

FOREIGN SERVICE ACT OF 1980

[P.L. 96–465]

[As Amended Through P.L. 118–159, Enacted December 23, 2024]

【Currency: This publication is a compilation of the text of Public Law 96–465. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

AN ACT To promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. 【22 U.S.C. 3901 note】 SHORT TITLE.—This Act may be cited as the “Foreign Service Act of 1980”.

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¹Editorially changed to match section catchline. Probably should read “Retirement of former Presidential appointees.”

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TITLE I—THE FOREIGN SERVICE OF THE UNITED STATES

CHAPTER 1—GENERAL PROVISIONS

SEC. 101. [22 U.S.C. 3901] FINDINGS AND OBJECTIVES.—(a) The Congress finds that—

(1) a career foreign service, characterized by excellence and professionalism, is essential in the national interest to assist the President and the Secretary of State in conducting the foreign affairs of the United States;

(2) the scope and complexity of the foreign affairs of the Nation have heightened the need for a professional foreign service that will serve the foreign affairs interests of the United States in an integrated fashion and that can provide a resource of qualified personnel for the President, the Secretary of State, and the agencies concerned with foreign affairs;

(3) the Foreign Service of the United States, established under the Act of May 24, 1924 (commonly known as the Rogers Act) and continued by the Foreign Service Act of 1946, must be preserved, strengthened, and improved in order to carry out its mission effectively in response to the complex challenges of modern diplomacy and international relations;

(4) the members of the Foreign Service should be representative of the American people, aware of the principles and history of the United States and informed of current concerns and trends in American life, knowledgeable of the affairs, cultures, and languages of other countries, and available to serve in assignments throughout the world; and

(5) the Foreign Service should be operated on the basis of merit principles.

(b) The objective of this Act is to strengthen and improve the Foreign Service of the United States by—

(1) assuring, in accordance with merit principles, admission through impartial and rigorous examination, acquisition of career status only by those who have demonstrated their fitness through successful completion of probationary assignments, effective career development, advancement and retention of the ablest, and separation of those who do not meet the requisite standards of performance;

(2) fostering the development and vigorous implementation of policies and procedures, including affirmative action programs, which will facilitate and encourage (A) entry into and advancement in the Foreign Service by persons from all segments of American society, and (B) equal opportunity and fair and equitable treatment for all without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or disability;

(3) providing for more efficient, economical, and equitable personnel administration through a simplified structure of Foreign Service personnel categories and salaries;

(4) establishing a statutory basis for participation by the members of the Foreign Service, through their elected representatives, in the formulation of personnel policies and procedures which affect their conditions of employment, and maintaining a fair and effective system for the resolution of individual grievances that will ensure the fullest measure of due process for the members of the Foreign Service;

(5) minimizing the impact of the hardships, disruptions, and other unusual conditions of service abroad upon the members of the Foreign Service, and mitigating the special impact of such conditions upon their families;

(6) providing salaries, allowances, and benefits that will permit the Foreign Service to attract and retain qualified personnel as well as a system of incentive payments and awards to encourage and reward outstanding performance;

(7) establishing a Senior Foreign Service which is characterized by strong policy formulation capabilities, outstanding executive leadership qualities, and highly developed functional, foreign language, and area expertise;

(8) improving Foreign Service managerial flexibility and effectiveness;

(9) increasing efficiency and economy by promoting maximum compatibility among the agencies authorized by law to utilize the Foreign Service personnel system, as well as compatibility between the Foreign Service personnel system and other personnel systems of the Government; and

(10) otherwise enabling the Foreign Service to serve effectively the interests of the United States and to provide the highest caliber of representation in the conduct of foreign affairs.

SEC. 102. [22 U.S.C. 3902] DEFINITIONS.—As used in this Act, the term—

(1) “abroad” means all areas not included within the United States;

(2) “agency” means an agency as defined in section 552(e) of title 5, United States Code;

(3) “chief of mission” means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 502(c) to be temporarily in charge of such a mission or office;

(4) “Department” means the Department of State, except that with reference to the exercise of functions under this Act with respect to another agency authorized by law to utilize the Foreign Service personnel system, such term means that other agency;

(5) “employee” (except as provided in section 1002(8)) means, when used with respect to an agency or to the Government generally, an officer or employee (including a member of the Service) or a member of the Armed Forces of the United

States, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration;

(6) “function” includes any duty, obligation, power, authority, responsibility, right, privilege, discretion, or activity;

(7) “Government” means the Government of the United States;

(8) “merit principles” means the principles set out in section 2301(b) of title 5, United States Code;

(9) “principal officer” means the officer in charge of a diplomatic mission, consular mission (other than a consular agency), or other Foreign Service post;

(10) “Secretary” means the Secretary of State, except that (subject to section 201) with reference to the exercise of functions under this Act with respect to any agency authorized by law to utilize the Foreign Service personnel system, such term means the head of that agency;

(11) “Service” or “Foreign Service” means the Foreign Service of the United States; and

(12) “United States”, when used in a geographic sense, means the several States and the District of Columbia.

SEC. 103. [22 U.S.C. 3903] MEMBERS OF THE SERVICE.—The following are the members of the Service.

(1) Chiefs of mission, appointed under section 302(a)(1) or assigned under section 502(c).

(2) Ambassadors at large, appointed under section 302(a)(1).

(3) Members of the Senior Foreign Service, appointed under section 302(a)(1) or 303, who are the corps of leaders and experts for the management of the Service and the performance of its functions.

(4) Foreign Service officers, appointed under section 302(a)(1), who have general responsibility for carrying out the functions of the Service.

(5) Foreign Service personnel, United States citizens appointed under section 303, who provide skills and services required for effective performance by the Service.

(6) Foreign national employees, foreign nationals appointed under section 303, who provide clerical, administrative, technical, fiscal, and other support at Foreign Service posts abroad.

(7) Consular agents, appointed under section 303 by the Secretary of State, who provide consular and related services as authorized by the Secretary of State at specified locations abroad where no Foreign Service posts are situated.

