iii) *Examining panel.* Candidates recommended by a Qualifications Evaluation Panel for examination will be given an oral examination by a panel of deputy examiners of the Board of Examiners. That panels shall include at least one officer from the functional or professional specialty for which the candidate is being examined. Examining panels shall be chaired by a career officer of the Foreign Service. Determinations of duly constituted panels of deputy examiners are final unless modified by specific action of the Board of Examiners.

(iv) *Content.* The Examining Panel will question the candidate regarding the indicated functional or professional specialty; knowledge of American history, government, and other features of American culture; familiarity with current events and international affairs; and other matters relevant to the candidate's qualifications for appointment.

(v) *Grading.* Candidates taking the oral examination will be graded numerically according to standards established by the Board of Examiners. The candidacy of anyone whose score is at or above the passing level set by the Board will be continued. The candidacy of anyone whose score is below the passing level will be terminated and may not be considered again until 1 year after that date.

(5) *Written essay.* Candidates who take the oral examination will be asked to write an essay during the examination day, on a topic related to Foreign Service work, to enable the Board of Examiners to measure the candidate's effectiveness of written expression.

(6) *Other exercises.* Candidates who take the oral examination also may be

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asked to complete other exercises during the examination day, to enable the Board of Examiners to measure additional aspects of performance related to Foreign Service work at the mid-level.

(7) *Background investigation.* Candidates who pass the oral examination will be eligible for selection for the background investigation. The background investigation shall be conducted to determine suitability for appointment to the Foreign Service.

(8) *Medical examination.* Candidates who pass the oral examination, and their dependents, will be eligible for selection for the medical examination. The medical examination shall be conducted to determine the candidate's physical fitness to perform the duties of a Foreign Service officer on a worldwide basis and, for candidates and dependents, to determine the presence of any physical, neurological, or mental condition of such a nature as to make it unlikely that they would be able to function on a world-wide basis.

(9) *Final review panel.* The entire file of candidates who pass the oral examination will be reviewed and graded by a Final Review Panel, consisting of two or more deputy examiners of the Board of Examiners, after the results of the background investigation and the medical examination are received. The Final Review Panel will take into account the grade assigned by the oral Examining Panel, as well as all other available information concerning the candidate, and decide whether or not to recommend the candidate for appointment. The candidate's file will then be submitted to the Board of Examiners for approval. If approved by the Board, the candidate's name will be entered on the rank-order register for the class and functional specialty for which the candidate has been found qualified. The candidacy of anyone who is not recommended for appointment by the Final Review Panel shall be terminated and the candidate so informed.

(10) *Foreign language requirement.* All candidates who pass the oral examination will be required to take a subsequent test to measure their fluency in foreign languages or their aptitude for learning them. A candidate may be appointed without first having passed an

examination in a foreign language, but the appointment will be subject to the condition that the newly appointed career candidate may not be converted to career Foreign Service officer status unless, within a specified period of time, adequate proficiency in a foreign language is achieved. For limitations on promotions see Volume 3 (Personnel), Foreign Affairs Manual, section 874.

(11) *Certification for appointment—(i) Departmental employees.* A candidate who is a career employee of the Department, for whom a certification of need has been issued, will be certified by the Board of Examiners for appointment after satisfactorily completing all aspects of the examination process. The appointment certification will specify the class and salary for which the candidate has been found qualified.

(ii) *Others.* Other successful candidates will, after being approved by the board of Examiners, have their names placed on the rank-order register for the class and functional specialty for which they have been found qualified. A separate rank-order register may be established for candidates under the Mid-Level Affirmative Action Program. Appointments to available openings will be made from the registers in rank-order according to the needs of the Foreign Service.

(12) *Termination of eligibility.* Candidates who have qualified but have not been appointed because of lack of openings will be removed from the rank-order register 18 months after the date of placement on the rank-order register. The Board of Examiners may extend the eligibility period when such extension is, in its judgment, justified in the interests of the Foreign Service.

(Secs. 206(a) and 301(b), Foreign Service Act of 1980 (secs. 206(a) and 301(b), Pub. L. 96-465, 94 Stat. 2079 and 2083 (22 U.S.C. 3926 and 3941)))

[48 FR 19702, May 2, 1983]

§ 11.20 Foreign Service specialist career candidate appointments.

(a) *General considerations.* (1) Section 303 of the Foreign Service Act of 1980 (hereinafter referred to as the Act) authorizes the appointment of members of the Service (other than Presidential appointments).

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(2) Section 306 of the Act provides that, before receiving a career appointment in the Foreign Service, an individual shall first serve under a limited appointment for a trial period of service as a career candidate.

(3) This section governs the appointment by the Department of State of Foreign Service specialist career candidates to classes FS-1 and below. Specialist candidates comprise all candidates for career appointment in all occupational categories other than generalists (that is, administrative, consular, economic, political, and program direction), who are governed by the regulations respecting Foreign Service officer career candidates. The appointment of all Senior Foreign Service career candidates regardless of occupational category is governed by § 11.30 (to be supplied). Regulations governing trial service and tenuring of specialist candidates are found in Volume 3 (Personnel), Foreign Affairs Manual, section 580.

(4) Veterans' preference shall apply to the selection and appointment of Foreign Service specialist career candidates.

(b) *Specialist career candidate appointments*—(1) *Certification of need*. Candidates for appointment as specialist career candidates must be world-wide available and must have a professional or a functional skill for which there is a continuing need in the Foreign Service. Before an application can be processed, the Director General of the Foreign Service must certify that there is a need for the applicant as a career candidate in the specialist category at or above the proposed class of appointment. No applicant shall be appointed at a class level for which there is no certified need. This individual certification of need is not required for those specialist occupations which the Director General determines in advance to be shortage or continuous recruitment categories, and for which the Director General has certified the need for a specific number of appointments at given levels. Such appointments, including an appointment of an individual who is the employee of any agency, may not exceed 5 years in duration, and may not be renewed or extended beyond 5 years. A specialist

candidate denied tenure under Volume 3 (Personnel), Foreign Affairs Manual, section 580, may not be reappointed as a career candidate in the same occupational category.

(2) *Eligibility*. An applicant must be a citizen of the United States and at least 20 years of age. The minimum age for appointment as a career candidate is 21. All career candidate appointments shall be made before the candidate's 60th birthday. The maximum age for appointment under the program is based on the requirement that all career candidates shall be able to (i) complete at least two full tours of duty, exclusive of orientation and training, (ii) complete the requisite eligibility period for tenure consideration, and (iii) complete the requisite eligibility period to receive retirement benefits, prior to reaching the mandatory retirement age of 65 prescribed by the Act.

(3) *Selection and initial screening*. Specialist career candidates will be selected on the basis of education, experience, suitability, performance potential, and physical fitness for world-wide service. Applicants normally will be given personal interviews and will be subject to such written, oral, physical, foreign language, and other examinations as may be prescribed by the Board of Examiners for the Foreign Service and administered by the Office of Recruitment, Examination, and Employment (PER/REE). The Board of Examiners will identify and/or approve the knowledge, skills, abilities, and personal characteristics required to perform the tasks and duties of Foreign Service specialists in each functional field. PER/REE will screen applications for appointment as Foreign Service specialist career candidates under approved criteria and select those who meet the requirements for further processing under these regulations.

(4) *Oral examination*. Candidates selected through the initial screening will be eligible for an oral examination unless they are candidates for appointment in occupational categories for which the oral examination may be waived by the Director General. This waiver normally will apply only to continuous-recruitment categories and to appointments below the FS-6 level, and

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where such waivers occur, a thorough oral interview will be conducted. The oral examination will be given by a panel of deputy examiners, at least one of whom will be a career Foreign Service specialist proficient in the functional field for which the candidate is being tested. The examination may include a writing sample. Candidates taking the oral examination will be graded numerically according to standards set by the Board of Examiners. The candidacy of anyone whose score is at or above the passing level set by the Board will be continued. The candidacy of anyone whose score is below the passing level will be terminated and may not be considered again for 1 year.

(5) *Background investigation.* Candidates who have passed the oral examination, and candidates who have passed the initial screening if the oral examination has been waived, will be eligible for selection for the background investigation to determine their suitability for appointment to the Foreign Service.

(6) *Medical examination.* Such candidates and their dependents will be eligible for selection for the medical examination. The medical examination shall be conducted to determine the candidate's physical fitness to perform the duties of a Foreign Service specialist on a world-wide basis and, for candidates and dependents, to determine the presence of any physical, neurological, or mental condition of such a nature as to make it unlikely that they would be able to function on a world-wide basis.

(7) *Final review panel.* After the results of the medical examination and background investigation have been received, a Final Review Panel, consisting of two or more deputy examiners of the Board of Examiners, or by another appropriate panel appointed for the purpose by the Director of PER/REE, will review and grade the candidate's entire file. Candidates approved by the Final Review Panel will have their names placed on a rank-order register for the functional specialty for which they are qualified. Candidates will remain eligible for appointment for 18 months from the date of placement on the rank-order register. The Board of Examiners may ex-

tend this eligibility period when such extension is, in its judgment, justified in the interests of the Foreign Service. The candidacy of anyone who is not recommended for appointment by the Final Review Board shall be terminated and the candidate so informed.

(c) *Limited non-career appointments.* Other Foreign Service specialist appointments may be made on a limited non-career basis. Before an application for a limited non-career appointment can be processed, the Director General of the Foreign Service must certify that there is a need for the applicant. Such limited specialists must serve overseas, and they will be subject to the same conditions as those outlined in these regulations for career candidates, with the exception that the maximum age of 59 does not apply to such appointments. However, because members of the Foreign Service generally are subject to the mandatory retirement age of 65 under section 812 of the Act, limited non-career appointments normally will not extend beyond the appointee's 65th birthday. Applicants for limited non-career appointments will be subject to the same screening, medical examination, background investigation, and final review process required of career candidates, but normally they will not be subject to a written or oral examination. Their appointments will normally be limited to the duration of the specific assignment for which they are to be hired, may not exceed 5 years in duration, and may not be renewed or extended beyond 5 years. Ordinarily, no limited non-career appointee will be reappointed until at least 1 year has elapsed since the expiration of a previous appointment. However, earlier reappointment may be granted in cases of special need, provided the exclusive employee representative is advised in advance and is afforded an opportunity to comment. Prior to the expiration of their limited appointments, if otherwise eligible, non-career appointees may compete for career candidate status by qualifying at that time for and taking the examinations required of career candidates. If successful, their names would be entered on the rank-

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order register for their functional specialty. If appointed as career candidates, the length of service under their previous limited non-career appointments may be counted as part of the trial period of service prescribed before a candidate can receive a career appointment.

(Secs. 206(a) and 301(b), Foreign Service Act of 1980 (secs. 206(a) and 301(b), Pub. L. 96-465, 94 Stat. 2079 and 2083 (22 U.S.C. 3926 and 3941)))

[48 FR 19704, May 2, 1983]

§ 11.30 Senior Foreign Service officer career candidate and limited non-career appointments.

(a) *General considerations.* (1) Career officers at the Senior Level normally shall be appointed as the result of promotion of Mid-Level career officers. Where the needs of the Foreign Service at the Senior Level cannot otherwise be met by this approach, limited appointments may be granted to applicants as Senior Career Candidates or as limited non-career appointees in accordance with these regulations. However, as required by section 305(b) of the Foreign Service Act of 1980 (hereinafter referred to as the Act), but qualified by section 305(b)(1) and (2) and section 2403(c) of the Act, the limited appointment of an individual in the Senior Foreign Service shall not cause the number of members of the Senior Foreign Service serving under limited appointments to exceed 5 percent of the total members of the Senior Foreign Service.

(2) Successful applicants under the Senior Career Candidate Program will be appointed to Career Candidate status for a period not to exceed 5 years. Such limited Career Candidate appointments may not be renewed or extended beyond 5 years.

(3) Under section 306 of the Act, Senior Career Candidates may be found qualified to become career members of the Senior Foreign Service. Those who are not found to be so qualified prior to the expiration of their limited appointments will be separated from the Career Candidate Program no later than the expiration date of their appointments. Separated candidates who originally were employees of a Federal department or agency, and who were ap-

pointed to the Senior Foreign Service with the consent of the head of that department or agency, will be entitled to reemployment rights in that department or agency in accordance with section 310 of the Act and section 3597 of title 5, United States Code.

(4) The following regulations shall be utilized in conjunction with section 593, Volume 3, Foreign Affairs Manual ("Senior Foreign Service Officer Career Candidate Program"). (Also see Foreign Affairs Manual Circulars No. 8 [applicable to the Department of State only] and No. 9 [applicable to the Departments of State, Agriculture, and Commerce, the Agency for International Development, and the United States Information Agency], dated March 6, 1981.)

(b) *Senior Career Candidate appointments*—(1) *Eligibility requirements.* Senior Career Candidates must meet the following eligibility requirements:

(i) *Citizenship.* Each person appointed as a Senior Career Candidate must be a citizen of the United States.

(ii) *Age.* All career candidate appointments shall be made before the candidate's 60th birthday. Appointments by the United States Information Agency shall be made before the candidate's 58th birthday. The maximum age for appointment under this program is based on the requirement that all career candidates shall be able to: (A) Complete at least two full tours of duty, exclusive of orientation and training; (B) complete the requisite eligibility period for tenure consideration and (C) complete the requisite eligibility period to receive retirement benefits, prior to reaching the mandatory retirement age of 65 prescribed by the Act.

(iii) *Service.* (A) On the date of application, an applicant must have completed a minimum of 15 years of professional work experience, including at least 5 years of service in a position of responsibility in a Federal Government agency or agencies or elsewhere equivalent to that of a Mid-Level Foreign Service officer (classes FS-1 through FS-3). The duties and responsibilities of the position occupied by the applicant must have been similar to or closely related to that of a Foreign Service officer in terms of knowledge,

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skills, abilities, and overseas work experience. In addition, an applicant must currently be in, or have been in, a position comparable to a Foreign Service officer of class 1 (FS-1), or higher.

(B) Applicants from outside the Federal Government, and Federal employees who at the time of application lack the 15 years of professional work experience or the 5 years of service in a position of responsibility as defined in the preceding paragraph, may, however, be considered if they are found to possess a combination of educational background, professional work experience, and skills needed by the Foreign Service at the Senior Level in employment categories which normally are not staffed by promotion of Mid-Level career officers.

(C) Non-career members of the Senior Foreign Service of a Federal Government department or agency also may apply for the Senior Career Candidate Program if they meet the eligibility requirements for the program.

(iv) *Certification of need.* Before an application can be processed, the Director of Personnel of the foreign affairs agency concerned must certify that there is a need for the applicant as a Senior Career Candidate based upon (A) the projections of personnel flows and needs mandated by section 601(c)(2) of the Act, and (B) a finding that the combination of educational background, professional work experience, and skills possessed by the applicant is not expected to be available in the immediate future in sufficient numbers within the Senior Foreign Service, including by promotion and/or special training of career personnel. This certification of need will be requested by the Board of Examiners for the Foreign Service from the appropriate foreign affairs agency Director of Personnel.

(2) *Application.* All applicants for the Senior Career Candidate Program must apply in writing through the prospective employing agency to the Board of Examiners for consideration. The applicant shall submit a completed Standard Form 171, "Personnel Qualifications Statement," and Form DSP-34, "Supplement to Application for Federal Employment," to the Board. In addition, the applicant shall submit a

narrative statement, not exceeding four typewritten pages in length, describing the applicant's pertinent background and professional work experience, which includes a statement of the applicant's willingness and ability to accept the obligation of world-wide service. The Board may request additional written information from the applicant following receipt of the initial application.

(3) *Qualifications evaluation panel.* (i) The Board of Examiners will establish a file for each applicant, placing in it all available documentation of value in evaluating the applicant's potential for service as a Senior Career Candidate. For an applicant from within the Federal Government, this will include the personnel file from the employing department or agency.

(ii) The complete file will be reviewed by a Qualifications Evaluation Panel of the Board of Examiners to determine whether the applicant meets the statutory and other eligibility requirements, to assess the applicant's skills under the certification of need issued by the prospective employing agency, and to recommend whether the applicant should be examined for possible appointment as a Senior Career Candidate. If the Qualifications Evaluation Panel decides that the applicant is not eligible for examination, the prospective employing agency shall be informed by the Board of the reasons for that decision.

(4) *Written examination.* The Board of Examiners normally will not require Senior Career Candidate applicants to undergo a written examination. However, the Board may, upon securing the agreement of the prospective employing agency, decide that such applicants should be required to take an appropriate written examination prescribed by the Board. If so, an applicant whose score on the written examination is at or above the passing level set by the Board will be eligible for selection for the oral examination.

(5) *Oral examination—(i) Examining panel.* Applicants recommended by the Qualifications Evaluation Panel will be given an appropriate oral examination by a Panel of Senior Foreign Service deputy examiners of the Board of Examiners. The Oral Examining Panel

shall be composed of at least two deputy examiners who are Senior Foreign Service career officers of the prospective employing agency, and at least one deputy examiner who is a Senior Foreign Service career officer from another foreign affairs agency operating under the Foreign Service Act. The Examining Panel shall be chaired by a deputy examiner who is a Senior Foreign Service career officer of the prospective employing agency. At least one of the Examining Panel members shall represent the functional or specialist field for which the applicant is being examined. Determinations of duly constituted panels of deputy examiners are final, unless modified by specific action of the Board of Examiners.

(ii) *Criteria.* (A) The Examining Panel will question the applicant regarding the indicated functional or specialist field and other matters relevant to the applicant's qualifications for appointment as a Senior Career Candidate. Prior to the oral examination, the applicant will be asked to write an essay, on a topic related to Foreign Service work, to enable the Examining Panel to judge the applicant's effectiveness of written expression. This essay requirement may be waived at the request of the head of the prospective employing agency, if, for example, the applicant is a career member of the Senior Executive Service.

(B) The oral examination will be conducted under written criteria, established in consultation with the prospective employing agency and publicly announced by the Board of Examiners. The examination will seek to determine the ability of the applicant to meet the objective of section 101 of the Act, which provides for a Senior Foreign Service "characterized by strong policy formulation capabilities, outstanding executive leadership qualities, and highly developed functional, foreign language, and area expertise."

(iii) *Grading.* Applicants taking the oral examination will be graded as "recommended," or "not recommended" by the Examining Panel. Those graded as "recommended" also will be given a numerical score, under the standard Board of Examiners scor-

ing criteria, for use by the Final Review Panel.

(6) *Background investigation.* Senior Career Candidate applicants recommended by the Examining Panel will be subject to the same background investigation as required for Junior and Mid-Level Foreign Service Officer Career Candidates. The background investigation shall be conducted to determine suitability for appointment to the Foreign Service.

(7) *Medical examination.* Senior Career Candidate applicants recommended by the Examining Panel, and their dependents, will be subject to the same medical examination as required for the Junior and Mid-Level Foreign Service Career Candidates. The medical examination shall be conducted to determine the applicant's physical fitness to perform the duties of a Foreign Service officer on a world-wide basis and, for applicants and dependents, to determine the presence of any physical, neurological, or mental condition of such a nature as to make it unlikely that they would be able to function on a world-wide basis. Applicants and/or dependents who do not meet the required medical standards may be given further consideration, as appropriate, under the procedures of the prospective employing agency.

(8) *Foreign language requirement.* Applicants recommended by the Examining Panel will be required to take a subsequent examination to measure their fluency in foreign languages, and/or their aptitude for learning them. Senior Career Candidates will be subject to the foreign language requirements established for their occupational category by their prospective employing agency. Senior Career Candidate applicants for the Foreign Commercial Service must demonstrate proficiency by examination in two foreign languages. United States Information Agency Senior Career Candidates, other than Senior Specialist Career Candidates, must demonstrate proficiency in at least one foreign language. Except for the Foreign Commercial Service and the United States Information Agency, an applicant may be appointed without first having passed an examination in a foreign language,

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but the appointed Senior Career Candidate may not be commissioned as a Career Senior Foreign Service officer unless adequate proficiency in a foreign language is achieved. This language requirement will not apply to candidates in occupational categories which, in the judgment of the prospective employing agency, do not require foreign language proficiency.

(9) *Final review panel.* (i) The entire file of an applicant recommended by the Examining Panel will be reviewed and graded by a Final Review Panel, after the results of the background investigation, medical examination and language examination are received. The Final Review Panel will decide whether or not to recommend the applicant for appointment, taking into account all of the available information concerning the applicant.

(ii) The Final Review Panel shall consist of a chairperson who shall be a Deputy Examiner who is a career Senior Foreign Service officer of the prospective employing agency, and at least two other Deputy Examiners of the Board of Examiners. Of the Deputy Examiners serving on the Final Review Panel, the majority shall be career Senior Foreign Service officers of the prospective employing agency; and at least one shall be a career Senior Foreign Service officer of one of the other foreign affairs agencies operating under the Act.

(10) *Certification of appointment.* The file of an applicant recommended by the Final Review Panel will be submitted to the Board of Examiners for consideration and approval. An applicant found by the Board to meet the standards for appointment as a Senior Foreign Service Career Candidate shall be so certified to the Director of Personnel of the prospective employing agency.

(c) *Limited non-career appointments.* (1) Other Senior Foreign Service appointments may be made on a limited non-career basis for individuals who do not wish to compete for career appointments, but for whom a need can be certified by the Director of Personnel of the foreign affairs agency concerned. Such limited non-career senior appointees will be subject to the eligibility requirements set forth in

§ 11.30(b)(1) (i) and (iv). The maximum age set forth in § 11.30(b)(1)(ii) does not apply to such appointments. However, because Foreign Service members generally are subject to the mandatory retirement age of 65, under section 812 of the Act, limited non-career Senior appointments normally will not extend beyond the appointee's 65th birthday. Limited non-career appointees of the Department of Commerce and the United States Information Agency will not be subject to the language requirements of § 11.30(b)(8). Applicants for limited non-career senior appointments will be subject to the same background investigation and medical examination required of career candidates, but normally they will not be subject to a written or oral examination, or to approval by the Board of Examiners. Processing procedures for such applicants will be established by the Director of Personnel of the foreign affairs agency concerned. Their appointments normally will be limited to the duration of the specific assignments for which they are to be hired, may not exceed 5 years in duration, and may not be renewed or extended beyond 5 years.

(2) Prior to the expiration of their limited non-career senior appointments, if they meet all the eligibility requirements set forth in § 11.30(b)(1), such individuals may elect to compete for career candidate status in the Senior Foreign Service by qualifying at that time for and taking the examinations required of career candidates. If appointed as career candidates, the length of service under their previous limited non-career appointments may be counted under the procedures of the employing agency as part of the trial period of service prescribed before a career candidate can receive a career appointment. The total period of limited appointment (non-career and career candidate) of such individuals may not exceed 5 years in duration.

(3) Nothing in this section will limit the right of an individual who has previously served as a limited non-career senior appointee from subsequently applying for consideration as a new applicant and being appointed as a Senior Career Candidate after a limited non-career appointment has expired.

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(d) *Reporting requirement.* The Director of Personnel of each foreign affairs agency shall report annually to the Director General of the Foreign Service, Department of State, the number and nature of the limited Senior Foreign Service appointments (non-career and career candidates) made by that agency under these regulations.

(Secs. 206(a) and 301(b), Foreign Service Act of 1980 (secs. 206(a) and 301(b), Pub. L. 96-465, 94 Stat. 2079 and 2083 (22 U.S.C. 3926 and 3941)))

[48 FR 38607, Aug. 25, 1983]

PART 12—COMPLAINTS AGAINST EMPLOYEES BY ALLEGED CREDITORS

Sec.

- 12.1 No cognizance taken of complaint.
- 12.2 Claimants denied access to employees.

§ 12.1 No cognizance taken of complaint.

The Department of State will take no cognizance of a complaint against an employee by an alleged creditor, so far as the complainant is concerned, beyond acknowledging receipt of his communication.

(Sec. 4, 63 Stat. 111, as amended; 22 U.S.C. 2658)

[22 FR 10789, Dec. 27, 1957]

§ 12.2 Claimants denied access to employees.

Persons claiming to be creditors or collectors of debts or claims will be denied access to employees for the purpose of presenting or collecting claims during the hours set apart for the transaction of public business or while the employees concerned are on duty.

(Sec. 4, 63 Stat. 111, as amended; 22 U.S.C. 2658)

[22 FR 10789, Dec. 27, 1957]

PART 13—PERSONNEL

Sec.

- 13.1 Improper exaction of fees.
- 13.2 Embezzlement.
- 13.3 Liability for neglect of duty or for malfeasance generally; action on bond; penalty.
- 13.4 False certificate as to ownership of property.

AUTHORITY: Sec. 302, 60 Stat. 1001; 22 U.S.C. 842.

SOURCE: 22 FR 10789, Dec. 27, 1957, unless otherwise noted.

§ 13.1 Improper exaction of fees.

Any consular officer who collects, or knowingly allows to be collected, for any services any other or greater fees than are allowed by law for such services, shall, besides his or her liability to refund the same, be liable to pay to the person by whom or in whose behalf the same are paid, treble the amount of the unlawful charge so collected, as a penalty. The refund and penalty may be recovered with costs, in any proper form of action, by such person for his or her own use. The amount of such overcharge and penalty may at the discretion of the Secretary of the Treasury be ordered withheld from the compensation of such officer for payment to the person entitled to the same (22 U.S.C. 1189).

NOTE: The foregoing relates to improper collection and personal withholding of funds by consular officers. For procedure where a collection, having been erroneously made, has been returned by the officer to the Treasury in good faith, making a subsequent accounting adjustment necessary, see §22.4, *Refund of fees* of this chapter.

(22 U.S.C. 2658 and 3926)

[22 FR 10789, Dec. 27, 1957, as amended at 49 FR 16989, Apr. 23, 1984]

§ 13.2 Embezzlement.

Every consular officer who shall receive money, property, or effects belonging to a citizen of the United States and shall not within a reasonable time after demand made upon him or her by the Secretary of State or by such citizen, his or her executor, administrator, or legal representative, account for and pay over all moneys, property, and effects, less his or her lawful fees, due to such citizen, shall be deemed guilty of embezzlement, and shall be punishable by imprisonment for not more than five years, and by a fine of not more than \$2,000 (22 U.S.C. 1198). Penalties of imprisonment and fine are also prescribed for embezzlement in connection with the acceptance, without execution of a prescribed form of bond, of appointment from any

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foreign state as administrator, guardian, or to any other office of trust for the settlement or conservation of estates of deceased persons or of their heirs or of persons under legal disabilities (22 U.S.C. 1178 and 1179). Acceptance of such appointments is not ordinarily permitted under existing regulations. See § 92.81 of this chapter.

(22 U.S.C. 2658 and 3926)

[22 FR 10789, Dec. 27, 1957, as amended at 49 FR 16989, Apr. 23, 1984]

§ 13.3 Liability for neglect of duty or for malfeasance generally; action on bond; penalty.

Whenever any consular officer willfully neglects or omits to perform seasonably any duty imposed upon him or her by law, or by any order or instruction made or given in pursuance of law, or is guilty of any willful malfeasance or abuse of power, or of any corrupt conduct in his or her office, he or she shall be liable to all persons injured by any such neglect, or omission, malfeasance, abuse, or corrupt conduct, for all damages, occasioned thereby; and for all such damages, he or she and his or her sureties upon his or her official bond shall be responsible thereon to the full amount of the penalty thereof to be sued in the name of the United States for the use of the person injured. Such suit, however, shall in no case prejudice, but shall be held in entire subordination to the interests, claims, and demands of the United States, as against any officer, under such bond, for every willful act of malfeasance or corrupt conduct in his or her office. If any consul neglects or omits to perform seasonably the duties imposed upon him or her by the laws regulating the shipment and discharge of seamen, or is guilty of any malversation or abuse of power, he or she shall be liable to any injured person for all damage occasioned thereby; and for all malversation and corrupt conduct in office, he or she shall be punishable by imprisonment for not more than five years and not less than one, and by a fine of not more than

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\$10,000 and not less than \$1,000 (22 U.S.C. 1199).

(22 U.S.C. 2658 and 3926)

[22 FR 10789, Dec. 27, 1957, as amended at 49 FR 16989, Apr. 23, 1984]

§ 13.4 False certificate as to ownership of property.

If any consul or vice consul falsely and knowingly certifies that property belonging to foreigners is property belonging to citizens of the United States, he or she shall be punishable by imprisonment for not more than three years, and by a fine of not more than \$10,000 (22 U.S.C. 1200).

(22 U.S.C. 2658 and 3926)

[22 FR 10789, Dec. 27, 1957, as amended by Dept. Reg. 108.838, 49 FR 16989, Apr. 23, 1984]

PART 16—FOREIGN SERVICE GRIEVANCE SYSTEM

Sec.

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AUTHORITY: Sec. 4 of the Act of May 26, 1949, as amended (63 Stat. 111; 22 U.S.C. 2658); Pub. L. 94-141 (89 Stat. 765); 22 U.S.C. 1037; sec. 10 of E.O. 11636 (36 FR 24901).

SOURCE: 41 FR 13912, Apr. 1, 1976, unless otherwise noted.

§ 16.1 Definitions.

(a) *Act* means the Foreign Service Act of 1946, as amended.

(b) *Grievant* means any officer or employee of the Service who is a citizen of the United States; or for purposes of paragraphs (c) (7) and (8) of this section, a former officer or employee of the Service; or in the case of death of the officer or employee, a surviving spouse or dependent family member of the officer or employee.

(c) *Grievance* means any act or condition subject to the control of the Foreign Affairs agencies (the Department of State, the Agency for International Development, or the U.S. Information Agency) which is alleged to deprive the grievant of a right or benefit authorized by law or regulation or is otherwise a source of concern or dissatisfaction to the grievant, including, but not limited to the following:

(1) Complaints against separation of an officer or employee allegedly contrary to law or regulation or predicated upon alleged inaccuracy (including inaccuracy resulting from omission or any relevant and material document), error, or falsely prejudicial character of any part of the grievant's official personnel record;

(2) Other alleged violation, misinterpretation, or misapplication of applicable law, regulation, or published policy affecting the terms and conditions of the grievant's employment or career status;

(3) Allegedly wrongful disciplinary action against an employee constituting a reprimand or suspension from official duties;

(4) Dissatisfaction with any matter subject to the control of the agency with respect to the grievant's physical working environment;

(5) Alleged inaccuracy, error, or falsely prejudicial material in the grievant's official personnel file;

(6) Action alleged to be in the nature of reprisal or other interference with freedom of action in connection with an employee's participation under these grievance procedures;

(7) When the grievant is a former officer who was involuntarily retired pursuant to sections 633 and 634 of the Act within 6 years prior to December 1, 1975, "grievance" shall mean a complaint that such involuntary retirement violated applicable law or regulation effective at the time of the retirement or that the involuntary retirement was predicated directly upon material contained in the grievant's official personnel file alleged to be erroneous or falsely prejudicial in character; and

(8) When the grievant is a former officer or employee or a surviving spouse or dependent family member of a

former officer or employee, "grievance" shall mean a complaint that an allowance or other financial benefit has been denied arbitrarily, capriciously or contrary to applicable law or regulation.

(d) Grievance does not include the following:

(1) Complaints against individual assignment or transfers of Foreign Service officers or employees, which are ordered in accordance with law and regulation (see also paragraph (c)(2) of this section);

(2) Judgments of Selection Boards rendered pursuant to section 623 of the Act, or of equivalent bodies, in ranking Foreign Service officers and employees for promotion on the basis of merit, or judgments in examinations prescribed by the Board of Examiners pursuant to section 516 or 517 of the Act (see also paragraph (c)(2) of this section);

(3) Termination of time-limited appointments pursuant to 22 U.S.C. 929 and 1008, and the pertinent regulations prescribed by the employing agency (see also paragraph (c)(2) of this section);

(4) Any complaints or appeals for which a specific statutory appeals procedure exists (see appendix A for examples).

A grievance filed under these procedures may be based on matters for which there is a specific statutory appeals procedure which is applicable to the Foreign Service grievant. Should the jurisdiction of the Grievance Board over a specific grievance be placed into question on grounds that the basis of the grievance is not encompassed within the Board's authority (§ 16.1(d)(4) and Appendix A), the Board shall consult with the other statutory body concerned, transmitting the views of the parties concerned before determining whether it has jurisdiction.

(e) *Employee organization* means any employee organization accorded recognition as the exclusive employee representative pursuant to Executive Order 11636 dated December 17, 1971.

(f) *Grievance Board* or *Board* means the full Foreign Service Grievance Board, or a Panel or member thereof, as appropriate.

(g) *Party* means the grievant or the Foreign Affairs agency having control

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over the act or condition forming the subject matter of the grievance.

(h) *Bureau* means equivalent organizational elements in State and USIA, and includes offices in AID.

(i) *Days* means calendar days.

§ 16.2 General provisions.

(a) *Statement of purpose.* These regulations establish procedures as required by law to provide Foreign Service officers and employees (and their survivors) of the Foreign Affairs agencies, a grievance procedure to insure a full measure of due process, and to provide for the just consideration and resolution of grievances of such officers, employees, and survivors. No regulation promulgated in this part shall be interpreted or applied in any manner which would alter or abridge the provisions of the due process established by the Congress in Pub. L. 94-141, 22 U.S.C. 1037, section 691.

(b) *Discussion of complaints.* (1) Every effort should be made to settle any employee complaint informally, promptly, and satisfactorily.

(2) Supervisors and other responsible officers should encourage employees to discuss complaints with them and should respond in a timely manner to resolve the complaints.

(3) An employee initially should discuss a complaint with the employee's current supervisor or with the responsible officer who has immediate jurisdiction over the complaint to give that person an opportunity to resolve the matter, before further steps are taken under these procedures.

(c) *Guidance.* Nothing in these procedures prevents a grievant from seeking guidance from any official who might be helpful respecting the submission of a grievance or its resolution.

(d) *Freedom of action.* (1) Any grievant, witness, representative or other person involved in a proceeding hereunder shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them. The Foreign Affairs agencies recognize their obligation to insure compliance with this section. Any person involved or having immediate knowledge of any alleged breach of this section should call it to the attention of the pertinent for-

eign affairs agency through appropriate channels for corrective action as necessary. Normally such allegations should be brought to the attention of the senior agency official at the post; and at Washington, DC, to the Director, Grievance Staff for State; Chief, Employee Relations Branch for AID and Chief, Employee-Management Relations Division for USIA.

(2) The grievant has the right to a representative of the grievant's own choosing at every stage of the proceedings. The grievant and representative(s) who are under the control, supervision, or responsibility of the Foreign Affairs agencies shall be granted reasonable periods of administrative leave to prepare, to be present, and to present the grievance.

(3) Any witness under the control, supervision, or responsibility of a Foreign Affairs agency shall be granted reasonable periods of administrative leave to appear and testify at any such proceeding.

(4) The Foreign Service Grievance Board established hereunder shall have authority to ensure that no copy of the determination of the agency head or designee to reject a Grievance Board recommendation, no notation of the failure of the Grievance Board to find for the grievant, and no notation that a proceeding is pending or has been held, shall be entered in the personnel records of the grievant (unless by order of the Grievance Board as a remedy for the grievance) or those of any other officer or employee connected the grievance. The Foreign Affairs agencies shall maintain grievance records under appropriate safeguards to preserve confidentiality (§ 16.9).

§ 16.3 Access to records.

(a) *Grievance Board records.* The grievant and the grievant's representative shall have access to the record of proceedings, including the decision of the Board.

(b) *Agency records.* (1) In considering the validity of a grievance, the Grievance Board shall have access, to the extent permitted by law, to any agency record considered by the Board to be relevant to the grievant and the subject matter of the grievance.