SEC. 104. [22 U.S.C. 3904] FUNCTIONS OF THE SERVICE.—Members of the Service shall, under the direction of the Secretary—

(1) represent the interest of the United States in relation to foreign countries and international organizations, and perform the functions relevant to their appointments and assignments, including (as appropriate) functions under the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, other international agreements to which

the United States is a party, the laws of the United States, and orders, regulations, and directives issued pursuant to law;

(2) provide guidance for the formulation and conduct of programs and activities of the Department and other agencies which relate to the foreign relations of the United States; and

(3) perform functions on behalf of any agency or other Government establishment (including any establishment in the legislative or judicial branch) requiring their services.

SEC. 105. [22 U.S.C. 3905] MERIT PRINCIPLES; PROTECTIONS FOR MEMBERS OF THE SERVICE; AND MINORITY RECRUITMENT.—

(a)(1) All personnel actions with respect to career members and career candidates in the Service (including applicants for career candidate appointments) shall be made in accordance with merit principles.

(2) For purposes of paragraph (1), the term “personnel action” means—

(A) any appointment, promotion, assignment (including assignment to any position or salary class), award of performance pay or special differential, within-class salary increase, separation, or performance evaluation, and

(B) any decision, recommendation, examination, or ranking provided for under this Act which relates to any action referred to in subparagraph (A).

(b) The Secretary shall administer the provisions of this Act and shall prescribe such regulations as may be necessary to ensure that members of the Service, as well as applicants for appointments in the Service—

(1) are free from discrimination on the basis of race, color, religion, sex, national origin, age, disability, marital status, geographic or educational affiliation within the United States, or political affiliation, as prohibited under section 2302(b)(1) of title 5, United States Code;

(2) are free from reprisal for—

(A) a disclosure of information by a member of applicant which the member or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency (including the Inspector General of the Department of State and the Foreign Service) or another employee designated by the head of the agency to receive such disclosures, of information which the member or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(3) are free to submit to officials of the Service and the Department any report, evaluation, or recommendation, including the right to submit such report, evaluation, or recommendation through a separate dissent channel, whether or not the views expressed therein are in accord with approved policy, unless the report, evaluation, or recommendation was submitted with the knowledge that it was false or with willful disregard for its truth or falsity; and

(4) are free from any personnel practice prohibited by section 2302 of title 5, United States Code.

(c) This section shall not be construed as authorizing the withholding of information from the Congress or the taking of any action against a member of the Service who discloses information to the Congress.

(d)(1) The Secretary shall establish a minority recruitment program for the Service consistent with section 7201 of title 5, United States Code.

(2) The Secretary shall transmit, to the Chairman of the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives, the Department's reports on its equal employment opportunity and affirmative action programs and its minority recruitment programs, which reports are required by law, regulation, or directive to be submitted to the Equal Employment Opportunity Commission (EEOC) or the Office of Personnel Management (OPM). Each such report shall be transmitted to the Congress at least once annually, and shall be received by the Congress not later than 30 days after its original submission to the Equal Employment Opportunity Commission or the Office of Personnel Management.

(e) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a), prohibiting discrimination on the basis of disability; or

(5) any provision of law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

CHAPTER 2—MANAGEMENT OF THE SERVICE

SEC. 201. [22 U.S.C. 3921] THE SECRETARY OF STATE.—(a) Under the direction of the President, the Secretary of State shall administer and direct the Service and shall coordinate its activities with the needs of the Department of State and other agencies.

(b) The Secretary of State alone among the heads of agencies utilizing the Foreign Service personnel system shall perform the functions expressly vested in the Secretary of State by this Act.

SEC. 202. [22 U.S.C. 3922] OTHER AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a)(1) The Broadcasting Board of Governors and the Administrator of the Agency for International Development may utilize the Foreign Service personnel system with respect to their respective agencies in accordance with this Act.

(2) The Secretary of Agriculture may utilize the Foreign Service personnel system in accordance with this Act—

(A) with respect to personnel of the Foreign Agricultural Service, and

(B) with respect to other personnel of the Department of Agriculture to the extent the President determines to be necessary in order to enable the Department of Agriculture to carry out functions which require service abroad.

(3) The Secretary of Commerce may utilize the Foreign Service personnel system in accordance with this Act—

(A) with respect to the personnel performing functions transferred to the Department of Commerce from the Department of State by Reorganization Plan Numbered 3 of 1979, and

(B) with respect to other personnel of the Department of Commerce to the extent the President determines to be necessary in order to enable the Department of Commerce to carry out functions which require service abroad.

(4)(A)³ Whenever (and to the extent) the Secretary of State considers it in the best interests of the United States Government, the Secretary of State may authorize the head of any agency or other Government establishment (including any establishment in the legislative or judicial branch) to appoint under section 303 individuals described in subparagraph (B) as members of the Service and to utilize the Foreign Service personnel system with respect to such individuals under such regulations as the Secretary of State may prescribe.

(B)³ The individuals referred to in subparagraph (A) are individuals eligible for employment abroad under section 311(a).

(b) Subject to section 201(b)—

(1) the agency heads referred to in subsection (a), and

(2) the head of any other agency (to the extent authority to utilize the Foreign Service personnel system is granted to such agency head under any other Act),

shall in the case of their respective agencies exercise the functions vested in the Secretary by this Act.

³ Indentation so in original.

SEC. 203. [22 U.S.C. 3923] COMPATIBILITY AMONG AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a) The Service shall be administered to the extent practicable in a manner that will assure maximum compatibility among the agencies authorized by law to utilize the Foreign Service personnel system. To this end, the other heads of such agencies shall consult regularly with the Secretary of State.

(b) Nothing in this chapter shall be construed as diminishing the authority of the head of any agency authorized by law to utilize the Foreign Service personnel system.

SEC. 204. [22 U.S.C. 3924] CONSOLIDATED AND UNIFORM ADMINISTRATION OF THE SERVICE.—The Secretary shall on a continuing basis consider the need for uniformity of personnel policies and procedures and for consolidation (in accordance with section 23 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2695)) of personnel functions among agencies utilizing the Foreign Service personnel system. Where feasible, the Secretary of State shall encourage (in consultation with the other heads of such agencies) the development of uniform policies and procedures and consolidated personnel functions.

SEC. 205. [22 U.S.C. 3925] COMPATIBILITY BETWEEN THE FOREIGN SERVICE AND OTHER GOVERNMENT PERSONNEL SYSTEMS.—The Service shall be administered to the extent practicable in conformity with general policies and regulations of the Government. The Secretary shall consult with the Director of the Office of Personnel Management, the Director of the Office of Management and Budget, and the heads of such other agencies as the President shall determine, in order to assure compatibility of the Foreign Service personnel system with other Government personnel systems to the extent practicable.