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(2) The agency shall, subject to applicable law, promptly furnish the grievant any agency record which the grievant requests to substantiate the grievance and which the agency or the Grievance Board determines is relevant and material to the proceeding. When deemed appropriate by the agency or the Board, a grievant may be supplied with only a summary or extract of classified material. If a request by a grievant for a document is denied prior to or during the agency's consideration of a grievance, such denial may be raised by the grievant as an integral part of the grievance before the Board.

(3) These regulations do not require disclosure of any official agency record to the Grievance Board or a grievant where the head of agency or deputy determines in writing that such disclosure would adversely affect the foreign policy or national security of the United States.

§ 16.4 Time limits for grievance filing.

(a) A grievance concerning a continuing practice or condition may be presented at any time if its adverse effect is presently continuing. Documents contained in official employee personnel files, for example, shall be deemed to constitute a continuing condition.

(b) Subject to paragraph (a) of this section, a grievance under these regulations is forever barred, and the Grievance Board shall not consider or resolve the grievance, unless the grievance is presented within a period of 3 years after the occurrence or occurrences giving rise to the grievance, except that if the grievance arose earlier than 2 years prior to the effective date of these regulations, the grievance shall be so barred, and no considered and resolved, unless it is presented within a period of 2 years after the effective date of these regulations. There shall be excluded from the computation of any such period any time during which the grievant was unaware of the grounds which are the basis of the grievance and could not have discovered such grounds if the grievant had exercised, as determined by the Grievance Board, reasonable diligence.

(c) A grievance shall be deemed presented to the responsible official

(§ 16.7(b)), transmitted to post or bureau (§ 16.7(c)) submitted for agency review (§ 16.8) or filed with the Grievance Board § 16.11(a):

(1) On the date of its dispatch by telegram, registered or certified mail, or receipted mail, in a diplomatic pouch;

(2) On the date of its arrival at the appropriate office, if delivered by any other means.

§ 16.5 Relationship to other remedies.

(a) A grievant may not file a grievance under these procedures if the grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided, under another provision of law, regulation, or executive order, and the matter has been carried to final decision thereunder on its merits or is still under consideration.

(b) If a grievant is not prohibited from filing a grievance under these regulations by paragraph (a) of this section, the grievant may file under these regulations notwithstanding the fact that such grievance may be eligible for consideration, resolution, and relief under a regulation or executive order other than under these regulations, but such election of remedies shall be final upon the acceptance of jurisdiction by the Board.

§ 16.6 Security clearances.

The agencies shall use their best endeavors to expedite security clearances whenever necessary to ensure a fair and prompt investigation and hearing.

§ 16.7 Agency procedures.

(a) *Initial consideration.* (1) Grievances shall be considered through the steps provided in this section before they are filed with the Grievance Board.

(2) During the pendency of agency procedures under this section, the grievant may request a suspension of the proposed action of the character of separation or termination of the grievant, disciplinary action against the grievant, or recovery from the grievant of alleged overpayment of salary, expenses or allowances, which is related to the grievance. The request must be

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in writing and addressed to the responsible official of the agencies, as designated in §16.8(a)(2) stating the reasons for such suspension. If the request is related to separation or termination of the grievant, and the agency considers that the grievance is not frivolous and is integral to the proposed action, the agency shall suspend its proposed action until completion of agency procedures, and for a period thereafter if necessary, consistent with paragraph (a) of §16.11, to permit the grievant to file a grievance with the Board, and to request interim relief under paragraph (c) of §16.11. If a request is denied, the agency shall provide the grievant in writing the reason for denial. Nothing in these regulations shall be deemed to preclude an employee from requesting the suspension of any proposed action.

(b) *Consideration by responsible officer.* (1) While every effort should be made to resolve a complaint by an initial discussion between an employee and the supervisor or responsible officer, an employee may present the complaint as a grievance by submitting it in writing, to that person. (The term "responsible officer" as used herein includes any appropriate officer who has immediate jurisdiction over the complaint.) The presentation shall include a description of the act or condition which is the subject of the grievance; its effect on the grievant; any provision of law, regulation, or agency policy which the grievant may believe was violated or misapplied; any documentary evidence readily available to the grievant on which the grievance rests; the identity of individuals having knowledge of relevant facts; and a statement of the remedial action requested.

(2) The responsible officer, whenever possible, shall use independent judgment in deciding whether the grievance is meritorious and what the resolution of it should be. Within 15 days from receipt of the written grievance, the responsible officer shall provide the grievant with a written response, which shall include a statement of any proposed resolution of the grievance.

(3) If the response denies in whole or in part the remedial action requested, such response shall notify the grievant

of the time within which to appeal the decision, and identity of the senior official, or designee, to whom the appeal should be addressed. In those cases in which the senior official, or designee, is the responsible officer to whom the grievance was initially presented or has participated in the decision process and has formally approved the written response of the responsible officer, the grievant shall be so notified and advised that the grievance may be submitted directly to the agency for review under §16.8.

(c) *Bureau or post review.* (1) If the responsible officer's written response does not resolve the grievance to the grievant's satisfaction, within 10 days of receiving it (or, if no response is received, within 25 days after first presenting the grievance), the grievant may pursue the grievance by transmitting it in writing to the senior official, or the designee in the bureau or post which has authority to resolve the grievance. The written transmission shall include all the information required by paragraph (b)(1) of this section and copies of any correspondence under paragraphs (b) (2) and (3) of this section.

(2) Within 15 days from receipt of the grievance that official shall provide the grievant with a written decision, including any proposed resolution of the grievance. If the decision denies in whole or in part the remedial action requested, the communication shall notify the grievant of the time within which to submit the grievance for agency review and the identity of the appropriate agency official to whom the grievance should be addressed.

§ 16.8 Agency review.

(a) *Submission.* (1) An employee may submit the grievance for agency review if the grievance (i) is not within the jurisdiction of a post or bureau, or (ii) the grievance has been considered but not resolved to the grievant's satisfaction within the post or bureau as provided in §16.7(c) within 10 days after receipt of the post's or bureau's decision (or, if no response is received, within 25 days after presenting it to the senior official or the designee). The grievant shall submit it in writing to the responsible official of the agency which

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has control of the act or condition which is the subject of the grievance.

(2) *Responsible officials.* The responsible officials of the agencies are the Deputy Assistant Secretary for Personnel (State), the Director of Personnel and Manpower (AID), and the Chief, Employee-Management Relations Division (USIA).

(3) *Contents.* (i) A request for agency review shall include a description of the act or condition which is the subject of the grievance; its effect on the grievant; any provision of law, regulation or agency policy which the grievant may believe was violated or misapplied; copies of any correspondence under §16.7(a), any documentary evidence readily available to the grievant on which the grievance rests; the identity of individuals having knowledge of relevant facts; and a statement of the remedial action requested.

(ii) The responsible official shall review the grievance on the basis of available documentary evidence, and, in that official's discretion, interview persons having knowledge of the facts. The agency review shall be completed and its decision dispatched within 90 days from the date of the initial written presentation of the grievance. The grievant shall be informed in writing of the findings of the responsible official and any proposed resolution of the grievance. The communication shall also include the time within which the grievant may file a grievance with the Grievance Board and the appropriate procedure to be followed in this respect.

§ 16.9 Records.

All official records concerning agency consideration of grievances, except those appropriate to implementation of decisions favorable to grievants, shall be kept separate from the official personnel record of the grievant and any other individuals connected with the grievance, and shall not be accessible to agency personnel other than the grievant, the grievant's representative, and those responsible for consideration of grievances.

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§ 16.10 Foreign Service Grievance Board.

(a) *Establishment and composition.* There is hereby established a Foreign Service Grievance Board for the Department of State, the Agency for International Development and the U.S. Information Agency to consider and resolve grievances under these procedures.

(b) The Grievance Board shall consist of not less than 5 members nor more than 15 members (including a chairperson) who shall be independent, distinguished citizens of the United States, well known for their integrity, who are not active officers, employees, or consultants of the Foreign Affairs agencies (except consultants who served as public members of the Interim Grievance Board previously established under section 660, Volume 3, Foreign Affairs Manual) but may be retired officers or employees. On its initial establishment, the Board shall consist of 15 members including chairperson.

(c) The Board may act by or through panels or individual members designated by the chairperson, except that hearings within the continental United States shall be held by panels of at least three members unless the parties agree otherwise. Reference in these regulations to the Grievance Board shall be considered to be reference to a panel or member of the Grievance Board where appropriate. All members of the Grievance Board shall act as impartial individuals in considering grievances.

(d) The members of the Grievance Board, including the chairperson, shall be appointed by the Secretary of State after being designated by the written agreement of the Foreign Affairs agencies and the employee organization.

(e) The Board chairperson and other members shall be appointed for terms of 2 years, subject to renewal upon the agreement of the Foreign Affairs agencies and the employee organization; except that the terms of 7 of the initially appointed members shall expire at the end of one year.

(f) Any vacancies shall be filled by the Secretary of State upon the nomination by the Board following the

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agreement of the agencies and the employee organization.

(g) *Compensation.* Members, including the chairperson, who are not employees of the Federal Government shall receive compensation for each day they are performing their duties as members of the Grievance Board (including travel time) at the daily rate paid an individual at GS-18 level of the General Schedule under section 5332 of title 5 of the United States Code.

(h) *Removal.* Grievance Board members shall be subject to removal by the Secretary of State for corruption, other malfeasance, or the demonstrated incapacity to perform their functions. No member shall be removed from office until after the Board of the Foreign Service has conducted a hearing and made its recommendations in writing to the Secretary of State, except where the right to a hearing is waived in writing. The Board of the Foreign Service shall provide a member with full notice of the charges against that member, and afford a member the right to counsel, to examine and cross-examine witnesses, and to present documentary evidence.

(i) *Grievance Board procedures.* In accordance with part J, title VI of the Act, the Board may adopt regulations concerning the organization of the Board and such other regulations as may be necessary to govern its proceedings.

(j) *Board facilities and staff support.* The Grievance Board may obtain facilities, services, and supplies through the general administrative services of the Department of State. All expenses of the Board, including necessary costs of the grievant's travel and travel-related expenses, shall be paid out of funds appropriated to the Department for obligation and expenditure by the Board. At the request of the Board, officers and employees on the rolls of the Foreign Affairs agencies may be assigned as staff employees to the Grievance Board. Within the limit of appropriated funds, the Board may appoint and fix the compensation of such other employees as the Board considers necessary to carry out its functions. The officers and employees so appointed or assigned shall be responsible solely to the Grievance Board and the Board

shall prepare the performance evaluation reports for such officers and employees. The records of the Grievance Board shall be maintained by the Board and shall be separate from all other records of the Foreign Affairs agencies.

§ 16.11 Grievance Board consideration of grievances.

(a) *Filing of grievance.* A grievant whose grievance is not resolved satisfactorily under agency procedures (§ 16.7) shall be entitled to file a grievance with the Grievance Board no later than 60 days after receiving the agency decision. In the event that an agency has not provided its decision within 90 days of presentation, the grievant shall be entitled to file a grievance with the Grievance Board no later than 150 days after the date of presentation to the agency. The Board may extend or waive, for good cause, the time limits stated in this section.

(b) *Exhaustion of agency procedures.* In the event that the Grievance Board finds that a grievance has not been presented for agency consideration or that a grievance has been expanded or modified to include materially different elements, the Board shall return the grievance to the official responsible for final agency review unless the agency waives any objection to Board consideration of the grievance without such review.

(c) *Prescription of interim relief.* If the Grievance Board determines that the agency is considering any action of the character of separation or termination of the grievant, disciplinary action against the grievant, or recovery from the grievant of alleged overpayment of salary, expenses, or allowances, which is related to a grievance pending before the Board, and that such action should be suspended, the agency shall suspend such action until the Board has ruled upon the grievance. *Notwithstanding* such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude an officer or employee from official premises or from the performance of specified duties when such exclusion is determined in writing to be essential to the functioning of the post or office

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to which the officer or employee is assigned.

(d) *Inquiry into grievances.* The Board shall conduct a hearing at the request of a grievant in any case which involves disciplinary action, or a grievant's retirement from the Service under sections 633 and 634 of the Act, or which in the judgment of the Board can best be resolved by a hearing or by presentation of oral argument. In those grievances in which the Board holds no hearing, the Board shall offer to each party the opportunity to review and to supplement, by written submission, the record of proceedings prior to its decision.

§ 16.12 Hearing.

(a) *Appearances and representation.* The grievant, a reasonable number of representatives of the grievant's own choosing, and a reasonable number of agency representatives, are entitled to be present at the hearing. The Grievance Board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be open to others.

(b) *Conduct of hearing.* (1) Testimony at a hearing shall be given by oath or affirmation which any Board member or person designated by the Board shall have authority to administer.

(2) Each party shall be entitled to examine and cross-examine witnesses at the hearing or by deposition, and to serve interrogatories answered by the other party unless the Board finds such interrogatory irrelevant or immaterial. Upon request of the Board, or upon a request of the grievant deemed relevant and material by the Board, and agency shall promptly make available at the hearing or by deposition any witness under its control, supervision or responsibility, except that if the Board determines that the presence of such witness at the hearing is required for just resolution of the grievance, then the witness shall be made available at the hearing, with necessary costs and travel expenses provided by the agency.

(3) During any hearings held by the Board, any oral or documentary evidence may be received but the Board shall exclude any irrelevant, immate-

rial, or unduly repetitious evidence normally excluded in hearings conducted under the Administrative Procedures Act (5 U.S.C. 556).

(4) A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings.

§ 16.13 Decisions.

(a) Upon completion of the hearing or the compilation of such record as the Board may find appropriate in the absence of a hearing, the board shall expeditiously decide the grievance on the basis of the record of proceedings. In each case the decision of the Board shall be in writing, shall include findings of fact, and shall include the reasons for the Board's decision.

(b) If the Grievance Board finds that the grievance is meritorious, the Board shall have the authority within the limitations of the authority of the head of the agency, to direct the agency:

(1) To correct any official personnel record relating to the grievant which the Board finds to be inaccurate, erroneous, or falsely prejudicial;

(2) To reverse and administrative decision denying the grievant compensation including related within-class salary increases pursuant to section 625 of the Act or any other perquisite of employment authorized by law or regulation when the Board finds that such denial was arbitrary, capricious, or contrary to law or regulation;

(3) To retain in service and employee whose termination would be in consequence of the matter by which the employee is aggrieved;

(4) To reinstate with back pay, under applicable law and regulations, an employee where it is clearly established that the separation or suspension without pay of the employee was unjustified or unwarranted;

(5) To order an extension of the time of an employee's eligibility for promotion to a higher class where the employee suffered career impairment in consequence of the matter by which the employee is aggrieved;

(6) To order that an employee be provided with facilities relating to the physical working environment which

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the employee has been denied arbitrarily, capriciously or in violation of applicable regulation.

(c) Such orders of the Board shall be final, subject to judicial review as provided for in section 694 of the Act, except that reinstatement of former officers who have filed grievances under § 16.1(c)(7) shall be presented as Board recommendations, the decision on which shall be subject to the sole discretion of the agency head or designee, who shall take into account the needs of the Service in deciding on such recommendations, and shall not be subjected to judicial review under section 694 of the Act. The reason(s) for the agency head's (or designee's) decision will be conveyed in writing to the Board and the grievant.

(d) If the Board finds that the grievance is meritorious and that remedial action should be taken that directly relates to promotion or assignment of the grievant, or to other remedial action, including additional step increases, not provided for in paragraph (b) of this section, or if the Board finds that the evidence before it warrants disciplinary action against any officer or employee, it shall make an appropriate recommendation to the head of the agency, and forward to the head of the agency the record of the Board's proceedings, including the transcript of the hearing, if any. The head of the agency (or designee, who shall not have direct responsibility for administrative management) shall make a written decision to the parties and to the Board on the Board's recommendation within 30 days from receipt of the recommendation. A recommendation of the Board may be rejected in part or in whole if the action recommended would be contrary to law, would adversely affect the foreign policy or security of the United States, or would substantially impair the efficiency of the Service. If the decision rejects the Board's recommendation in part or in whole, the decision shall state specifically any and all reasons for such action. Pending the decision, there shall be no ex parte communications concerning the grievance between the agency head, or designee, and any person involved in the grievance proceeding.

§ 16.14 Reconsideration of a grievance.

A grievant whose grievance is found not to be meritorious by the Board may obtain reconsideration by the Board only upon presenting newly discovered or previously unavailable material evidence not previously considered by the Board and then only upon approval of the Board.

§ 16.15 Judicial review.

Any aggrieved party may obtain judicial review of these regulations, and revisions thereto, and final actions of the agency head (or designee) or the Grievance Board hereunder, in the District Courts of the United States, in accordance with the standards set forth in chapter 7 of title 5 of the United States Code. Section 706 of title 5 shall apply without limitation or exception.

PART 17—OVERPAYMENTS FROM THE FOREIGN SERVICE RETIREMENT AND DISABILITY FUND UNDER THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM (FSRDS) AND THE FOREIGN SERVICE PENSION SYSTEM (FSPS)

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- 17.4 Equity and good conscience.
- 17.5 Financial hardship.
- 17.6 Ordinary and necessary living expenses.
- 17.7 Waiver precluded.
- 17.8 Burdens of proof.
- 17.9 Procedures.

AUTHORITY: 22 U.S.C. 4047(d); 22 U.S.C. 4071(b); 5 U.S.C. 8470(b); 5 CFR 845.301-07.

SOURCE: 71 FR 16229, Mar. 31, 2006, unless otherwise noted.

§ 17.1 General.

This part establishes procedures for notifying individuals of their rights if they have received an overpayment from the Foreign Service Retirement and Disability Fund under Chapter 8 of the Foreign Service Act of 1980, as amended, including their right to contest the determination that there has been an overpayment and the right to request a waiver of recovery of the

overpayment. This part also provides the procedures for administrative determination of these rights and for appeals of negative determinations.

§ 17.2 Conditions for waiver of recovery of an overpayment.

(a) *Foreign Service Retirement and Disability System.* Recovery of an overpayment from the Foreign Service Retirement and Disability Fund under the Foreign Service Retirement and Disability System may be waived pursuant to section 4047(d), of title 22, United States Code when the individual is without fault and recovery would be against equity and good conscience or administratively infeasible.

(b) *Foreign Service Pension System.* Recovery of an overpayment from the Foreign Service Retirement and Disability Fund under the Foreign Service Pension System may be waived pursuant to section 4071(b) of title 22, United States Code and section 8470(b) of title 5, United States Code when the individual is without fault and recovery would be against equity and good conscience.

(c) When it has been determined that the recipient of an overpayment is ineligible for waiver, the individual is nevertheless entitled to an adjustment in the recovery schedule if he or she shows that it would cause him or her financial hardship to make payment at the rate scheduled.

§ 17.3 Fault.

A recipient of an overpayment is without fault if he or she performed no act of commission or omission that resulted in the overpayment. The fact that the Department of State or other agency may have been at fault in initiating an overpayment will not necessarily relieve the individual from liability.

(a) *Considerations.* Pertinent considerations in finding fault are—

(1) Whether payment resulted from the individual's incorrect but not necessarily fraudulent statement, which he/she should have known to be incorrect;

(2) Whether payment resulted from the individual's failure to disclose material facts in his/her possession which

he/she should have known to be material; or

(3) Whether he/she accepted a payment which he/she knew or should have known to be erroneous.

(b) *Mitigation factors.* The individual's age, physical and mental condition or the nature of the information supplied to him or her by the Department of State or a Federal agency may mitigate against finding fault if one or more contributed to his or her submission of an incorrect statement, a statement which did not disclose material facts in his or her possession, or his or her acceptance of an erroneous overpayment.

§ 17.4 Equity and good conscience.

(a) *Defined.* Recovery is against equity and good conscience when—

(1) It would cause financial hardship to the person from whom it is sought;

(2) The recipient of the overpayment can show (regardless of his or her financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment either he/she has relinquished a valuable right or changed positions for the worse; or

(3) Recovery could be unconscionable under the circumstances.

(b) [Reserved]

§ 17.5 Financial hardship.

(a) Waiver of overpayment will not be allowed in any case prior to receipt and evaluation of a completed Statement of Financial Status, duly sworn by the recipient of the overpayment.

(b) Financial hardship may be deemed to exist in, but not limited to, those situations where the recipient from whom collection is sought needs substantially all of his or her current income and liquid assets to meet current ordinary and necessary living expenses and liabilities.

(1) *Considerations.* Some pertinent considerations in determining whether recovery would cause financial hardship are as follows:

(i) The individual's financial ability to pay at the time collection is scheduled to be made.

(ii) Income to other family member(s), if such member's ordinary and

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necessary living expenses are included in expenses reported by the individual.

(c) *Exemptions.* Assets exempt from execution under State law should not be considered in determining an individual's ability to repay the indebtedness, rather primary emphasis shall be placed upon the individual's liquid assets and current income in making such determinations.

§ 17.6 Ordinary and necessary living expenses.

An individual's ordinary and necessary living expenses include rent, mortgage payments, utilities, maintenance, food, clothing, insurance (life, health and accident), taxes, installment payments, medical expenses, support expenses when the individual is legally responsible, and other miscellaneous expenses which the individual can establish as being ordinary and necessary.

§ 17.7 Waiver precluded.

(a) Waiver of an overpayment cannot be granted when:

- (1) The overpayment was obtained by fraud; or
- (2) The overpayment was made to an estate.

(b) [Reserved]

§ 17.8 Burdens of proof.

(a) *Burden of the Department of State.* The Bureau of Resource Management, Department of State, must establish by the preponderance of the evidence that an overpayment occurred.

(b) *Burden of individual.* The recipient of an overpayment must establish by substantial evidence that he or she is eligible for waiver or an adjustment in the recovery schedule.

§ 17.9 Procedures.

(a) *Notice.* The Bureau of Resource Management, Department of State, shall give written notification to any individual who has received an overpayment promptly by first-class mail to the individual at the individual's most current address in the records of the Bureau of Resource Management. The written notice shall inform the individual of:

- (1) The amount of the overpayment;
- (2) The cause of the overpayment;

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(3) The intention of the Department to seek repayment of the overpayment,

(4) The date by which payment should be made to avoid the imposition of interest, penalties, and administrative costs;

(5) The applicable standards for the imposing of interest, penalties, and administrative costs;

(6) The department's willingness to discuss alternative payment arrangements and how the individual may offer to enter into a written agreement to repay the amount of the overpayment under terms acceptable to the Department; and

(7) The name, address and telephone number of a contact person within the Bureau of Resource Management. The written notice also shall inform the individual of their right to contest the overpayment, their right to request a waiver of recovery of the overpayment, and the procedures to follow in case of such contest or request for waiver of recovery. The notification shall allow at least 30 days from its date within which the individual may contest in writing the overpayment or request a waiver of recovery, including with their submission all evidence and arguments in support of their position.

(b) *Administrative file.* The Bureau of Resource Management will prepare an administrative file as a basis for determination in each case where an individual contests a claim to recover overpayment or requests waiver of recovery of the overpayment. On the basis of the administrative file, the Chief Financial Officer or his or her delegate, shall make the final administrative determination.

(c) *Additional information.* At any time before the final administrative decision, the Department may request the individual to supplement his or her submission with additional factual information and may request that the individual authorize the Department of State to have access to bank and other financial records bearing on the application of these regulations. If the individual, without good cause shown, fails or refuses to produce the requested additional information or authorization, the Department of State is entitled to make adverse inferences with respect

to the matters sought to be amplified, clarified, or verified.

(d) *Decision and right of appeal.* The final administrative decision shall be reduced to writing and sent to the individual. If the decision is adverse to the individual, the notification of the decision shall include a written description of the individual's rights of appeal to the Foreign Service Grievance Board. The Foreign Service Grievance Board shall consider any appeal under this part in accordance with the regulations of the Board set forth in 22 CFR part 901.

PART 18—REGULATIONS CONCERNING POST EMPLOYMENT CONFLICT OF INTEREST

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Sec.

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- 18.2 Definitions.
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- 18.5 Interpretative standards; advisory opinions.

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- 18.6 Authority to prohibit appearances.
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- 18.9 Contents of complaint.
- 18.10 Service of complaint and other papers.
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- 18.15 Hearings.
- 18.16 Evidence.
- 18.17 Depositions.
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- 18.19 Decision of the hearing examiner.
- 18.20 Appeal to the Board of Appellate Review.
- 18.21 Decision of the Board of Appellate Review.
- 18.22 Notice of disciplinary action.

AUTHORITY: 18 U.S.C. 207, as amended, 92 Stat. 1864.

SOURCE: 46 FR 2608, Jan. 12, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 18.1 Scope.

This part contains rules governing disciplinary action against a former officer or employee of the Department of State, including the Foreign Service, because of a violation of the post employment conflict of interest prohibitions. Such disciplinary action may include prohibition from practice before the Department of State and any component thereof as defined in this part.

§ 18.2 Definitions.

For the purpose of this part—

(a) The term *Department* means the Department of State and includes the Foreign Service.

(b) The term *Director General* means the Director General of the Foreign Service and Director of Personnel.

(c) The term *practice* means any informal or formal appearance before, or, with the intent to influence, any oral or written communication to the Department on a pending matter of business on behalf of any other person (except the United States).

§ 18.3 Director General.

The Director General shall institute and provide for the conduct of disciplinary proceedings involving former employees of the Department as authorized by 18 U.S.C. 207(j), and perform such other duties as are necessary or appropriate to carry out his/her functions under this part.

§ 18.4 Records.

The roster of all persons prohibited from practice before the Department shall be available to public inspection at the Office of Director General. Other records may be disclosed upon specific request, in accordance with appropriate disclosure regulations of the Department.

Subpart B—Applicable Rules

§ 18.5 Interpretative standards; advisory opinions.

(a) A determination that a former officer or employee of the Department violated 18 U.S.C. 207(a), (b) or (c) will be made in conformance with the

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standards established in the interpretative regulations promulgated, either in interim or final form by the Office of Government Ethics and published at 5 CFR part 737.

(b) Former officers and employees of the Department wanting to know whether a proposed course of conduct would be in conformity with the Act or the interpretive regulations thereunder may contact the Assistant Legal Adviser for Management to request an advisory opinion.

Subpart C—Administrative Enforcement Proceedings

§ 18.6 Authority to prohibit appearances.

Pursuant to 18 U.S.C 207(j), if the Director General finds, after notice and opportunity for a hearing, that a former officer or employee of the Department has violated 18 U.S.C. 207(a), (b) or (c), the Director General in his/her discretion may prohibit that person from engaging in practice before the Department for a period not to exceed five years, or may take other appropriate disciplinary action.

§ 18.7 Report of violation by a former employee.

(a) If an officer or employee of the Department has reason to believe that a former officer or employee of the Department has violated any provision of this part, or if any such officer or employee receives information to that effect, he/she shall promptly make a written report thereof, which report or a copy thereof shall be forwarded to the Director General. If any other person has information of such violations, he/she may make a report thereof to the Director General or to any officer or employee of the Department.

(b) The Director General shall coordinate proceedings under this part with the Department of Justice in cases where it initiates criminal prosecution.

§ 18.8 Institution of proceeding.

Whenever the Director General determines that there is sufficient reason to believe that any former officer or employee of the Department has violated 18 U.S.C. 207(a), (b) or (c), he/she may institute an administrative discipli-

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nary proceeding. The proceeding may be for that person's suspension from practice before the Department or for some lesser penalty. The proceeding shall be instituted by a complaint which names the respondent and is signed by the Director General and filed in his/her office. Except in cases of willfulness, or where time, the nature of the proceeding, or the public interest does not permit, a proceeding will not be instituted under this section until facts or conduct which may warrant such action have been called to the attention of the proposed respondent in writing and he/she has been accorded the opportunity to provide his/her position on the matter.

§ 18.9 Contents of complaint.

A complaint shall plainly and concisely describe the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the respondent of the charges against him/her so that the respondent is able to prepare a defense. Written notification shall be given of the place and of the time within which the respondent shall file his/her answer, which time shall not be less than 15 days from the date of service of the complaint. Notice shall be given that a decision by default may be rendered against the respondent in the event he/she fails to file an answer.

§ 18.10 Service of complaint and other papers.

(a) *Complaint.* The complaint or a copy thereof may be served upon the respondent by certified mail; by delivering it to the respondent or his/her attorney or agent of record either in person; or by leaving it at the office or place of business of the respondent, attorney or agent; in any other manner which has been agreed to by the respondent; or by first-class mail in case of a person resident abroad.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served upon a respondent as provided in paragraph (a) of this section or by mailing the paper by first-class mail to the respondent at the last address known to the Director General, or by mailing the paper by first-class mail to the respondent's attorney or

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agent of record. Such mailing shall constitute complete service.

(c) Whenever the filing of a paper is required or permitted in connection with a proceeding, and the place of filing is not specified by this subpart or by rule or order of the hearing examiner, the paper shall be filed with the Director General, Department of State, Washington, DC 20520. All papers shall be filed in duplicate.

§ 18.11 Answer.

(a) *Filing.* The respondent's answer shall be filed in writing within the time specified in the complaint or notice of institution of the proceeding, unless on application the time is extended by the Director General. The answer shall be filed in duplicate with the Director General.

(b) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the Director General shall constitute a waiver of hearing, and the Director General may make his/her decision by default without a hearing or further procedure.

§ 18.12 Motions and requests.

Motions and requests, including requests to intervene, may be filed with the Director General.

§ 18.13 Representation.

A respondent or proposed respondent may appear in person or he/she may be represented by counsel or other representative. The Director General may be represented by an attorney or other employee of the Department.

§ 18.14 Hearing examiner.

(a) After an answer is filed, if the Director General decides to continue the administrative disciplinary pro-

ceedings, he/she shall appoint a hearing examiner to conduct those proceedings under this part.

(b) *Authorities.* Among other powers, the hearing examiner shall have authority, in connection with any proceeding assigned or referred to him/her, to do the following:

(1) Take evidence under appropriate formalities;

(2) Make rulings upon motions and requests;

(3) Determine the time and place of hearing and regulate its course and conduct;

(4) Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10) Make initial decisions.

§ 18.15 Hearings.

Hearings shall be stenographically recorded and transcribed and the testimony of witnesses shall be taken under oath or affirmation. Hearings will be closed unless an open hearing is requested by the respondent, except that if classified information or protected information of third parties is likely to be adduced at the hearing, it will remain closed. If either party to the proceeding fails to appear at the hearing, after due notice thereof has been sent to him/her, he/she shall be deemed to have waived the right to a hearing and the hearing examiner may make a decision against the absent party by default.

§ 18.16 Evidence.

The rules of evidence prevailing in courts of law and equity are not controlling in hearings under this part.

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However, the hearing examiner shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

§ 18.17 Depositions.

Depositions for use at a hearing may, with the consent of the parties in writing or the written approval of the hearing examiner, be taken by either the Director General or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories. There shall be at least 10 days written notice to the other party. The requirement of a 10-day written notice may be waived by the parties in writing. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogation shall be mailed or delivered to the opposing party at least 5 days before the date of taking the depositions, unless the parties mutually agree otherwise. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

§ 18.18 Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the hearing examiner, prior to making his/her decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

§ 18.19 Decision of the hearing examiner.

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the hearing examiner shall make the initial decision. The decision shall include

(a) A statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and

(b) An order of suspension from practice before the Department or other ap-

propriate disciplinary action, or an order of dismissal of the complaint. The hearing examiner shall file the decision with the Director General and shall transmit a copy thereof to the respondent or his/her attorney of record. A party adversely affected by the decision shall be given notice of his or her right to appeal to the Board of Appellate Review (part 7 of this chapter) within 30 days from the date of the hearing examiner's decision.

§ 18.20 Appeal to the Board of Appellate Review.

Within 30 days from the date of the hearing examiner's decision, either party may appeal to the Board of Appellate Review. The appeal shall be taken by filing notice of appeal, in triplicate, with the Board of Appellate Review, which shall state with particularity exceptions to the decision of the hearing examiner and reasons for such exceptions. If an appeal is by the Director General, he/she shall transmit a copy thereof to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief, in triplicate, with the Board of Appellate Review. If the reply brief is filed by the Director General, he/she shall transmit a copy of it to the respondent. The Director General shall transmit the entire case record to the Board of Appellate Review within 30 days after an appeal has been taken.

§ 18.21 Decision of the Board of Appellate Review.

The Board of Appellate Review shall decide the appeal on the basis of the record. The decision of the Board shall be final, and not subject to further administrative review. Copies of the Board's decision shall be forwarded promptly to the parties by the Board.

§ 18.22 Notice of disciplinary action.

Upon the issuance of a final order suspending a former officer or employee from practice before the Department, the Director General shall give notice thereof to appropriate officers and employees of the Department. Officers and employees of the Department shall refuse to participate in any appearance by such former officer or employee or to accept any communication

which constitutes the prohibited practice before the Department during the period of suspension. The Director General shall take other appropriate disciplinary action as may be required by the final order.

PART 19—BENEFITS FOR SPOUSES AND FORMER SPOUSES OF PARTICIPANTS IN THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

Sec.

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AUTHORITY: Secs. 206 and 801 of Foreign Service Act of 1980 (94 Stat. 2079, 2102); Sec. 4 of Act of May 26, 1949 (22 U.S.C. 2658).

SOURCE: 46 FR 12958, Feb. 19, 1981, unless otherwise noted. Redesignated at 46 FR 18970, Mar. 27, 1981.

§ 19.1 Authorities.

Chapter 8 of the Foreign Service Act of 1980 (Pub. L. 96-465, 94 Stat. 2102) (hereafter “the Act”), and any Executive order issued under authority of section 827 of the Act.

§ 19.2 Definitions.

(a) *Agencies* means the Department, the Agency for International Development (AID), the International Communication Agency (USICA), the Foreign Agricultural Service (FAS), and the Foreign Commercial Service (FCS).

(b) *Annuitant* means any person including a former participant or survivor who meets all requirements for an annuity from the Fund under the provisions of the Foreign Service Act of 1980, or any other law and who has filed claim therefor.

(c) *Basic salary* means the salary fixed by law or administrative action before deductions and exclusive of additional compensation of any kind. It includes the salary fixed by sections 401, 402, 403, and 406 of the Act and salary incident to assignment under section 503 of the Act. Basic salary excludes premium pay for overtime,

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night, Sunday and holiday work, allowances, post and special differentials, and chargé pay.

(d) *Chief of Mission* means a principal officer in charge of a diplomatic mission of the United States or of a United States Office abroad which has been designated diplomatic in nature or any member of the Foreign Service assigned under the terms of the Act to be chargé d'affaires or head of such a mission or office.

(e) *Child* means, except with reference to lump-sum payments, an unmarried child, under the age of 18 years, or such unmarried child regardless of age who because of physical or mental disability incurred before age 18 is incapable of self-support. In addition to the offspring of the participant, the term includes:

(1) An adopted child;
(2) A stepchild or recognized natural child who received more than one-half support from the participant; and

(3) A child who lived with and for whom a petition of adoption was filed by a participant, and who is adopted by the surviving spouse of the participant after the latter's death. "Child" also means an unmarried student under the age of 22 years. For this purpose, a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while a student, is deemed to have become 22 years of age on the first day of July after the birth-day.

(f) *Court* means any court of any State or of the District of Columbia.

(g) *Court Order* means any court decree of divorce or annulment, or any court approved property settlement agreement incident to any court decree of divorce or annulment.

(h) *Department* means the Department of State.

(i) *Divorce* means the dissolution of a marriage by a final decree of divorce or annulment.