SEC. 206. [22 U.S.C. 3926] REGULATIONS; DELEGATION OF FUNCTIONS.—(a) The Secretary may prescribe such regulations as the Secretary deems appropriate to carry out functions under this Act.

(b) The Secretary may delegate functions under this Act which are vested in the Secretary to any employee of the Department or any member of the Service.

SEC. 207. [22 U.S.C. 3927] CHIEF OF MISSION.—(a) Under the direction of the President, the chief of mission to a foreign country—

(1) shall have full responsibility for the direction, coordination, and supervision of all Government executive branch employees in that country (except for Voice of America correspondents on official assignment and employees under the command of a United States area military commander); and

(2) shall keep fully and currently informed with respect to all activities and operations of the Government within that country, and shall insure that all Government executive branch employees in that country (except for Voice of America correspondents on official assignment and employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission.

(b) Any executive branch agency having employees in a foreign country shall keep the chief of mission to that country fully and

currently informed with respect to all activities and operations of its employees in that country, and shall insure that all of its employees in that country (except for Voice of America correspondents on official assignment and employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission.

(c) Each chief of mission to a foreign country shall have as a principal duty the promotion of United States goods and services for export to such country.

(d) PROMOTION OF UNITED STATES ECONOMIC INTERESTS.—Each chief of mission to a foreign country shall have as a principal duty the promotion of United States economic and commercial interests in such country.

SEC. 208. [22 U.S.C. 3928] DIRECTOR GENERAL OF THE FOREIGN SERVICE.

The President shall appoint, by and with the advice and consent of the Senate, a Director General of the Foreign Service, who shall be a current or former career member of the Foreign Service. The Director General should assist the Secretary of State in the management of the Service and perform such functions as the Secretary of State may prescribe.

SEC. 209. [22 U.S.C. 3929] INSPECTOR GENERAL.—(a)(1) There shall be an Inspector General of the Department of State and the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation from among individuals exceptionally qualified for the position by virtue of their integrity and their demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations, or their knowledge and experience in the conduct of foreign affairs. The Inspector General shall report to and be under the general supervision of the Secretary of State. Neither the Secretary of State nor any other officer of the Department shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation. The Inspector General shall periodically (at least every 5 years) inspect and audit the administration of activities and operations of each Foreign Service post and each bureau and other operating unit of the Department of State, and shall perform such other functions as the Secretary of State may prescribe, except that the Secretary of State shall not assign to the Inspector General any general program operating responsibilities.

(2) The Inspector General may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(b) Inspections, investigations, and audits conducted by or under the direction of the Inspector General shall include the systematic review and evaluation of the administration of activities and operations of Foreign Service posts and bureaus and other operating units of the Department of State, including an examination of—

(1) whether financial transactions and accounts are properly conducted, maintained, and reported;

(2) whether resources are being used and managed with the maximum degree of efficiency, effectiveness, and economy;

(3) whether the administration of activities and operations meets the requirements of applicable laws and regulations and, specifically, whether such administration is consistent with the requirements of section 105;

(4) whether there exist instances of fraud or other serious problems, abuses, or deficiencies, and whether adequate steps for detection, correction, and prevention have been taken; and

(5) whether policy goals and objectives are being effectively achieved and whether the interests of the United States are being accurately and effectively represented.

(c)(1) The Inspector General shall develop and implement policies and procedures for the inspection and audit activities carried out under this section. These policies and procedures shall be consistent with the general policies and guidelines of the Government for inspection and audit activities and shall comply with the standards established by the Comptroller General of the United States for audits of Government agencies, organizations, programs, activities, and functions.

(2) In carrying out the duties and responsibilities established under this section, the Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view toward insuring effective coordination and cooperation.

(3) In carrying out the duties and responsibilities established under this section, the Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

(4)⁴ The Inspector General shall develop and provide to employees—

(A) information detailing their rights to counsel; and

(B) guidelines describing in general terms the policies and procedures of the Office of Inspector General with respect to individuals under investigation other than matters exempt from disclosure under other provisions of law.

(5) INVESTIGATIONS.—

(A) CONDUCT OF INVESTIGATIONS.—In conducting investigations of potential violations of Federal criminal law or Federal regulations, the Inspector General shall—

(i) abide by professional standards applicable to Federal law enforcement agencies; and

(ii) make every reasonable effort to permit each subject of an investigation an opportunity to provide exculpatory information.

(B) FINAL REPORTS OF INVESTIGATIONS.—In order to ensure that final reports of investigations are thorough and accurate, the Inspector General shall—

(i) make every reasonable effort to ensure that any person named in a final report of investigation has been afforded an opportunity to refute any allega-

⁴ Indentation so in original.

tion of wrongdoing or assertion with respect to a material fact made regarding that person's actions;

(ii) include in every final report of investigation any exculpatory information, as well as any inculpatory information, that has been discovered in the course of the investigation.

(6) REQUIRED REPORTING OF ALLEGATIONS AND INVESTIGATIONS AND INSPECTOR GENERAL AUTHORITY.—

(A) IN GENERAL.—The head of a bureau, post, or other office of the Department of State (in this paragraph referred to as a “Department entity”) shall submit to the Inspector General a report of any allegation of—

(i) waste, fraud, or abuse in a Department program or operation;

(ii) criminal or serious misconduct on the part of a Department employee at the FS-1, GS-15, or GM-15 level or higher;

(iii) criminal misconduct on the part of a Department employee; and

(iv) serious, noncriminal misconduct on the part of any Department employee who is authorized to carry a weapon, make arrests, or conduct searches, such as conduct that, if proved, would constitute perjury or material dishonesty, warrant suspension as discipline for a first offense, or result in loss of law enforcement authority.

(B) DEADLINE.—The head of a Department entity shall submit to the Inspector General a report of an allegation described in subparagraph (A) not later than 5 business days after the date on which the head of such Department entity is made aware of such allegation.

(d)(1) The Inspector General shall keep the Secretary of State fully and currently informed, by means of the reports required by paragraphs (2) and (3) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of activities and operations administered or financed by the Department of State.