(j) *Expressly provided for* means a direction by a court order to divide a member's Foreign Service Retirement benefits or survivor benefits and awarding a portion of such benefits to an eligible beneficiary.

(k) *Former spouse*¹ means a former wife or husband of a participant or former participant who was married to such participant for not less than ten years during periods of service by that participant which are creditable under section 816 of the Act provided the participant was making contributions to the Fund under section 805 of the Act during some portion of such service, and provided the divorce occurred after February 15, 1981. For this purpose, a former spouse shall not be considered as married to a participant for periods assumed to be creditable under section 808 of the Act in the case of a disability annuity or section 809 of the Act in the case of a death in service. A former spouse will be considered married to a participant for any extra period of creditable service provided under section 817 of the Act for service at an unhealthful post during which the former spouse resided with the participant. See § 19.5-3 for procedures to determine this extra period of marriage.

(l) *Fund* means the Foreign Service Retirement and Disability Fund.

(m) *M/MED* means the Department's Office of Medical Services.

(n) *Military and naval service* means honorable active service:

(1) In the Armed Forces of the United States;

(2) In the Regular or Reserve Corps of the Public Health Service after June 30, 1960; or

(3) As commissioned officer of the National Oceanic and Atmospheric Administration or predecessor organization after June 30, 1961.

However, this definition does not include service in the National Guard, except when ordered to active duty in the service of the United States.

(o) *Participant* means a person as described in § 19.3.

¹Note: Section 804(6) of the Act defines "former spouse" with respect to duration of marriage as being married to a participant "for not less than 10 years during periods of service by that participant which are creditable under section 816." The Department interprets this as necessarily implying that the marriage must have covered a period of at least one day while the member of the Foreign Service was a participant in the System.

(p) *Previous spouse* means any person formerly married to a principal, whether or not such person qualifies as a former spouse under paragraph (k) of this section.

(q) *Principal* means a participant or former participant whose service forms the basis for a benefit under chapter 8 of the Act for a spouse, previous spouse, former spouse or child of a participant.

(r) *PER/ER/RET* means the Department's Retirement Division in the Bureau of Personnel.

(s) *Pro rata share* means, in the case of any former spouse of any participant or former participant, a percentage which is equal to the percentage that (1) the number of years and months during which the former spouse was married to the participant during the creditable service of that participant is of (2) the total number of years and months of such creditable service. When making this calculation, item (1) is adjusted in accordance with paragraph (k) of this section and item (2) is adjusted in accordance with § 19.4. In the total period, 30 days constitutes a month and any period of less than 30 days is not counted.

(t) *Spousal agreement* means any written agreement between a participant or former participant, and the participant's spouse or former spouse.

(u) *Student* means a child regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, university, or comparable recognized educational institution. A child who is a student shall not be deemed to have ceased to be a student during any interim between school years, semesters, or terms if the interim or other period of nonattendance does not exceed 5 calendar months and if the child shows to the satisfaction of the Retirement Division (PER/ER/RET) that the child has a bona fide intention of continuing to pursue such course during the school year, semester, or term immediately following the interim.

(v) *Surviving spouse* means the surviving wife or husband of a participant or annuitant who, in the case of death in service or marriage after retirement, was married to the participant

or annuitant for at least one year immediately preceding death or is the parent of a child born of the marriage.

(w) *System* means the Foreign Service Retirement and Disability System.

[46 FR 12958, Feb. 19, 1981. Redesignated and amended at 46 FR 18970, Mar. 27, 1981]

§ 19.3 Participants.

The following persons are participants in the System:

(a) Members of the Service serving under a career appointment or as a career candidate under section 306 of the Act (1) in the Senior Foreign Service, or (2) assigned to a salary class in the Foreign Service Schedule;

(b) Any person not otherwise entitled to be a participant who has served as chief of mission or an ambassador at large for an aggregate period of 20 years or more, exclusive of extra service credit for service at unhealthful posts, and who has paid into the Fund a special contribution for each year of service;

(c) Any individual who was appointed as a Binational Center Grantee and who completed, prior to February 15, 1981, at least 5 years of satisfactory service as a grantee, as determined by the Director of Personnel of USICA, or under any other appointment under the Foreign Service Act of 1946, as amended, who has paid into the Fund a special contribution for such service.

(d) Any person converted to the competitive service pursuant to section 2104 of the Act who elects to participate in the System pursuant to section 2106(b)(1) or (2) shall remain a participant so long as he/she is employed in an agency which is authorized to utilize the Foreign Service personnel system.

§ 19.4 Special rules for computing creditable service for purposes of payments to former spouses.

For purposes of determining the pro rata share of annuity, survivor annuity or lump-sum payable to a former spouse, the following shall be considered creditable service—

(a) The entire period of a principal's approved leave without pay during full-time service with an organization composed primarily of Government employees irrespective of whether the

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principal elects to make payments to the Fund for this service;

(b) The entire period of Government service for which a principal received a refund of retirement contributions which he/she has not repaid unless the former spouse received under §19.13 a portion of the (lump-sum) refund or unless a spousal agreement or court order provided that no portion of the refund be paid to the former spouse; and

(c) All creditable service including service in excess of 35 years.

The period covered by the credit for unused sick leave is not creditable for this purpose.

§ 19.5 Required notifications to Department respecting spouses and former spouses.

§ 19.5-1 Notification from participant or annuitant.

If a participant or former participant becomes divorced on or after February 15, 1981, he/she shall notify the Department (PER/ER/RET) of the divorce on or prior to its effective date. The notice shall include the effective date of the divorce, the full name, mailing address, and date of birth of the former spouse and the date of the member's marriage to that person, and enclose a certified copy of the divorce decree. If there is a court order or spousal agreement concerning payment or non-payment of Foreign Service benefits to the former spouse, the original or a certified copy of the order or agreement shall also be forwarded to PER/ER/RET. In the absence of a court order or spousal agreement providing otherwise, the Department will pay a pro rata share of the member's benefits to the former spouse. (A former spouse of a former participant who separated from the Service on or before February 15, 1981 is not eligible for a pension under §19.9, *i.e.*, not eligible for a pro rata share of the principal's annuity.) Upon receipt of notice of a divorce, a court order, or spousal agreement, the Department will proceed as indicated in §19.6 or §19.7. Delinquent notice to the Department of the divorce of an annuitant will result in retroactive payments to any qualified former spouse to the extent that the retroactive payments can be deducted from future an-

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nuity payments to the principal as stated in §19.6-4.

§ 19.5-2 Notification to Department from former spouses.

A former spouse is obligated to notify the Department of the following on a timely basis:

(a) A divorce from a participant or former participant when the former spouse is notified by the court of the divorce before the participant is notified;

(b) Any change in address; and

(c) Any remarriage.

Notices shall be sent to the Department of State, Attention PER/ER/RET, Washington, DC 20520.

§ 19.5-3 Residence of spouse during service at unhealthful post.

(a) The calculation of the pro rata share of benefits for a former spouse, and the determination of whether a person qualifies as a "former spouse" depends on the length of the marriage. The latter, under the definition in the Act and when the principal has received extra service credit for an assignment to an unhealthful post, depends upon whether a spouse has resided with the principal at the unhealthful post. In order to determine residency for this purpose, whenever a married participant is assigned to an unhealthful post for which he/she *does not* receive post differential and *does* receive or request extra service credit, the participant shall report on Form OF-140, Election to Receive Extra Service Credit Towards Retirement, whether his/her spouse is or is not residing at the post. Although a chief of mission is not required to submit Form OF-140 in order to receive extra credit for service at an unhealthful post, he/she must nevertheless submit this form if the chief of mission has a spouse that does not accompany him/her at post for the entire assignment. Both the participant and spouse shall sign the completed form. If there is a change in residence of the spouse during the assignment, a new joint Form OF-140 shall be filed to report the change.

(b) Whenever a participant retires or becomes divorced, or whenever a former participant becomes divorced

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who has extra service credit for assignment at unhealthful posts completed prior to the issuance of this regulation who was married during at least a portion of the assignment, the participant or former participant shall submit a statement to PER/ER/RET reporting on whether his/her spouse resided at the unhealthful post and the dates of such residence. The statement shall be signed by the principal and his/her spouse or former spouse whenever possible.

(c) In the event of a disagreement between a principal and his/her spouse or former spouse concerning residency at an unhealthful post, or the submission of a report or statement by a principal showing a period of nonresidence at a post by a spouse which is not signed by the spouse, the determination of residence will be made by PER/ER/RET and based on records in the Department of payments for travel and allowances plus any other evidence that can be adduced. In the absence of any evidence to the contrary, the assumption will be made that the spouse resided at the post.

§ 19.6 Court orders and divorce decrees.

§ 19.6-1 Orders by a court.

(a) A court may—

(1) Fix the amount of any pension to a former spouse under § 19.9, or order that none be paid;

(2) Fix the amount of any regular survivor annuity to a former spouse under paragraphs (a) and (b) of § 19.11, or order that none be paid;

(3) Order provision of an additional survivor annuity for a spouse or former spouse under § 19.10-5;

(4) Fix the amount of any benefit under § 19.10-6 based on recall service payable to a former spouse to whom the annuitant was married during any portion of the recall service, or order that none be paid;

(5) Fix the amount of any lump-sum payable to a former spouse under § 19.13 or order that none be paid;

(6) Order, to the extent consistent with any obligation stated in § 19.8 between a participant and a former spouse, and pursuant to any court decree of divorce, legal separation or an-

nulment or any court ordered or approved property settlement agreement incident to any court decree of divorce, legal separation, or annulment, that any payment from the Fund which would otherwise be made to a former participant based on his/her service shall be paid (in whole or in part) by the Secretary of State to a previous spouse or child of such participant. No apportionment under this paragraph may be made of a payment authorized to be paid to a survivor of a participant or annuitant.

(b) An order by a court that does not meet the definition of "court" in § 19.2(f) is not valid for purposes of this section even though a divorce decree issued by such court may be a basis for pro rata share payments to a former spouse as described in these regulations.

§ 19.6-2 Qualifying court order.

(a) To be valid for purposes of this section, a court order must be found to be "qualified" by PER/ER/RET acting for the Secretary of State. A qualifying court order must—

(1) Be consistent with the terms of the Act and applicable regulations;

(2) Not direct payment of an amount in excess of the maximum amount authorized to be paid by the relevant regulation;

(3) Direct that payments be made to an eligible beneficiary from a principal's Foreign Service retirement benefit or survivor benefit. If a court directs or implies that a principal, rather than the Secretary of State or the Government, make the payments, the order will not be considered qualified unless the principal does not object during the 30-day notice period provided under § 19.6-6;

(4) Define the amount to be paid to a beneficiary in way so that it can be readily calculated from information in the normal files of the Department;

(5) Not make payment contingent upon events other than those on which other payments from the Fund are based such as age, marital status and school attendance; and

(6) Not be in conflict with any previously issued court order which remains valid.

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(b) No apportionment of annuity to a beneficiary under § 19.6-1(a) (1) or (6) shall exceed the net annuity of the principal. The net annuity is computed by excluding from the gross annuity the amounts which are:

- (1) Owed by the individual to the United States;
- (2) Deducted for health benefits premiums pursuant to section 8906 of Title 5, United States Code;
- (3) Deducted for life insurance premiums under the Government Life Insurance Program;
- (4) Owed due to overpayment of annuity;

(5) Properly withheld for Federal income tax purposes, if amounts withheld are not greater than they would be if the individual claimed all dependents to which he/she was entitled.

[46 FR 12958, Feb. 19, 1981. Redesignated and amended at 46 FR 18970, Mar. 27, 1981]

§ 19.6-3 Application for payment.

(a) To receive payment from the Fund pursuant to a court award, the beneficiary must submit an application in writing to the Chief of the Retirement Division (PER/ER/RET), Department of State, Washington, DC 20520. The application must be typed or printed, signed by the beneficiary, and include—

(1) The full name, date of birth, current address and current marital status of the beneficiary;

(2) Full name and date of birth of the participant or former participant and his/her date of birth or other identifying information;

(3) Relationship to the beneficiary, and if a spouse or former spouse, date of marriage to and/or divorce from the participant;

(4) A statement that the court order has not been amended, superseded, or set aside;

The original of the court order or a recently certified copy must be enclosed with the application, or a statement appended that such a copy has been sent to the Department by other means.

(b) When payments are subject to termination upon the occurrence of a condition subsequent, such as marriage, remarriage or termination of schooling, or death of the principal, no pay-

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ment will be made until the beneficiary submits a statement to PER/ER/RET that—

(1) The condition has not occurred;

(2) He/she will notify the Department (PER/ER/RET) within 15 calendar days of the occurrence of the condition subsequent; and

(3) He/she will be personally liable for any overpayment to him/her resulting from the occurrence of the condition subsequent. PER/ER/RET may require periodic recertification of these statements.

§ 19.6-4 Date of court orders.

(a) A court order directing or barring payment of a pension to a former spouse under § 19.9 may not be given effect by the Department if it is issued more than 12 months after the divorce becomes final. A court order adjusting the amount of a regular or additional survivor annuity to a former spouse under § 19.11-2 or § 19.10-5 may not be given effect by the Department if it is issued after the death of the principal.

(b) A court order issued within 12 months after a divorce becomes final directing payment of a pension to a former spouse in an amount other than provided in § 19.9 may be made retroactively effective to the first of the month in which the divorce becomes final if so specified by the court. In such event, the Department will adjust any future payments that may become due to an annuitant and a former spouse by increasing one and correspondingly reducing the other in order to give effect to the order of the court. However, if future payments to one party are not due, as for example if a court orders that no payments be made to a former spouse, or that 100 percent of an annuity be paid as pension to a former spouse, the Department will not give retroactive effect to a court order by collecting overpayments from one party in order to pay them to the other party and will not make overpayments from the Fund.

(c) A court order under this chapter involving any payment other than a pension to a former spouse under § 19.9 may not be given retroactive effect and shall not be effective until it is determined to be a qualifying order under § 19.6-5.

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§ 19.6-5 Preliminary review.

(a) Upon receipt of an application for payment under §19.6-3, PER/ER/RET will determine whether—

- (1) The application is complete;
- (2) The applicant is an eligible beneficiary under this chapter; and
- (3) The court order is a qualifying order. If the application is completed, the beneficiary is eligible and the court order appears on its face to be a qualifying order, PER/ER/RET will provide the notification required by §19.6-6, otherwise, it will notify the applicant of any deficiency or requirement for additional information, and if the order is determined to be non-qualifying, the basis for such determination.

(b) Upon receipt of a certified copy of a final decree of divorce, PER/ER/RET will determine whether—

(1) It is a valid decree. Any decree recognized as valid by the parties will be considered valid for this purpose. In addition, any non-recognized decree will be considered valid for this purpose unless:

(i)(A) Neither party was domiciled within the court's jurisdiction, and

(B) The party denying recognition did not participate in the proceedings, or

(ii) The party denying recognition was not afforded notice of the proceedings (actual or constructive);

(2) A related court order has been submitted by either party; and

(3) A pro rata share payment is or may become due the former spouse. If a divorce decree is deemed valid under this paragraph, a pro rata share payment is due a former spouse unless PER/ER/RET is in receipt of a court order which it has deemed qualified under paragraph (a) of this section, or a valid spousal agreement providing otherwise. If it determines that a pro rata share payment is due, it will provide the notification required by §19.6-6, otherwise, unless action is being taken pursuant to a related court order, it will notify both parties to the divorce the reason a pro rata share payment is not payable.

[46 FR 12958, Feb. 19, 1981. Redesignated and amended at 46 FR 18970, Mar. 27, 1981]

§ 19.6-6 Notification.

(a) *Notification to a principal.* Whenever PER/ER/RET receives from a former spouse or other eligible beneficiary—

(1) a court order which it deems qualified that requires payment to the beneficiary; or

(2) A final decree of divorce which it deems valid together with a request for a pro rata share payment—PER/ER/RET will send a copy of the document to the principal and a notice stating: (i) That PER/ER/RET deems the order qualified or the divorce decree valid, (ii) that payments will be made from the principal's account to the beneficiary and the effective date of such payments, (iii) the effect of such payments on the principal's retirement benefit. In the case of any court order with retroactive or immediate effect, and in the case of pro rata share payments, the amounts will be withheld from future payments to the principal but will not be paid to the beneficiary for 30 days from the notice date in order to give the principal an opportunity to contest the court order or the validity of the divorce.

PER/ER/RET will provide the former spouse or other beneficiary the same information, stating the exact amount that will be payable to the beneficiary and explaining how that amount was calculated.

(b) *Notification to a former spouse.* When PER/ER/RET receives from a principal—(1) a court order which it deems qualified that requires or forbids payment to a former spouse; or (2) a final decree of divorce which it deems valid without an accompanying court order—PER/ER/RET will send a copy of the document to the former spouse and a notice stating: (i) That PER/ER/RET deems the court order qualified or the divorce decree valid, (ii) that PER/ER/RET intends to honor the court decree or to make pro rata share payments because of the divorce, (iii) the effective date, exact amount, and method of calculation of any payments to the former spouse.

PER/ER/RET will provide the same information to the principal and will explain the effect any payment to a

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former spouse will have on the principal's retirement benefit.

§ 19.6-7 Decision.

(a) When a response has not been received by PER/ER/RET from a principal within the 30-day period under § 19.6-6a, payment will be made in accordance with the notification. When a response is received, the Chief, PER/ER/RET will consider the response. If it is shown that a court order is not qualifying or that a divorce is not valid under terms of the Act and these regulations, payment proposed in the notification will not be made. In such a case, PER/ER/RET will advise both parties of the basis for its decision and the alternative action, if any, that it proposes to take.