(2) The Inspector General shall, not later than April 30 of each year, prepare and furnish to the Secretary of State an annual report summarizing the activities of the Inspector General. Such report shall include—

(A) a description of significant problems, abuses, and deficiencies relating to the administration of activities and operations of Foreign Service posts, and bureaus and other operating units of the Department of State, which were disclosed by the Inspector General within the reporting period;

(B) a description of the recommendations for corrective action made by the Inspector General during the reporting period with respect to significant problems, abuses, or deficiencies described pursuant to subparagraph (A);

(C) an identification of each significant recommendation described in previous annual reports on which corrective action has not been completed;

(D) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted;

(E) a listing of each audit report completed by the Inspector General during the reporting period; and

(F)⁵ a notification, which may be included, if necessary, in the classified portion of the report, of any instance in a case that was closed during the period covered by the report when the Inspector General decided not to afford an individual the opportunity described in subsection (c)(5)(B)(i) to refute any allegation and the rationale for denying such individual that opportunity.

The Secretary of State shall transmit a copy of such annual report within 30 days after receiving it to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees, together with a report of the Secretary of State containing any comments which the Secretary of State deems appropriate. Within 60 days after transmitting such reports to those committees, the Secretary of State shall make copies of them available to the public upon request and at a reasonable cost.

(3) The Inspector General shall report immediately to the Secretary of State whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of activities and operations of Foreign Service posts or bureaus or other operating units of the Department of State. The Secretary of State shall transmit any such report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees within 7 days after receiving it, together with a report by the Secretary of State containing any comments the Secretary of State deems appropriate.

(4) Nothing in this subsection shall be construed to authorize the public disclosure by any individual of any information which is—

(A) specifically prohibited from disclosure by any other provision of law; or

(B) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(e)(1) The Inspector General shall have the same authority in carrying out the provisions of this section as is granted under section 406 of title 5, United States Code, to each Inspector General of an establishment (as defined in section 401 of title 5, United States Code) for carrying out the provisions of chapter 4 of title 5, United States Code, and the responsibilities of other officers of the Government to the Inspector General shall be the same as the responsibilities of the head of an agency or establishment under section 406(c) and (d) of title 5, United States Code.

(2) At the request of the Inspector General, employees of the Department and members of the Service may be assigned as employees of the Inspector General. The individuals so assigned and individuals appointed pursuant to paragraph (1) shall be respon-

⁵ Indentation so in original.

sible solely to the Inspector General, and the Inspector General or his or her designee shall prepare the performance evaluation reports for such individuals.

(3) The Inspector General shall ensure that only officials from the Office of the Inspector General may participate in formal interviews or other formal meetings with the individual who is the subject of an investigation, other than an intelligence-related or sensitive undercover investigation, or except in those situations when the Inspector General has a reasonable basis to believe that such notice would cause tampering with witnesses, destroying evidence, or endangering the lives of individuals, unless that individual receives prior adequate notice regarding participation by officials of any other agency, including the Department of Justice, in such interviews or meetings.

(f)(1) The Inspector General may receive and investigate complaints or information from a member of the Service or employee of the Department concerning the possible existence of an activity constituting a violation of laws or regulations, constituting mismanagement, gross waste of funds, or abuse of authority, or constituting a substantial and specific danger to public health or safety.

(2) The Inspector General shall not, after receipt of a complaint or information from a member of the Service or employee of the Department, disclose the identity of such individual without the consent of such individual, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(g) Under the general supervision of the Secretary of State, the Inspector General may review activities and operations performed under the direction, coordination, and supervision of chiefs of mission for the purpose of ascertaining their consonance with the foreign policy of the United States and their consistency with the responsibilities of the Secretary of State and the chief of mission.

SEC. 210. [22 U.S.C. 3930] BOARD OF THE FOREIGN SERVICE.—The President shall establish a Board of the Foreign Service to advise the Secretary of State on matters relating to the Service, including furtherance of the objectives of maximum compatibility among agencies authorized by law to utilize the Foreign Service personnel system and compatibility between the Foreign Service personnel system and the other personnel systems of the Government. The Board of the Foreign Service shall be chaired by an individual appointed by the President and shall include one or more representatives of the Department of State, the Broadcasting Board of Governors, the Agency for International Development, the Department of Agriculture, the Department of Commerce, the Department of Labor, the Office of Personnel Management, the Office of Management and Budget, the Equal Employment Opportunity Commission, and such other agencies as the President may designate.

SEC. 211. [22 U.S.C. 3931] BOARD OF EXAMINERS FOR THE FOREIGN SERVICE.—(a) The President shall establish a Board of Examiners for the Foreign Service to develop, and supervise the administration of, examinations prescribed under section 301(b) to be given to candidates for appointment in the Service. The Board shall consist of 15 members appointed by the President (no fewer

than 5 of whom shall be appointed from among individuals who are not Government employees and who shall be qualified for service on the Board by virtue of their knowledge, experience, or training in the fields of testing or equal employment opportunity). The Board shall include representatives of agencies utilizing the Foreign Service personnel system and representatives of other agencies which have responsibility for employment testing. The Board shall be chaired by a member of the Board, designated by the President, who is a member of the Service.

(b) The Board of Examiners shall periodically review the examinations prescribed under section 301(b) in order to determine—

(1) whether any such examination has an adverse impact on the hiring, promotion, or other employment opportunity of members of any race, sex, or ethnic group;

(2) methods of minimizing any such adverse impact;

(3) alternatives to any examinations which have such an adverse impact; and

(4) whether such examinations are valid in relation to job performance.

The Board of Examiners shall annually report its findings under this subsection to the Secretary of State and shall furnish to the Secretary of State its recommendations for improvements in the development, use, and administration of the examinations prescribed under section 301(b).

(c) Any vacancy or vacancies on the Board shall not impair the right of the remaining members to exercise the full powers of the Board.

CHAPTER 3—APPOINTMENTS

SEC. 301. [22 U.S.C. 3941] GENERAL PROVISIONS RELATING TO APPOINTMENTS.—(a) Only citizens of the United States may be appointed to the Service, other than for service abroad as a consular agent or as a foreign national employee.