(b) If a principal responding to a notification under § 19.6-6a objects to the payment or other action proposed by the Department in the notification based on the validity of the court order or divorce decree, and the record contains support for the objection, PER/ER/RET will grant the principal 30 days to initiate formal legal action to determine the validity of the objection, will continue to delay payment to the former spouse or other beneficiary during this period, and will notify the beneficiary of this action. If evidence is submitted that formal legal action has been started within the 30-day period, the amount of any proposed payment to a former spouse or other beneficiary will continue to be withheld from any payments due the principal, but no payment will be made to the former spouse or other beneficiary until a judicial decision is rendered or agreement reached between the parties.

[46 FR 12958, Feb. 19, 1981. Redesignated and amended at 46 FR 18970, Mar. 27, 1981]

§ 19.6-8 Allotment to beneficiary.

If a court order is not a qualifying court order because it directs or implies that payment to the beneficiary is to be made by the principal rather than the Secretary of State, the principal may make an allotment to the beneficiary from his/her annuity. An annuitant may also make an allotment from his/her annuity to a previous spouse in the absence of a court order.

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§ 19.6-9 Limitations.

(a) Retirement benefits are subject to apportionment by court order under § 19.6-1(a)(6) only while the principal is living. Payment of apportioned amounts will be made only to a previous spouse and/or the children of the principal. Such payments will not be made to any of the following:

(1) Heirs or legatees of the previous spouse;

(2) Creditors of either the principal or the previous spouse; or

(3) Assignees of either the principal or the previous spouse.

(b) The amount of any court ordered payment may not be less than one dollar and, in the absence of compelling circumstances, shall be in whole dollars.

(c) In honoring and complying with a court order, the Department shall not be required to disrupt the scheduled method of accruing retirement benefits or the normal timing for making such payments, despite the existence of any special schedule relating to a previous spouse or other beneficiary.

(d) In cases where the court order apportions a percentage of the retirement benefits, PER/ER/RET will initially determine the amount of proper payment. That amount will only be increased by future cost-of-living increases unless the court directs otherwise.

§ 19.6-10 Liability.

(a) The Department shall not be liable for any payment made from retirement benefits pursuant to a court order if such payment is made in accordance with the provisions of this chapter.

(b) In the event that the Secretary is served with more than one court order with respect to the same retirement benefits, the benefits shall be available to satisfy the court orders on a first-come, first-served basis.

(c) A previous spouse or other beneficiary may request that an amount be withheld from the retirement benefits of a principal or survivor of a principal which is less than the amount stipulated in a court order, or otherwise scheduled to be paid to the beneficiary under this chapter. This lower amount will be deemed a complete fulfillment

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of the obligation of the Department for the period in which the request is in effect. See § 19.14.

§ 19.7 Spousal agreements.**§ 19.7–1 Purpose.**

A spousal agreement may be used by both parties to establish an agreed-upon level of benefits to a spouse or a former spouse and to relieve the participant of responsibility for providing a higher level of benefits.

§ 19.7–2 Agreement with spouse.

(a) A spousal agreement between a participant and a spouse may waive or fix the level of a regular survivor annuity under § 19.11–3. If an agreement is filed, it will assure the spouse that the agreed-upon level of survivor annuity will be paid, irrespective of a future divorce provided the survivor meets the definition of "former spouse" in § 19.2(k). If an agreement is not filed, the participant's annuity will be reduced under § 19.10–2 to provide the maximum regular survivor annuity for the spouse, but in the event of a future divorce if the spouse meets the definition of "former spouse," that person will be entitled only to a pro rata share of the survivor annuity. An agreement under this paragraph may be filed with PER/ER/RET at any time prior to retirement (commencement of the principal's annuity).

(b) A spousal agreement between an annuitant and a spouse filed with PER/ER/RET before commencement of a supplemental annuity for recall service may waive a supplemental survivor annuity that would otherwise be provided for a spouse under § 19.10–6.

(c) A spousal agreement between a participant or former participant and a spouse may be filed with PER/ER/RET at any time in accordance with § 19.10–5 and provide for an additional survivor annuity for the spouse.

(d) A spousal agreement filed under paragraph (a), (b), or (c) remains valid and binding in the event of divorce if the spouse qualifies as a former spouse.

§ 19.7–3 Agreement with former spouse.

(a) A spousal agreement between a participant or former participant and a

former spouse may waive, reduce or increase the following benefits for a former spouse;

- (1) A pension under § 19.9;
- (2) A regular survivor annuity under § 19.11–2;
- (3) A supplemental survivor annuity under § 19.10–6;
- (4) A lump sum payment for regular or recall service under § 19.13.

A spousal agreement shall also be used by a participant or former participant who has a former spouse on February 15, 1981, to elect a regular survivor annuity for such former spouse in accordance with § 19.11–2(e). An agreement to establish or increase any benefit for a former spouse entered into while the principal is married to someone else, must be signed and agreed to by both the spouse and the former spouse. An agreement affecting pension benefits may be filed at any time and will govern payments made after its acceptance by PER/ER/RET. An agreement affecting a regular survivor annuity must be filed before the end of the 12-month period after the divorce involving that former spouse or at the time of retirement, whichever occurs first, except as authorized in § 19.11–2(b) for persons retired on February 15, 1981, or in § 19.11–2(e) with respect to persons who were former spouses on February 15, 1981. This filing requirement stated in the Act makes it impossible to adjust, other than by court order, a regular survivor annuity for a former spouse when the divorce occurs after a retirement which occurs on or after February 15, 1981. The survivor annuity for the former spouse in such case is fixed by any spousal agreement entered into prior to the divorce, by § 19.11–2 or by court order. An agreement affecting supplemental survivor benefits or lump-sum payments must be filed before the supplemental annuity of the principal begins or lump-sum payment is made.

(b) A spousal agreement between a participant or former participant and a former spouse may be filed with PER/ER/RET at any time in accordance with § 19.10–5 to provide an additional survivor annuity for the former spouse.

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§ 19.7-4 Form of agreement.

(a) A spousal agreement is any legal agreement between the parties accepted by PER/ER/RET as meeting the requirements of this section. If in accordance with the regulations, PER/ER/RET will accept as a valid spousal agreement a property settlement agreed to by the parties and approved by a court regardless of the date of the agreement.

(b) A spousal agreement must either be authenticated by a court or notarized.

§ 19.7-5 Limitations.

(a) A spousal agreement may not provide for any payment from the Fund in excess of the amount otherwise authorized to be paid, or at a time not authorized by these regulations, or to a person other than a spouse or former spouse.

(b) A spousal agreement must be filed with the Department, Attention PER/ER/RET, and accepted by that office as in conformance with the Act and these regulations prior to the times specified in §§ 19.7-2 and 19.7-3. That office will provide advice to the parties on the validity of any proposed agreement and on proper format.

(c) A spousal agreement may apply only to payments from the Fund for periods after receipt of a valid agreement by the Department.

(d) Paragraphs (b), (c) and (d) of §§ 19.6-9 and 19.6-10 apply to spousal agreements and payments made pursuant to spousal agreements to the same extent that they apply to court orders and court ordered payments.

§ 19.7-6 Duration and precedence of spousal agreements.

(a) A spousal agreement may be revised or voided by agreement of the parties (by filing a new agreement under this section) at any time prior to the last day for filing an agreement determined in accordance with § 19.7-2 or § 19.7-3, except spousal agreements for additional survivor annuities are irrevocable. After the last day for filing a particular agreement, such agreement is irrevocable.

(b) A valid spousal agreement entered into subsequent to the issuance of a court order affecting the same parties

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will override the court order, and shall govern payments from the Fund.

(c) A spousal agreement may not override a previous spousal agreement involving the same principal but a different spouse or former spouse without agreement of such spouse or former spouse.

§ 19.8 Obligations of members.

Participants and former participants are obligated by the Act and these regulations to provide the following benefits to others and must accept the necessary reductions in their own retirement benefits to meet these obligations:

(a) A pension to a former spouse pursuant to § 19.9;

(b) A court ordered apportionment of annuity to a previous spouse or child under § 19.6-1 (a)(6) (the benefit to a child referred to here is paid during the annuitant's lifetime as distinguished from the automatic survivorship annuity to a child described in § 19.11-7);

(c) A regular survivor annuity to a former spouse who has not remarried prior to age 60, and to a spouse to whom married when annuity commences, pursuant to §§ 19.11-2 and 19.11-3;

(d) An additional survivor annuity for a spouse or former spouse under § 19.10-5 when elected by the participant or ordered by a court;

(e) Lump-sum payments to a former spouse pursuant to § 19.13;

(f) Benefits ordered by a court under § 19.6 or specified in a spousal agreement under § 19.7.

§ 19.9 Pension benefits for former spouses.

§ 19.9-1 Entitlement.

(a) Unless otherwise expressly provided by a spousal agreement under § 19.7 or a court order under § 19.6, a person who, after February 15, 1981, becomes a former spouse of a participant (or former participant who separated from the Service after February 15, 1981) and who has not remarried prior to becoming 60 years of age, becomes entitled to a monthly pension benefit effective on a date determined under § 19.9-2 in an amount determined under § 19.9-3.

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(b) A former spouse shall not be qualified for a pension under this subsection if, before the commencement of that pension, the former spouse remarries before becoming 60 years of age.

(c) A pension benefit under this section is treated the same as a survivor annuity for purposes of §19.11-5(b): a former spouse who elects to receive a pension under this section must waive simultaneous receipt of any survivor annuity.

[46 FR 12958, Feb. 19, 1981. Redesignated and amended at 46 FR 18970, Mar. 27, 1981]

§ 19.9-2 Commencement and termination.

(a) The pension of a former spouse under this subsection commences on the latter of the day the principal becomes entitled to a Foreign Service annuity or on the first day of the month in which the divorce becomes final. (Suspension or reduction of a Foreign Service annuity because of reemployment does not affect the commencement of a pension to a former spouse.) In the case of any former spouse of a disability annuitant, the pension of such former spouse shall commence on the latter of:

(1) The date the principal would qualify for an annuity (other than a disability annuity) on the basis of his/her creditable service;

(2) The date the disability annuity begins; or

(3) The first of the month in which the divorce becomes final.

(b) The pension of a former spouse and the right thereto terminate on:

(1) The last day of the month before the former spouse dies or remarries before 60 years of age; or

(2) The date the annuity of the former participant terminates unless the termination results from recall, reappointment or reinstatement in the Foreign Service or reemployment in Government service.

§ 19.9-3 Computation and payment of pension to former spouse.

(a) A pension to a former spouse is paid monthly on the same date that annuity is paid to the principal.

(b) No spousal agreement or court order may provide for a pension or any combination of pensions to former

spouses of any one principal which exceeds the net annuity of the principal as defined in §19.6-2(b).

(c) A pension to a former spouse not fixed by a spousal agreement or court order shall equal the former spouse's pro rata share of 50 percent of the annuity to which the principal is entitled on the date the divorce becomes final, or, if not then entitled to an annuity, 50 percent of the annuity to which the principal first becomes entitled following that date. A pension to a former spouse of a disability annuitant shall be calculated on the basis of an annuity for which the participant would qualify if not disabled. A pension to a former spouse will be increased by the same percentage of each cost-of-living adjustment received by the principal.

(d) The Department will initiate payment of a pension to a former spouse after complying with the notification and other procedures described in §19.6.

(e) If a pension can not be paid because a former spouse is missing, the principal may file an affidavit with PER/ER/RET that he/she does not know the whereabouts of the former spouse. In such an event, the principal and the Department will follow the procedures in §19.11-4 in an effort to locate the former spouse. The annuity of the principal will be reduced by the amount of the pension to the former spouse even though the latter is not being paid. If the former spouse has not been located during the 12-month period following the date the principal files an affidavit under this section, the annuity of the principal will be recomputed effective from its commencing date (or on the date following the last month a pension payment was made to the former spouse) and paid without reduction of the amount of pension to the former spouse. If the former spouse subsequently is located, pension payments to him/her will be initiated at that time at the rate that would have been payable had they been paid continuously from the original effective date. The Department shall not be liable to make any pension payments to the former spouse for the missing period if the procedures under this section were faithfully complied with nor will the Department be responsible for recovering any payments made to the

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principal for the benefit of the former spouse.

§ 19.9-4 Effect on annuitant.

Any pension payable to a former spouse under this section or pursuant to any spousal agreement or court order shall be deducted from the annuity of the principal. (See § 19.6-4 concerning retroactive adjustments.) If the annuity of such a principal in any month is discontinued or reduced so that the net amount payable is less than the pension to the former spouse or spouses of the principal because of recall, reappointment or reinstatement in the Foreign Service or reemployment in the Government service, the principal's salary, rather than annuity, shall be reduced by the amount of the pension payment(s). Such salary reductions shall be deposited in the Treasury to the credit of the Fund. If a pension to a former spouse is discontinued for any reason except a suspension pending a determination of entitlement, the annuity of the principal shall be recomputed effective as of the date of discontinuance of the pension, and paid as if the pension to the former spouse had never been deducted.

§ 19.10 Types of annuities to members.

§ 19.10-1 Full annuity.

If a participant retires and does not provide a survivor annuity to a spouse, former spouse or designated beneficiary, the participant receives a "full" annuity. A full annuity means an annuity computed without any survivorship reduction. Example: Average salary \$20,000 and maximum of 35 years of service.

Average basic annual salary for high 3 consecutive years of service	\$20,000
Multplied by 2 pct02
	\$400.00
Multplied by 35 years of creditable service35
Full annuity	\$14,000

§ 19.10-2 Reduced annuity with regular survivor annuity to spouse or former spouse.

(a) At commencement of annuity, a participant or former participant may provide a regular survivor annuity for any eligible former spouse and, within the limits of paragraph (b) of this sec-

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tion, a regular survivor annuity to any spouse to whom he/she is then married as described in §§ 19.11-2 and 19.11-3, respectively. A regular survivor annuity for a spouse or former spouse equals 55 percent of the portion of the retiree's annuity (up to the full amount) designated as the base for the survivor annuity. To provide the survivor annuity, the participant must accept a reduction in his/her full annuity equal to 2½ percent of the first \$3,600 of the designated base, plus 10 percent of the balance of the base. If a regular survivor annuity is being provided for both a spouse and a former spouse, the bases for each are added and the calculation made as in the following example:

Participant's full annuity as computed in § 19.10-1: \$14,000.

Maximum regular survivor annuity is 55 percent of full annuity: \$7,700.

Case I (Participant has a spouse and former spouse at retirement) If the pro rata share for a former spouse is 75 percent, the base for this benefit will be 75 percent of \$14,000: \$10,500.

The base for the maximum regular survivor annuity for a spouse would then be 25 percent of \$14,000, or \$3,500.

Combined base: \$14,000.

Participant's full annuity reduced as follows:

2½ percent of first \$3,600 of the base: \$90.

Plus 10 percent of the amount over \$3,600 (\$14,000-3,600) \$10,400: \$1,040.

Total reduction in participant's full annuity: \$1,130.

Participant's reduced annuity: \$12,870.

Survivor annuity for former spouse: 55 percent of \$10,500 or \$5,775.

Survivor annuity for spouse: 55 percent of \$3,500 or \$1,925.

Case II (Participant married at retirement with no former spouse. All calculations made without reference to cost-of-living increases described in § 19.11-5d.)

Joint election of base for regular survivor annuity of 90 percent of the maximum, or 90 percent of \$14,000: \$12,600.

Participant's full annuity reduced as follows:

2½ percent of first \$3,600 of the base: \$90.

Plus 10 percent of the amount over \$3,600 (\$12,600-3,600) \$9,000: \$900.

Total reduction in participant's full annuity: \$990.

Participant's reduced annuity: \$13,010.

In this example, if divorce occurs subsequent to retirement and a court orders a 75 percent share for the former spouse, the base for the survivor annuity for the former spouse would be 75 percent of \$14,000: \$10,500.

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The participant's full annuity would then be reduced by \$780 in accordance with the above formula for this survivor benefit, and the reduced annuity would be \$14,000-\$780: \$13,220.

If the former spouse qualifies for a pension as described in §19.9 based on a pro rata share of 75 percent, the pension would equal 50 percent of the participant's reduced annuity times 75 percent ($50\% \times \$13,220 \times 75\% = \$4,957.50$).

The participant's reduced annuity would then be further reduced by this pension (\$13,220-\$4,957.50) to provide an annuity to the former participant of \$8,262.50.

If this annuitant later remarried, the maximum base for the regular survivor annuity for the new spouse would be the amount designated at retirement, \$12,600, less the amount committed to the former spouse, \$10,500: \$12,600-\$10,500 or \$2,100.

The survivor annuity for this spouse: 55 percent of \$2,100 or \$1,155.

The election of this benefit for the new spouse would be made individually by the annuitant since a marriage after retirement does not give a spouse a right to participate in the election.

If the election is made to provide a regular survivor annuity to the new spouse, all of the above calculations would be recomputed effective the first day of the month beginning one year after the date of the remarriage, as follows:

Base for survivor annuity for former spouse: 75% of \$14,000 or \$10,500.

Survivor annuity for former spouse: 55% of \$10,500 or \$5,775.

Base for survivor annuity for spouse: 15% of \$14,000 or \$2,100.

Survivor annuity for spouse: 55% of \$2,100 or \$1,155.

The combined base for the survivor benefits is \$10,500 plus \$2,100 or \$12,600. The annuity reduction on this combined base as computed above is \$990.

The participant's annuity after reduction for survivor benefit would be \$14,000-\$990 or \$13,010.

The pension for the former spouse would be $50\% \times \$13,010 \times 75\% = \$4,878.75$.

The participant's annuity would be further reduced by this amount: \$13,010-\$4,878.75 to provide an annuity after this recalculations of \$8,131.25.

(b) The maximum regular survivor annuity or combination of regular survivor annuities that may be provided under this section is limited to 55% of the principal's full annuity computed at retirement. If an annuitant is recalled to active duty in the Foreign Service, he/she may provide additional regular survivor annuities under §19.10-6. The maximum regular sur-

vivor annuity or combination of regular survivor annuities that an annuitant who was married at retirement may elect or provide, pursuant to a court order or otherwise, after retirement in the event of his/her divorce or remarriage, is limited to the amount provided at the time of initial retirement or reversion to retired status following recall service.