(b)(1) The Secretary shall prescribe, as appropriate, written, oral, physical, foreign language, and other examinations for appointment to the Service (other than as a chief of mission or ambassador at large).

(2) The Secretary shall ensure that the Board of Examiners for the Foreign Service annually offers the oral assessment examinations described in paragraph (1) in cities, chosen on a rotating basis, located in at least three different time zones across the United States.

(c) The fact that an applicant for appointment as a Foreign Service officer candidate is a veteran or disabled veteran shall be considered an affirmative factor in making such appointments. As used in this subsection, the term “veteran or disabled veteran” means an individual who is a preference eligible under subparagraph (A), (B), or (C) of section 2108(3) of title 5, United States Code.

(d)(1) Members of the Service serving under career appointments are career members of the Service. Members of the Service serving under limited appointments are either career candidates or non-career members of the Service.

(2) Chiefs of mission, ambassadors at large, and ministers serve at the pleasure of the President.

(3) An appointment as a Foreign Service officer is a career appointment. Foreign Service employees serving as career candidates or career members of the Service shall not represent to the income tax authorities of the District of Columbia or any other State or locality that they are exempt from income taxation on the basis of holding a Presidential appointment subject to Senate confirmation or that they are exempt on the basis of serving in an appointment whose tenure is at the pleasure of the President.

SEC. 302. [22 U.S.C. 3942] APPOINTMENTS BY THE PRESIDENT.—(a)(1) The President may, by and with the advice and consent of the Senate, appoint an individual as a chief of mission, as an ambassador at large, as an ambassador, as a minister, as a career member of the Senior Foreign Service, or as a Foreign Service officer.

(2)(A) The President may, by and with the advice and consent of the Senate, confer the personal rank of career ambassador upon a career member of the Senior Foreign Service in recognition of especially distinguished service over a sustained period.

(B)(i) Subject to the requirement of clause (ii), the President may confer the personal rank of ambassador or minister on an individual in connection with a special mission for the President of a temporary nature not exceeding six months in duration.

(ii) The President may confer such personal rank only if, prior to such conferral, he transmits to the Committee on Foreign Relations of the Senate a written report setting forth—

- (I) the necessity for conferring such rank,
- (II) the dates during which such rank will be held,
- (III) the justification for not submitting the proposed conferral of personal rank to the Senate as a nomination for advice and consent to appointment, and
- (IV) all relevant information concerning any potential conflict of interest which the proposed recipient of such personal rank may have with regard to the special mission.

Such report shall be transmitted not less than 30 days prior to conferral of the personal rank of ambassador or minister except in cases where the President certifies in his report that urgent circumstances require the immediate conferral of such rank.

(C) An individual upon whom a personal rank is conferred under subparagraph (A) or (B) shall not receive any additional compensation solely by virtue of such personal rank.

(3) Except as provided in paragraph (2)(B) of this subsection or in clause 3, section 2, article II of the Constitution (relating to recess appointments), an individual may not be designated as ambassador or minister, or be designated to serve in any position with the title of ambassador or minister, without the advice and consent of the Senate.

(b) If a member of the Service is appointed to any position in the executive branch by the President, by and with the advice and consent of the Senate, or by the President alone, the period of service in that position by the member shall be regarded as an assignment under chapter 5 and the member shall not, by virtue of the acceptance of such assignment, lose his or her status as a member

of the Service. A member of the Senior Foreign Service who accepts such an assignment may elect to continue to receive the salary of his or her salary class, to remain eligible for performance pay under chapter 4, and to receive the leave to which such member is entitled under subchapter I of chapter 63, title 5, United States Code, as a member of the Senior Foreign Service, in lieu of receiving the salary and leave (if any) of the position to which the member is appointed by the President.

SEC. 303. [22 U.S.C. 3943] APPOINTMENTS BY THE SECRETARY.—The Secretary may appoint the members of the Service (other than the members of the Service who are in the personnel categories specified in section 302(a)) in accordance with this Act and such regulations as the Secretary may prescribe.

SEC. 304. [22 U.S.C. 3944] APPOINTMENT OF CHIEFS OF MISSION.—(a)(1) An individual appointed or assigned to be a chief of mission should possess clearly demonstrated competence to perform the duties of a chief of mission, including, to the maximum extent practicable, a useful knowledge of the principal language or dialect of the country in which the individual is to serve, and knowledge and understanding of the history, the culture, the economic and political institutions, and the interests of that country and its people.

(2) Given the qualifications specified in paragraph (1), positions as chief of mission should normally be accorded to career members of the Service, though circumstances will warrant appointments from time to time of qualified individuals who are not career members of the Service.

(3) Contributions to political campaigns should not be a factor in the appointment of an individual as a chief of mission.

(4) The President shall provide the Committee on Foreign Relations of the Senate, with each nomination for an appointment as a chief of mission, a report on the demonstrated competence of that nominee to perform the duties of the position in which he or she is to serve.

(b)(1) In order to assist the President in selecting qualified candidates for appointment or assignment as chiefs of mission, the Secretary of State shall from time to time furnish the President with the names of career members of the Service who are qualified to serve as chiefs of mission, together with pertinent information about such members.

(2) The Secretary shall also furnish to the President, on an annual basis and to assist the President in selecting qualified candidates for appointments or assignments as chief of mission, the names of between 5 and 10 career civil servants serving at the Department of State or the United States Agency for International Development who are qualified to serve as chiefs of mission, together with pertinent information about such individuals.

(3) Each individual nominated by the President to be a chief of mission, ambassador at large, or minister shall, at the time of nomination, file with the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a report of contributions made by such individual and by members of his or her immediate family during the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination. The report shall

be verified by the oath of the nominee, taken before any individual authorized to administer oaths. The chairman of the Committee on Foreign Relations of the Senate shall have each such report printed in the Congressional Record. As used in this paragraph, the term “contribution” has the same meaning given such term by section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)), and the term “immediate family” means the spouse of the nominee, and any child, parent, grandparent, brother, or sister of the nominee and the spouses of any of them.

SEC. 305. [22 U.S.C. 3945] APPOINTMENT TO THE SENIOR FOREIGN SERVICE.—(a) Appointment to the Senior Foreign Service shall be to a salary class established under section 402, and not to a position.