§ 19.10-3 Marriage after retirement.

If an annuitant who was unmarried at the time of retirement, marries, he/she may within one year after such marriage irrevocably elect to receive a reduced annuity and to provide, subject to any obligation to provide a survivor annuity for a former spouse, a survivor annuity for the new spouse. If such an election is made, the principal's annuity shall be reduced in accordance with §19.10-2 effective on the first day of the first month which begins at least one year after the date of the marriage. The reduction is computed on the commencing rate of the principal's annuity.

§ 19.10-4 Death or divorce of a spouse and remarriage after retirement.

(a) If the marriage of an annuitant who received a reduced annuity at retirement under §19.10-2 to provide a survivor annuity for a spouse is dissolved by divorce or by death of the spouse, the retiree's annuity shall be recomputed, if necessary, as of the first of the month following the death or divorce. If the marriage was dissolved by death, the annuity shall be recomputed and paid at its full amount. If the marriage is dissolved by divorce, procedures in §19.11-2(b) shall be followed.

(b) In the event an annuitant affected by this paragraph remarries, the annuitant may elect within one year of remarriage to provide a survivor annuity for the new spouse equal in amount to the survivor benefit formerly in effect for the previous spouse less any amount committed for a former spouse. The annuity of a retiree making such an election shall be reduced effective on the first day of the first month which begins at least one year after the remarriage to the amount that would have been payable had there been no

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recomputation under paragraph (a) of this section.

§ 19.10-5 Reduced annuity with additional survivor annuity to spouse or former spouse.

(a) *General.* This section provides an opportunity for a participant or former participant who has provided a regular survivor annuity to a former spouse to provide a survivor annuity to a second spouse or to another former spouse. The additional survivor annuity provided under this section generally is more costly than the regular survivor annuity because the participant is required to pay its full cost by deduction from salary or annuity, or otherwise, as specified in paragraph (e) of this section. The participant must also be in normal health for his/her age and pass a physical examination prescribed by the Secretary of State (M/MED) to be eligible to provide an additional survivor annuity under this section.

(b) *Limitation on amount.* Neither the total amount of additional survivor annuity or annuities under this section provided by any participant or former participant nor any combination of regular or additional survivor annuities for any one surviving spouse or former spouse of a principal may exceed 55 percent of the principal's full annuity counting any supplemental annuity or recomputation of annuity because of recall service. An additional survivor annuity provided by any principal shall be further limited to the amount that can be provided by a monthly payment which is not greater than the principal's net annuity described in §19.6-2(b). The amount of any additional survivor annuity provided by a spousal agreement effective prior to the principal's retirement, shall be reduced as necessary by PER/ER/RET after the principal's retirement to comply with this limitation. Any amount paid by a participant for the portion of additional survivor annuity cancelled pursuant to this paragraph shall be treated as an additional lump sum payment under paragraph (e) of this section and used to increase the amount of the additional annuity. A participant who separates from the Service without entitlement to any annuity is not entitled to provide an ad-

ditional survivor annuity. Payments in such a case would be discontinued as described in paragraph (e) of this section.

(c) *Procedures to grant additional survivor annuity.* A participant or former participant who has provided a regular survivor annuity to a former spouse who wishes to provide, or who is ordered by a court to provide an additional survivor annuity under this section to a spouse or another former spouse, shall do so by filing a spousal agreement with PER/ER/RET on a form acceptable to PER/ER/RET. Such an agreement will be irrevocable when accepted by PER/ER/RET unless the beneficiary of the additional survivor annuity is subsequently made a beneficiary of a regular survivor annuity in equal amount. Within the limitations specified in paragraph (b) of this section, an individual may be made the beneficiary of both a regular and an additional survivor annuity. A spousal agreement granting an additional survivor annuity to a spouse will remain valid in the event the marriage is dissolved and the spouse qualifies as a former spouse under the definition §19.2(k).

(d) *Eligibility for additional survivor annuity.* A spouse or former spouse must meet the same criteria (§19.2(v) or §19.2(k)) to be eligible for an additional survivor annuity as a spouse or former spouse must meet to be eligible for a regular survivor annuity. Payment of a special survivor annuity will commence on the day after the participant dies and shall terminate on the last day of the month before death or remarriage before attaining age 60. If it is discontinued because of remarriage, it will not be resumed.

(e) *Payment for additional survivor annuity.* (1) Payment for an additional survivor annuity will commence on the first of the month following the effective date of a spousal agreement providing the additional survivor annuity. The effective date will be the date of acceptance of the spousal agreement by PER/ER-RET (upon a finding that the agreement conforms to the law and regulations) or such later date as may be specified in the agreement. No payment will be made to a beneficiary under the agreement if the principal

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dies before its effective date. Accordingly, in order to give protection to a beneficiary during active service, the agreement must be made effective, and payment commence, during active service. Payment will be made by a participant or annuitant by deduction from salary or annuity. Payment will be made by a former participant while awaiting commencement of a deferred annuity by direct payment to the Department, Office of Financial Operations (M/COMP/FO). Payments not received by the due date may, at the option of M/COMP/FO and with notice to the principal and the beneficiary be collected from the principal's lump-sum account. Amounts so collected must be repaid by the principal with interest compounded at 10 percent annually to prevent exhaustion of the lump-sum account. If the lump-sum account does become exhausted, any rights to the lump-sum payment under § 19.13 and survivorship rights under this paragraph will expire on that date. If the principal dies with an amount owing, it shall be collected by set off from the survivor annuity or lump-sum account.

(2) Monthly payments may be reduced or eliminated by direct payment to M/COMP/FO by any participant or former participant under terms mutually agreed upon by the participant and PER/ER/RET. Minimum monthly payments will be based upon actuarial tables prescribed from time to time by the Director General of the Foreign Service (M/DGP) with the advice of the Secretary of Treasury. Such tables will be calculated so that the present value of all payments equal the present value of the survivor annuity. If new tables are prescribed, they would be applicable to additional survivor annuities provided by spousal agreements that become effective on or after the effective date of the new tables. Additional survivor annuities will be increased by regular cost-of-living adjustments from their commencing dates only when so specified at the option of the participant or former participant in a spousal agreement. Monthly payments will be higher if cost-of-living adjustments are provided.

(3) In the event of the disqualification of a beneficiary for an additional

survivor annuity because of death, remarriage prior to age 60 or divorce from the principal and failure to meet the definition of "former spouse," or in the event of an authorized reduction or cancellation of an election for an additional survivor annuity, the monthly payment for such discontinued or reduced additional survivor annuity will be discontinued or reduced, as appropriate, effective at the beginning of the first month following termination or reduction of the benefit. Except as otherwise specified in paragraph (b) of this section, any amount paid for such discontinued or reduced benefit by a participant or former participant in excess of the minimum monthly payments described above shall be refunded to the participant or former participant with interest calculated at the annual rate used in the last evaluation of the System or at such higher rate as may be authorized by M/COMP/FO as will not cause a loss to the Fund. The following table illustrates the minimum monthly payments schedule in effect February 15, 1981.

Age of principal and beneficiary on effective date of spousal agreement	Minimum monthly pay- ment required to provide an additional survivor an- nuity of \$100 per month.	
	Without COLA	With COLA
40	\$7.49	\$12.34
50	14.18	22.01
60	23.55	33.90
70	35.57	47.12

(4) Reduction from annuity to a principal to pay for an additional survivor annuity will be in the nature of an allotment and will not affect computations of cost-of-living adjustments to the principal.

§ 19.10-6 Benefits for recall service.

(a) *Annuity of recalled participant.* Any participant who is recalled to the Service under section 308 of the Act, shall, while serving, be entitled in lieu of annuity to the full salary of the class in which serving. During such service, the recalled annuitant shall make contributions to the Fund under section 805(a) of the Act. If a share of the annuity is being paid as a pension to a former spouse under § 19.9, that share shall be deducted from the salary

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of the recalled annuitant during the period of the recall service. Upon reversion of the annuitant to retired status, any pension payable to a former spouse that was being deducted from the salary of the principal shall again be deducted from the annuity of the principal which shall be determined as follows:

(1) If the recall service lasts less than one year, a refund of retirement contributions made during the recall period will be refunded under § 19.13 and the former annuity will be resumed at the previous rate adjusted by any cost-of-living increases that became effective during recall service.

(2) If the recall service lasts between one and five years, the annuitant will be entitled to elect benefits under paragraph (a)(1) of this section or receive both the former annuity adjusted by cost-of-living increases and a supplemental annuity computed under § 19.10 on the basis of service credit and average salary earned during the recall period, irrespective of the number of years of service credit previously earned.

(3) If the recall service lasts five years or more, the annuitant will be entitled to recomputation of the annuity as if there had been no previous retirement, or elect benefits under paragraph (a) (1) or (2) of this section.

(4) An annuitant may receive credit in any computation under paragraph (a) (2) or (3) of this section for any Federal service performed subsequent to the separation upon which the original annuity was computed provided a special contribution is made for such service under section 805 of the Act.

(5) An annuitant entitled to a supplemental annuity under paragraph (a)(3) of this section or a recomputed annuity under paragraph (a)(4) of this section is obligated, in the absence of a court order or spousal agreement to the contrary, to have those annuities reduced to provide the benefits described in § 19.8 to any spouse or former spouse to whom married during any portion of the recall service. An annuitant must accept a reduction of 10 percent of his/her supplemental annuity in order to provide a supplemental survivor annuity to a spouse or former spouse. The maximum supplemental

survivor annuity equals 55 percent of the supplemental annuity. If, upon reversion to retired status, an annuitant has a former spouse entitled to a pro rata share or some other share of the supplemental survivor annuity, but no spouse, the appropriate share of the supplemental annuity shall be reduced by 10 percent to provide such former spouse a share of the maximum supplemental survivor annuity.

(b) *Survivor benefit for death during recall service.* (1) If an annuitant entitled to a reduced annuity under § 19.10-2 dies in service after being recalled and is survived by a spouse or former spouse entitled to a survivor annuity based on the service of such annuitant, such survivor annuity shall be computed as if the recall service had otherwise terminated on the day of death and the annuity of the deceased had been resumed in accordance with paragraph (a) of this section. If such death occurs after the annuitant had completed sufficient recall service to attain eligibility for a supplemental annuity, a surviving spouse or surviving former spouse who was married to the participant at any time during a period of recall service shall be entitled to elect, in addition to any other benefits and in lieu of a refund of retirement contributions made during the recall service, a supplemental survivor annuity computed and paid under § 19.10-6a(5) as if the recall service had otherwise terminated. If the annuitant had completed sufficient recall service to attain eligibility to have his/her annuity determined anew, a surviving spouse or such a surviving former spouse may elect, in lieu of any other survivor benefit under § 19.11, to have the rights of the annuitant redetermined and to receive a survivor annuity computed under § 19.11-2 or § 19.11-3 on the basis of the total service of the annuitant. In the event such an annuitant is survived both by a spouse and such a former spouse, the former spouse will be entitled to a pro rata share of any refund or supplemental survivor benefit under this section computed on the basis of total service during the recall period and months of marriage during such period. If the surviving spouse and surviving former spouse elect different benefits under

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this paragraph, the former spouse will receive the pro rata share of the benefit he/she elects and the spouse will receive the reciprocal share of the benefit he/she elects.

(2) In the event an annuitant dies during recall service and is survived by a former spouse to whom not married during any period of the recall service, such former spouse will not be entitled to any benefits based on the recall service.

§ 19.11 Survivor benefits.**§ 19.11-1 Kinds of survivor benefits.**

If a participant or former participant dies in active service or after retirement, regular survivor annuities are payable under terms of this section to an eligible surviving spouse, former spouse or child. Also, if all rights to annuity and survivor annuity terminate prior to exhaustion of the participant's lump-sum credit, a lump-sum payment is made pursuant to § 19.13. In addition to the above, an additional survivor annuity, and a supplemental survivor annuity may be payable to an eligible survivor under §§ 19.10-5 and 19.10-6, respectively. If any participant or former participant makes an election, files a spousal agreement or becomes subject to a court order to provide a regular survivor annuity for a spouse or former spouse and does not subsequently become entitled to leave a survivor annuity under these regulations (because of separation from the Service and withdrawal of contributions, death after separation but before commencement of a deferred annuity, or for any other reason), none will be paid and such election, spousal agreement or court order to provide such survivor annuity will have no force or effect.

§ 19.11-2 Regular survivor annuity for a former spouse.

(a) *Divorce prior to retirement.* If a participant or former participant is divorced prior to commencement of annuity, any former spouse shall be entitled to a pro rata share of such a principal's maximum regular survivor annuity (based on service performed prior to the first date the principal becomes eligible for an annuity following the di-

vorce) unless a different amount is elected in a spousal agreement filed with PER/ER/RET within 12 months after the divorce becomes final or at the time of the retirement, whichever occurs first, or unless a different amount is specified by a court prior to the death of the principal. The principal's annuity shall be reduced at the commencing date under § 19.10-2 in order to provide the survivor annuity committed to the former spouse.

(b) *Divorce after retirement.* In the event an annuitant is divorced after retirement (commencement of annuity), the maximum survivor annuity that may be provided for that former spouse is limited to the amount provided for that person at the time of retirement. Within that limit, the former spouse is entitled to a pro rata share of the participant's maximum survivor benefit (based on service performed prior to the divorce) unless a different amount was elected in a spousal agreement filed with PER/ER/RET at the time of retirement, or in the case of retirement before February 15, 1981, filed with PER/ER/RET within 12 months after the divorce becomes final, or unless a different amount is specified by a court prior to the death of the principal. For this purpose, a joint election filed with PER/ER/RET at the time of retirement is considered a spousal agreement. If the survivor annuity for the former spouse is reduced at the time of the divorce (because the pro rata share or the amount specified in a spousal agreement or court order is less than the amount elected at retirement), the principal's annuity shall be recomputed and paid, effective on the date the survivor benefit is reduced, as if the lower amount had been elected at the outset of retirement.

(c) *Death or remarriage of former spouse and transfer of survivor benefit to a spouse.* Remarriage below age 60 or death of a former spouse while a principal is alive will disqualify the former spouse for benefits under this section. In the event of such a remarriage or death of a former spouse, the portion of a principal's survivor annuity committed to that person will become available for transfer to any spouse. If such a remarriage or death of the

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former spouse occurs after the principal's annuity commences, any reduction in the principal's annuity for that former spouse will be discontinued effective at the beginning of the first month following the remarriage or death unless the annuitant elects to provide or to increase a survivor benefit for a spouse. Such an election may be made within one year after the annuitant receives notice of the remarriage or death of his/her former spouse. The Department (PER/ER/RET) and the annuitant shall each notify the other promptly whenever either receives independent notice of such a remarriage or death. If an election to transfer survivor benefits to a spouse is not made by the annuitant, his/her annuity will be recomputed and paid as if there had been no reduction for the discontinued survivor benefit. If an annuity is so recomputed and an election is subsequently made to designate as beneficiary a spouse to whom married for at least one year at the time the election is made, the principal's annuity shall be restored retroactively to its former, lower rate and then adjusted by cost-of-living increases that have occurred since the date of the first recomputation. If an election is made for a spouse when the marriage has not yet lasted a year, the procedures in § 19.10-4 shall be followed.

(d) *Amount of survivor annuity.* The amount of a regular survivor annuity is determined under § 19.11-3(c).

(e) *Special rules for election of survivor annuity for a person who is a former spouse on February 15, 1981.* (1) Any participant, or former participant eligible for a deferred annuity which has not yet commenced, who, on February 15, 1981 has a former spouse, may at any time prior to commencement of annuity, elect, with the consent of any spouse to whom married at the time of the election, to receive a reduced annuity and provide a regular survivor annuity for such former spouse. Such survivor annuity shall be limited by § 19.10-2(b). An election under this paragraph for a former spouse will reduce the amount of any regular survivor annuity that may subsequently be provided for any spouse or other former spouse.

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(2) Any former participant in receipt of an annuity who has a former spouse on February 15, 1981 and who has not committed his/her entire annuity as a base for a regular survivor annuity for a spouse or any other former spouse, may, prior to December 31, 1982, designate any portion of the uncommitted base as the base for a regular survivor annuity for such former spouse.

(3) The annuity of a former participant making an election under this paragraph shall be reduced under § 19.10-2(a) effective February 15, 1981, or from its commencing date if later.

(4) An election under this paragraph shall be made by filing a spousal agreement with PER/ER/RET under § 19.7. A spousal agreement to provide a regular survivor annuity under this paragraph for a former spouse may be revoked or amended after its acceptance by PER/ER/RET as in accordance with the Act and these regulations, only by agreement of the parties up to the last day allowed by this paragraph for filing such an agreement. Thereafter, it is irrevocable. If a participant dies in service after having filed a valid election under this section, a survivor annuity will be paid to an eligible former surviving spouse in accordance with the terms of the election.

§ 19.11-3 Regular survivor annuity for a spouse.

(a) In the absence of a joint election or a spousal agreement to the contrary, a participant or former participant who is separated from active service on or after February 15, 1981 who is married at the commencement of his/her annuity shall provide a regular survivor annuity for a spouse under § 19.10-2 equal to the maximum amount that remains available under limitations stated in paragraph (b) of that section after allowing for any commitment of a regular survivor annuity for a former spouse who has not remarried prior to age 60 and who is alive on the date the former participant becomes eligible for an annuity.

(b) A regular survivor annuity is also payable to a surviving spouse for whom a principal elected an annuity under § 19.10-3, § 19.10-4, or § 19.11-2(c) following a marriage after commencement of his/her annuity.

(c) The amount of a regular survivor annuity equals 55 percent of the base designated for the benefit at the time the principal's annuity commenced, adjusted by the total percentage of cost-of-living increases the principal was receiving at death.

(d) A survivor annuity is payable to a surviving spouse only if that person was married to the principal at the time of his/her death or if the spouse became a former spouse under the definition in §19.2(k).