(b) An individual may not be given a limited appointment in the Senior Foreign Service if that appointment would cause the number of members of the Senior Foreign Service serving under limited appointments to exceed 5 percent of the total number of members of the Senior Foreign Service, except that (1) members of the Senior Foreign Service assigned to the Peace Corps shall be excluded in the calculation and application of this limitation, and (2) members of the Senior Foreign Service serving under limited appointments with reemployment rights under section 310 as career appointees in the Senior Executive Service shall be considered to be career members of the Senior Foreign Service for purposes of this subsection.

(c)(1) Appointments to the Senior Foreign Service by the Secretary of Commerce shall be excluded in the calculation and application of the limitation in subsection (b).

(2) Except as provided in paragraph (3), no more than one individual (other than an individual with reemployment rights under section 310 as a career appointee in the Senior Executive Service) may serve under a limited appointment in the Senior Foreign Service in the Department of Commerce at any time.

(3) The Secretary of Commerce may appoint an individual to a limited appointment in the Senior Foreign Service for a specific position abroad if—

(A) no career member of the Service who has the necessary qualifications is available to serve in the position; and

(B) the individual appointed has unique qualifications for the specific position.

(d) The Secretary shall by regulation establish a recertification process for members of the Senior Foreign Service that is equivalent to the recertification process for the Senior Executive Service under section 3993a of title 5, United States Code.

SEC. 306. [22 U.S.C. 3946] CAREER APPOINTMENTS.—(a) Before receiving a career appointment in the Service an individual shall first serve under a limited appointment as a career candidate for a trial period of service prescribed by the Secretary. During such trial period of service, the Secretary shall decide whether—

(1) to offer a career appointment to the candidate under section 303, or

(2) to recommend to the President that the candidate be given a career appointment under section 302.

(b) Decisions by the Secretary under subsection (a) shall be based upon the recommendations of boards, established by the Secretary and composed entirely or primarily of career members of the Service, which shall evaluate the fitness and aptitude of career candidates for the work of the Service.

(c) Nothing in this section shall be construed to limit the authority of the Secretary or the Foreign Service Grievance Board under section 1107 of this Act.

SEC. 307. [22 U.S.C. 3947] ENTRY LEVELS FOR FOREIGN SERVICE OFFICER CANDIDATES.—A career candidate for appointment as a Foreign Service officer may not be initially assigned under section 404 to a salary class higher than class 4 in the Foreign Service Schedule unless—

(1) the Secretary determines in an individual case that assignment to a higher class is warranted because of the qualifications (including foreign language competence) and experience of the candidate and the needs of the Service; or

(2) at the time such initial assignment is made, the candidate is serving under a career appointment in the Service and is receiving a salary at a rate equal to or higher than the minimum rate payable for class 4 in the Foreign Service Schedule.

SEC. 308. [22 U.S.C. 3948] RECALL AND REEMPLOYMENT OF CAREER MEMBERS.—(a) Whenever the Secretary determines that the needs of the Service so require, the Secretary may recall any retired career member of the Service for active duty in the same personnel category as that member was serving at the time of retirement. A retired career member may be recalled under this section to any appropriate salary class or rate, except that a retired career member of the Senior Foreign Service may not be recalled to a salary class higher than the one in which the member was serving at the time of retirement unless appointed to such higher class by the President, by and with the advice and consent of the Senate.

(b) Former career members of the Service may be reappointed under section 302(a)(1) or 303, without regard to section 306, in a salary class which is appropriate in light of the qualifications and experience of the individual being reappointed.

SEC. 309. [22 U.S.C. 3949] LIMITED APPOINTMENTS.—(a) A limited appointment in the Service, including an appointment of an individual who is an employee of an agency, may not exceed 5 years in duration and, except as provided in subsections (b) and (c), may not be extended or renewed. A limited appointment in the Service which is limited by its terms to a period of one year or less is a temporary appointment.

(b) A limited appointment may be extended for continued service—

- (1) as a consular agent;
- (2) in accordance with section 311(a);
- (3) as a career candidate, if—

(A) continued service is determined appropriate to remedy a matter that would be cognizable as a grievance under chapter 11; or

(B) the individual is serving in the uniformed services (as defined in section 4303 of title 38, United States Code) and the limited appointment expires in the course of such service;

(4) as a career employee in another Federal personnel system serving in a Foreign Service position on detail from another agency;

(5) as a foreign national employee;

(6) in exceptional circumstances if the Secretary determines the needs of the Service require the extension of—

(A) a limited noncareer appointment for a period not to exceed 1 year; or

(B) a limited appointment of a career candidate for the minimum time needed to resolve a grievance, claim, investigation, or complaint not otherwise provided for in this section.

(c)(1) Except as provided in paragraph (2) noncareer employees who have served for 5 consecutive years under a limited appointment under this section may be reappointed to a subsequent non-career limited appointment if there is at least a 1-year break in service before such new appointment.

(2) The Secretary may waive the 1-year break requirement under paragraph (1) in cases of special need.

SEC. 310. [22 U.S.C. 3950] REEMPLOYMENT RIGHTS FOLLOWING LIMITED APPOINTMENT.—Any employee of an agency who accepts a limited appointment in the Service with the consent of the head of the agency in which the employee is employed shall be entitled, upon the termination of such limited appointment, to be reemployed in accordance with section 3597 of title 5, United States Code.

SEC. 311. [22 U.S.C. 3951] UNITED STATES CITIZENS HIRED ABROAD.—

(a) The Secretary, under section 303, may appoint United States citizens, who are family members of government employees assigned abroad or are hired for service at their post of residence, for employment in positions customarily filled by Foreign Service officers, Foreign Service personnel, and foreign national employees.

(b) The fact that an applicant for employment in a position referred to in subsection (a) is a family member of a Government employee assigned abroad shall be considered an affirmative factor in employing such person.

(c)(1) Non-family members employed under this section for service at their post of residence shall be paid in accordance with local compensation plans established under section 408.

(2) Family members employed under this section shall be paid in accordance with the Foreign Service Schedule or the salary rates established under section 407.

(3) In exceptional circumstances, non-family members may be paid in accordance with the Foreign Service Schedule or the salary rates established under section 407, if the Secretary determines that the national interest would be served by such payments.

(d) Nonfamily member United States citizens employed under this section shall not be eligible by reason of such employment for benefits under chapter 8 of this Act, or under chapters 83 or 84 of title 5, United States Code.