[46 FR 12958, Feb. 19, 1981. Redesignated and amended at 46 FR 18970, Mar. 27, 1981]

§ 19.11-4 Procedure in event a spouse or former spouse is missing.

If a participant or former participant has a spouse or former spouse whose whereabouts are unknown, such participant may elect to reduce or eliminate the share of a regular survivor annuity provided for that person under §19.11-2 or §19.11-3 by filing an affidavit with PER/ER/RET stating that his/her spouse or former spouse is missing and giving full name, last known address, date last heard from, circumstances of the disappearance and a description of the effort that has been made to locate the individual. Thereafter, the participant shall take such additional steps to locate the missing person as may be directed by PER/ER/RET. That Office shall also attempt to locate the missing person by sending a letter to the individual's last known address given in the Department's files, to the address given on the affidavit, and, if a Social Security number is known, to the Social Security Administration for forwarding. The election and affidavit may be filed at any time before commencement of annuity. It must remain on file with PER/ER/RET for at least one year before being given irrevocable effect by the Department. If the annuity to the former participant becomes effective prior to the expiration of this one year period, the annuity shall be computed and paid without reference to the election filed under this section. Following this one-year period, or at the commencement of annuity, if later, if the missing person has not been located, the affidavit may be reaffirmed by the participant, after which an election by the participant to reduce or

eliminate the share of regular survivor annuity for the missing person shall be given irrevocable effect by the Department. If the annuity to the former participant has commenced, it shall be recomputed and paid retroactively to give effect to any election made under this section.

§ 19.11-5 Commencement, termination and adjustment of annuities.

(a) An annuity payable from the Fund to a surviving spouse or former spouse begins on the day after the participant or annuitant dies and stops on the last day of the month before the survivor's (1) marriage before age 60, or (2) death. If a survivor annuity is terminated because of remarriage, the annuity is restored at the same rate effective on the date such remarriage is terminated, provided any lump-sum paid upon termination of the annuity is returned to the Fund. The termination of a surviving spouse annuity due to remarriage does not apply to a survivor annuitant who is a surviving spouse of a participant who died in service or retired before October 1, 1976, unless elected following a marriage after retirement under circumstances described in §19.10-3 or §19.10-4.

(b) A surviving spouse or former spouse shall not become entitled to a survivor annuity or to the restoration of a survivor annuity payable from the Fund unless the survivor elects to receive it instead of any other survivor annuity to which entitled under this or any other retirement system for Government employees. (For this purpose, neither the Social Security system nor the military retirement system is considered a retirement system for Government employees.) This restriction does not apply to a survivor annuitant who is a surviving spouse of a participant who died in service or retired before October 1, 1976, unless the survivor annuity was elected under circumstances described in §19.10-3 or §19.10-4.

(c) A child's annuity begins on the day after the participant dies, or if a child is not then qualified, on the first day of the month in which the child becomes eligible. A child's annuity shall terminate on the last day of the month

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which precedes the month in which eligibility ceases.

(d) Regular and supplemental survivor annuities to a spouse or former spouse of an annuitant described in §§ 19.11-2, 19.11-3 and 19.10-6(b) are increased from their effective date by the cumulative percentage of cost-of-living increases the annuitant was receiving under section 826 of the Act at death. All annuities payable to survivors on the date a cost-of-living adjustment becomes effective are increased by that percentage except (1) the first increase to a surviving spouse of a participant who dies in service shall be pro rated and (2) additional survivor annuities under § 19.10-5 when the spousal agreement authorizing the annuity makes no provision for cost-of-living increases.

(e) The annuity of survivors becomes effective as specified in this section but is not paid until the survivor submits Form JF-38, Application for Death Benefits, supported by such proof as may be required, for example, death, marriage, and/or divorce certificates. In the event that such is not submitted during an otherwise eligible beneficiary's lifetime, no annuity is due or payable to the beneficiary's estate.

[46 FR 12958, Feb. 19, 1981. Redesignated and amended at 46 FR 18970, Mar. 27, 1981]

§ 19.11-6 Death during active duty.

(a) *Annuity for surviving former spouse.* In the event a participant dies before separation from the Service and leaves a former spouse, such former spouse is entitled to a regular survivor annuity under § 19.11-2 computed as if the participant had retired on the date of death unless a court order or spousal agreement is on file in the Department waiving such entitlement or providing for some other computation, or unless the former spouse had been found missing and an election filed under the procedures of § 19.11-4 waiving a survivor benefit for that person. Any assumed service authorized to be used under paragraph (b) of this section in computing the annuity for a surviving spouse may not be counted as "years of marriage" when determining whether the previous spouse qualifies as a "former spouse" under the definition in § 19.2(k) or when computing the pro

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rata share under § 19.2(s). A former spouse is entitled to an additional survivor annuity under § 19.10-5 provided death occurs on or after the effective date of a spousal agreement providing for the additional annuity.

(b) *Annuity for surviving spouse.* If a participant who has at least 19 months of civilian service credit toward retirement under the System, excluding extra service credited for unhealthful post duty in accordance with section 816 of the Act, dies before separation from the Service, and is survived by a spouse as defined in § 19.2(v) such survivor shall be entitled to an annuity equal to 55 percent of the annuity computed in accordance with § 19.10-1 less any annuity payable to a former spouse under paragraph a. If the participant had less than three years of creditable civilian service at the time of death, the survivor annuity is computed on the basis of the average salary for the entire period of such service. If, at time of death, the participant had less than 20 years of creditable service, the annuity shall be computed on the assumption that the participant has had 20 years of service, but such additional service credit shall in no case exceed the difference between the participant's age on the date of death and age 65. A spouse is entitled to an additional survivor annuity under § 19.10-5 provided death occurs on or after the effective date of a spousal agreement providing for the additional annuity.

(c) *Annuity for a child or children.* If a participant described in paragraph (b) of this section is survived by a child or children, each surviving child is entitled to an annuity as described in § 19.11-7.

(d) *Annuity changes.* Annuities based on a death in service are subject to the provisions of § 19.11-5 governing commencement, adjustment, termination and resumption of annuities.

§ 19.11-7 Annuity payable to surviving child or children.

(a) If a participant who has at least 18 months of civilian service credit under the System dies in service, or if an annuitant who was a former participant dies, annuities are payable to a surviving child or children, as defined in § 19.2(e) as follows:

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(1) *When survived by spouse and child or children.* If a principal is survived by a wife or husband and by a child or children, in addition to any other annuity, there shall be paid to or on behalf of each child an annuity equal to the smallest of:

(i) \$900

(ii) \$2,700 divided by the number of children—adjusted under paragraph (b).

(2) *When survived by a child or children but no spouse.* If the principal is not survived by a wife or husband, but by a child or children, each surviving child shall be paid an annuity equal to the smallest of:

(i) \$1,080

(ii) \$3,240 divided by the number of children—adjusted under paragraph (b) of this section.

(b) *Adjusted rates.* In order to reflect cost-of-living increases, the amounts referred to in paragraphs (a)(1) and (2) are increased from the commencing date of the annuity to each child by the cumulative percentage of all cost-of-living increases that have occurred under 5 U.S.C. 8340 since October 31, 1969.

(c) *Recomputation of annuity for child or children.* If a surviving wife or husband dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such spouse or child had not survived the participant. If the annuity to a surviving child who has not been receiving an annuity is initiated or resumed, the annuities of any other children shall be recomputed and paid from that date as though the annuities to all currently eligible children in the family were then being initiated.

§ 19.11-8 Required elections between survivor benefits.

(a) *Bar against concurrent payment under this Act and Workers' Compensation Act.* Except as stated below, survivor annuities and survivors' compensation for work injuries under 5 U.S.C. 8102 are not payable concurrently if both are based on the death of the same employee. A survivor entitled to both must elect which of the two benefits he/she prefers. Should all eligible survivors of a deceased employee elect to receive the compensation ben-

efit rather than the survivor annuity, their rights to the latter are terminated and, if the lump-sum credit has not been exhausted, a lump-sum payment will become due under § 19.13. The one exception to this rule occurs when a widow or widower is being paid the balance of a scheduled compensation award under 5 U.S.C. 8107 due the deceased employee. If so, the widow or widower may receive the survivor annuity and compensation award concurrently.

(b) *Election between survivor annuity and social security benefits.* Pursuant to 42 U.S.C. 417 (a) and (e), survivors who are eligible for annuity which is based in part on military service performed by a principal between September 16, 1940, and December 31, 1956, and also for survivor benefits under the Social Security system, may elect to have the military service credited toward the Social Security benefit. In practice, the survivors should apply for both benefits, ask the Department and the Social Security Administration for statements showing the amount of each benefit, and then make their election of where to credit the military service. If Social Security benefits are elected, the rights of all survivors to a foreign service annuity are terminated.

§ 19.12 Employment in a Government agency.

An annuitant who is reemployed by a Federal Government agency may not receive a combination of salary and annuity which exceeds his/her Foreign Service salary at the time of retirement. Refer to § 19.9-4.

§ 19.13 Lump-sum payment.**§ 19.13-1 Lump-sum credit.**

“Lump-sum credit” is the compulsory and special contributions to a participant's or former participant's credit in the Fund for his/her first 35 years of service plus interest thereon computed from the midpoint of each service period and compounded at four percent annually to the date of separation or December 31, 1976, whichever is earlier, and after such date, for a participant who separates from the Service after completing at least one year of civilian service and before completing 5

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years of such service, at the rate of three percent annually to the date of separation. Interest shall not be paid for a fractional part of a month in the total service or on compulsory and special contributions from the annuitant for recall service or other service performed after the date of separation which forms the basis for annuity.

§ 19.13-2 Share payable to a former spouse.

A former spouse of a participant or annuitant is entitled to a prorata share of 50 percent of any lump-sum payment authorized to be paid to a former participant under this section who separated from the Service on or after February 15, 1981, unless otherwise directed in a court order or a spousal agreement.

§ 19.13-3 Payment after death of principal.

If a participant or former participant dies and no claim for annuity is payable, the lump-sum credit is paid to surviving beneficiaries.

§ 19.14 Waiver of annuity.

An individual entitled to be paid an annuity may, for personal reasons, decline to accept all or any part of the annuity. However, a principal may not waive the portion of his/her annuity authorized to be paid to a former spouse under § 19.7 or § 19.9 or to a beneficiary under § 19.6. An annuity waiver shall be in writing and sent to the Department (PER/ER/RET). A waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

PART 20—BENEFITS FOR CERTAIN FORMER SPOUSES

Sec.

- 20.1 Definitions.
- 20.2 Funding.
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- 20.4 Retirement benefits.
- 20.5 Survivor benefits.
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- 20.8 Effect on other benefits.
- 20.9 Application procedure.

AUTHORITY: 22 U.S.C. 3901 *et seq.*

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SOURCE: 53 FR 39457, Oct. 7, 1988, unless otherwise noted.

§ 20.1 Definitions.

As used in this part, unless otherwise specified, the following have the meaning indicated:

COLA means cost-of-living adjustment in annuity.

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

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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.

(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 having 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—

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(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 the Act or 5 U.S.C. 8420a, survivor benefits for a former spouse under this section shall, nevertheless, be based on what the principal's annuity would have been had the principal not withdrawn retirement contributions in a lump sum.

(c) *Reduction because of receipt of other survivor benefits.* If a former spouse is in receipt of a survivor annuity based on an election by the principal under section 806(f) or 2109 of the Act, the survivor benefits for the former spouse under this section shall be reduced on the effective date by the amount of such elected survivor annuity.

(d) *Commencement and Termination.* Entitlement to survivor benefits under this section—

(1) Shall commence on the latter of—

(i) The date the principal dies;

(ii) December 22, 1987; and

(2) Shall terminate on the last day of the month before the former spouse dies or remarries before attaining age 55.

§ 20.6 COLA.

(a) *Retirement benefits.* A retirement annuity payable to a former spouse under § 20.4 is adjusted for cost-of-living increases under section 826 or 858 of the Act in the same manner as the annuity of the principal. The first such increase for a former spouse shall be prorated under the applicable section in the same way the first increase for the principal is adjusted, irrespective of whether the annuity to the former spouse commences on the same date as the annuity to the principal. If the benefit of a former spouse is based in part on an annuity supplement payable to a principal under 5 U.S.C. 8421 which is not adjusted by COLA, then that portion of the benefit payable to a former spouse is not adjusted by COLA.

(b) *Survivor benefits.* (1) Survivor annuities payable to a former spouse are adjusted for COLA under section 826 or 858 of the Act in the same manner as annuities are or would be adjusted for other survivors of the principal.

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(2) A survivor annuity payable to a former spouse under §20.5-1(A) shall be increased from its commencing date pursuant to paragraph (c)(2) of section 826 of the Act or 8462 of Title 5, U.S. Code, by all COLA received by the principal at death, irrespective of the date of death and in instances where death occurred prior to December 22, 1987, by all COLA that would have been paid to a survivor annuitant from the date of death until December 22, 1987.

(3) The first increase to which a former spouse becomes entitled whose annuity is computed under §20.5(a)(2) shall be prorated pursuant to 5 U.S.C. 8462(c)(4).

(4) The first increase to which a former spouse becomes entitled whose annuity is computed under §20.5(a)(3) or

(5) Shall be prorated pursuant to paragraph (c)(1) of section 826 of the Act or 8462 or title 5, U.S. Code.

§20.7 Waiver.

A former spouse entitled to an annuity under this part may decide to decline all or any part of the annuity for personal reasons. An annuity waiver shall be in writing and sent to the Retirement Division (PER/ER/RET), Department of State, Washington, DC 20520. A waiver may be revoked in writing at any time. Payment of the annuity waived prior to receipt by the Retirement Division of the renovation may not be made.

§20.8 Effect on other benefits.

Payment to a former spouse under this part shall not impair, reduce, or otherwise affect benefits paid under the Act to the principal or other persons.

§20.9 Application procedure.

(a) *Submission of application.* To be eligible for retirement or survivor benefits under this part, a former spouse must submit a properly executed and completed application to the Department of State by June 22, 1990 or, if an exception is made for compelling cause to this deadline, within 60 days following the date of the letter from the Department transmitting the application to the former spouse. The application must be delivered or mailed to the Retirement Division (PER/ER/RET),

Room 1251, Department of State, Washington, DC 20520.

(b) *Request for application.* The Department of State has attempted to mail applications to all former spouses of whom it is aware that it believes may be eligible for benefits under this part. Any eligible former spouse who does not have an application at the time this part is published in the FEDERAL REGISTER (October 7, 1988) must communicate with the Department as soon as possible and request an application. Request may be in person or by mail to the address in §20.9(a) or by telephoning the Retirement Division on area code 202-647-9315. A request by letter must include the typed or printed full name and current address of the former spouse.

It shall also give the dates of marriage and divorce or annulment that establish eligibility and fully identify the Foreign Service employee or former employee in question and state the agency of current or last employment.

(c) *Payment of benefits delayed.* Payment of benefits cannot be made to a former spouse until the application for benefits is approved by the Retirement Division of the Department. Upon such approval, benefits will be paid to an eligible former spouse retroactively, if necessary, back to the commencing date determined under this part.

PART 21—INDEMNIFICATION OF EMPLOYEES

AUTHORITY: 5 U.S.C. 301; 22 U.S.C. 2658.

SOURCE: 60 FR 29988, June 7, 1995, unless otherwise noted.

§21.1 Policy.

(a) The Department of State may indemnify an employee for any verdict, judgment, or other monetary award which is rendered against such employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of employment and that such indemnification is in the interest of the United States, as determined as a matter of discretion by the Under Secretary for Management or his or her designee.

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(b) The Department of State may settle or compromise a personal damages claim against an employee by the payment of available funds at any time, provided the alleged conduct giving rise to the personal damages claim was taken within the scope of employment and that such settlement or compromise is in the interest of the United States, as determined as a matter of discretion by the Under Secretary for Management or his or her designee.

(c) The Director General of the Foreign Service and Director of Personnel ("Director General") shall be the designee of the Under Secretary for Management with respect to determinations under paragraphs (a) and (b) of this section in cases which involve:

- (1) Foreign courts or foreign administrative bodies and
- (2) Requests of less than five thousand dollars.

(d) Absent exceptional circumstances as determined by the Under Secretary for Management or his or her designee, the Department will not entertain a request either to agree to indemnify or to settle a personal damages claim before entry of an adverse verdict, judgment, or award.

(e) When an employee in the United States becomes aware that an action has been filed against the employee in his or her personal capacity as a result of conduct taken within the scope of his or her employment, the employee shall immediately notify the Department through the Executive Director of the Office of the Legal Adviser that such an action is pending. Employees overseas shall notify their Administrative Counselor who shall then notify the Assistant Legal Adviser for Special Functional Problems. Employees may be authorized to receive legal representation by the Department of Justice in accordance with 28 CFR 50.15.

(f) The employee may thereafter request indemnification to satisfy a verdict, judgment, or award entered against the employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, award, or settlement proposal if on appeal, to the Legal Adviser. Except as provided in paragraph (g) of this section, the Legal Adviser and the Director General shall then, in coordination with the Bureau of Finance and Management Policy, forward the request with their recommendation to the Under Secretary for Management for decision. The Legal Adviser may seek the views of the Department of Justice, as appropriate, in preparing this recommendation.

(g) Cases in which the Director General is the designee under paragraph (c) of this section may be forwarded by the Assistant Legal Adviser for Special Functional Problems, along with the views of the employee and the bureau or post as appropriate, to the Director General for decision.

(h) Personal services contractors of the Department are considered employees for purposes of the policy set forth in this part.

(i) Any payment under this part either to indemnify a Department of State employee or to settle a personal damages claim shall be contingent upon the availability of appropriated funds.

(j) In addition to the indemnification provisions contained in the regulations in this part, the Department will also follow any specific policies or regulations adopted with respect to damages awarded against Department health care personnel for malpractice claims within the scope of 22 U.S.C. 2702.

[60 FR 29988, June 7, 1995]