(e) The Secretary shall hold a family member of a government employee described in subsection (a) seeking employment in a posi-

tion described in that subsection to the same employment standards as those applicable to Foreign Service officers, Foreign Service personnel, or foreign national employees seeking the same or a substantially similar position.

SEC. 312. [22 U.S.C. 3952] DIPLOMATIC AND CONSULAR COMMISSIONS.—(a) The Secretary of State may recommend to the President that a member of the Service who is a citizen of the United States be commissioned as a diplomatic or consular officer or both. The President may, by and with the advice and consent of the Senate, commission such member of the Service as a diplomatic or consular officer or both. The Secretary of State may commission as a vice consul a member of the Service who is a citizen of the United States. All official functions performed by a diplomatic or consular officer, including a vice consul, shall be performed under such a commission.

(b) Members of the Service commissioned under this section may, in accordance with their commissions, perform any function which any category of diplomatic officer (other than a chief of mission) or consular officer is authorized by law to perform.

(c) The Secretary of State shall define the limits of consular districts.

CHAPTER 4—COMPENSATION

SEC. 401. [22 U.S.C. 3961] SALARIES OF CHIEFS OF MISSION.—(a) Except as provided in section 302(b), each chief of mission shall receive a salary, as determined by the President, at one of the annual rates payable for levels II through V of the Executive Schedule under sections 5313 through 5316 of title 5, United States Code, except that the total compensation, exclusive of danger pay, for any chief of mission shall be subject to the limitation on certain payments under section 5307 of title 5, United States Code, or the limitation under section 402(a)(3), whichever is higher⁶.

(b) The salary of a chief of mission shall commence upon the effective date of appointment to that position. The official services of a chief of mission are not terminated by the appointment of a successor, but shall continue for such additional period, not to exceed 50 days after relinquishment of charge of the mission, as the Secretary of State may determine. During that period, the Secretary of State may require the chief of mission to perform such functions as the Secretary of State deems necessary in the interest of the Government.

SEC. 402. [22 U.S.C. 3962] SALARIES OF THE SENIOR FOREIGN SERVICE.—(a)(1) The President shall prescribe salary classes for the Senior Foreign Service and shall prescribe an appropriate title for each class. The President shall also prescribe ranges of basic salary rates for each class. Except as provided in paragraph (3), basic salary rates for the Senior Foreign Service may not exceed the max-

⁶ Section 412(c) of title IV of division B of Public Law 108-447 provides as follows:

(c) Section 401(a) of such Act (22 U.S.C. 3961(a)) is amended by striking “shall not exceed the annual rate of pay payable for level I of such Executive Schedule” and inserting “shall be subject to the limitation on certain payments under section 5307 of title 5, United States Code, or the limitation under section 402(a)(3), whichever is higher”.

The amendment probably should not have included the words “of pay” in the matter purported to be struck, but was executed here to reflect the probable intent of Congress.

imum rate or be less than the minimum rate of basic pay payable for the Senior Executive Service under section 5382 of title 5, United States Code.

(2) The Secretary shall determine which basic salary rate within the ranges prescribed by the President under paragraph (1) shall be paid to each member of the Senior Foreign Service based on individual performance, contribution to the mission of the Department, or both, as determined under a rigorous performance management system. Except as provided in regulations prescribed by the Secretary and, to the extent possible, consistent with regulations governing the Senior Executive Service, the Secretary may adjust the basic salary rate of a member of the Senior Foreign Service not more than once during any 12-month period.

(3) Upon a determination by the Secretary that the Senior Foreign Service performance appraisal system, as designed and applied, makes meaningful distinctions based on relative performance—

(A) the maximum rate of basic pay payable for the Senior Foreign Service shall be level II of the Executive Schedule; and

(B) the applicable aggregate pay cap shall be equivalent to the aggregate pay cap set forth in section 5307(d)(1) of title 5, United States Code, for members of the Senior Executive Service.

(b)(1) An individual who is a career appointee in the Senior Executive Service receiving basic pay at one of the rates payable under section 5382 of title 5, United States Code, and who accepts a limited appointment in the Senior Foreign Service in a salary class for which the basic salary rate is less than such basic rate of pay, shall be paid a salary at his or her former basic rate of pay (with adjustments as provided in paragraph (2)) until the salary for his or her salary class in the Senior Foreign Service equals or exceeds the salary payable to such individual under this subsection.

(2) The salary paid to an individual under this subsection shall be adjusted by 50 percent of each adjustment, which takes effect after the appointment of such individual to the Senior Foreign Service, in the basic rate of pay at which that individual was paid under section 5382 of title 5, United States Code, immediately prior to such appointment.

SEC. 403. [22 U.S.C. 3963] FOREIGN SERVICE SCHEDULE.—The President shall establish a Foreign Service Schedule which shall consist of 9 salary classes and which shall apply to members of the Service who are citizens of the United States and for whom salary rates are not otherwise provided for by this chapter. The maximum salary rate for the highest class established under this section, which shall be designated class 1, may not exceed the maximum rate of basic pay prescribed for GS-15 of the General Schedule under section 5332 of title 5, United States Code. Salary rates established under this section shall be adjusted in accordance with section 5303 of title 5, United States Code.

NOTE.—Executive Order 12826, December 30, 1992, 57 F.R. 62909, states:

FOREIGN SERVICE SCHEDULE

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	\$66,609	\$53,973	\$43,734	\$35,438	\$28,715	\$25,670	\$22,948	\$20,515	\$18,340
2	68,607	55,592	45,046	36,501	29,576	26,440	23,636	21,130	18,890
3	70,785	57,260	46,397	37,596	30,464	27,233	24,346	21,764	19,457
4	72,785	58,978	47,789	38,724	31,378	28,050	25,076	22,417	20,041
5	74,969	60,747	49,223	39,886	32,319	28,892	25,828	23,090	20,642
6	77,218	62,569	50,700	41,082	33,289	29,759	26,603	23,783	21,261
7	79,535	64,447	52,221	42,315	34,287	30,651	27,401	24,496	21,899
8	81,921	66,380	53,787	43,584	35,316	31,571	28,223	25,231	22,556
9	84,378	68,371	55,401	44,892	36,375	32,518	29,070	25,988	23,233
10	86,589	70,423	57,063	46,239	37,467	33,494	29,942	26,767	23,930
11	86,589	72,535	58,775	47,626	38,591	34,498	30,840	27,570	24,647
12	86,589	74,711	60,538	49,054	39,748	35,533	31,765	28,398	25,387
13	86,589	76,953	62,354	50,526	40,941	36,599	32,718	29,249	26,148
14	86,589	79,261	64,225	52,042	42,169	37,697	33,700	30,127	26,933

SEC. 404. [22 U.S.C. 3964] ASSIGNMENT TO A SALARY CLASS.—
 (a) The Secretary shall assign all Foreign Service officers and Foreign Service personnel (other than Foreign Service personnel who are paid in accordance with section 407 or section 408) to appropriate salary classes in the Foreign Service Schedule.

(b)(1) The salary class to which a member of the Service is assigned under this section shall not be affected by the assignment of the member to a position classified under chapter 5.

(2) Except as authorized by subchapter I of chapter 35 of title 5, United States Code, changes in the salary class of a member of the Senior Foreign Service or a member of the Service assigned to a salary class in the Foreign Service Schedule shall be made only in accordance with chapter 6. The Secretary shall prescribe regulations (which shall be consistent with the relevant provisions of subchapter VI of chapter 53 of title 5, United States Code, and with the regulations prescribed to carry out such provisions) providing for retention of pay by members of the Service in cases in which reduction-in-force procedures are applied.

SEC. 405. [22 U.S.C. 3965] PERFORMANCE PAY.—(a) Subject to subsection (e), members of the Senior Foreign Service who are serving—

(1) under career or career candidate appointments, or
 (2) under limited appointments with reemployment rights under section 310 as career appointees in the Senior Executive Service,
 shall be eligible to compete for performance pay in accordance with this section. Performance pay shall be paid in a lump sum and shall be in addition to the basic salary prescribed under section 402 and any other award. The fact that a member of the Senior Foreign Service competing for performance pay would, as a result of the payment of such performance pay, receive compensation exceeding the compensation of any other member of the Service shall not preclude the award or its payment.

(b) Awards of performance pay shall take into account the criteria established by the Office of Personnel Management for per-

formance awards under section 5384 of title 5, United States Code, and rank awards under section 4507 of title 5, United States Code. Awards of performance pay under this section shall be subject to the following limitations:

(1) Not more than 33 percent of the members of the Senior Foreign Service may receive performance pay in any fiscal year.

(2) Except as provided in paragraph (3), performance pay for a member of the Senior Foreign Service may not exceed 20 percent of the annual rate of basic salary for that member.

(3) Not more than 6 percent of the members of the Senior Foreign Service may receive performance pay in any fiscal year in an amount which exceeds the percentage limitation specified in paragraph (2). Payments under this paragraph to a member of the Senior Foreign Service may not exceed, in any fiscal year, the percentage of basic pay established under section 4507(e)(1) of title 5, United States Code, for a Meritorious Executive, except that payments of the percentage of the basic pay established under section 4507(e)(2) of such title for Distinguished Executives may be made in any fiscal year to up to 1 percent of the members of the Senior Foreign Service.

(4) Any award under this section shall be subject to the limitation on certain payments under section 5307 of title 5, United States Code, or the limitation under section 402(a)(3), whichever is higher.

(5) The Secretary of State shall prescribe regulations, consistent with section 5582 of title 5, United States Code, under which payment under this section shall be made in the case of any individual whose death precludes payment under paragraph (4) of this subsection.

(c) The Secretary shall determine the amount of performance pay available under subsection (b)(2) each year for distribution among the members of the Senior Foreign Service and shall distribute performance pay to particular individuals on the basis of recommendations by selection boards established under section 602.

(d) The President may grant awards of performance pay under subsection (b)(3) on the basis of annual recommendations by the Secretary of State of members of the Senior Foreign Service who are nominated by their agencies as having performed especially meritorious or distinguished service. Such service in the promotion of internationally recognized human rights, including the right to freedom of religion, shall serve as a basis for granting awards under this section. Recommendations by the Secretary of State under this subsection shall be made on the basis of recommendations by special interagency selection boards established by the Secretary of State for the purpose of reviewing and evaluating the nominations of agencies.

(e) Notwithstanding any other provision of law, the Secretary of State may provide for recognition of the meritorious or distinguished service of any member of the Foreign Service described in subsection (a) (including any member of the Senior Foreign Service) by means other than an award of performance pay in lieu of making such an award under this section.

SEC. 406. [22 U.S.C. 3966] WITHIN-CLASS SALARY INCREASES.—(a) Any member of the Service receiving a salary under the Foreign Service Schedule shall be advanced to the next higher salary step in the member's class at the beginning of the first applicable pay period following the completion by that member of a period of—

(1) 52 calendar weeks of service in each of salary steps 1 through 9, and

(2) 104 calendar weeks of service in each of salary steps 10 through 13,

unless the performance of the member during that period is found in a review by a selection board established under section 602 to fall below the standards of performance for his or her salary class.

(b) The Secretary may grant, on the basis of especially meritorious service, to any member of the Service receiving an increase in salary under subsection (a), an additional salary increase to any higher step in the salary class in which the member is serving.

SEC. 407. [22 U.S.C. 3967] SALARIES FOR FOREIGN SERVICE PERSONNEL ABROAD WHO PERFORM ROUTINE DUTIES.—(a) The Secretary may establish salary rates at rates lower than those established for the Foreign Service Schedule for the Foreign Service personnel described in subsection (b). The rates established under this subsection may be no less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

(b) The Secretary may pay Foreign Service personnel who are recruited abroad, who are not available or are not qualified for assignment to another Foreign Service post, and who perform duties of a more routine nature than are generally performed by Foreign Service personnel assigned to class 9 in the Foreign Service Schedule, in accordance with the salary rates established under subsection (a).

SEC. 408. [22 U.S.C. 3968] LOCAL COMPENSATION PLANS.—(a)(1) The Secretary shall establish compensation (including position classification) plans for foreign national employees of the Service and United States citizens employed under section 311(c)(1). To the extent consistent with the public interest, each compensation plan shall be based upon prevailing wage rates and compensation practices (including participation in local social security plans) for corresponding types of positions in the locality of employment, except that such compensation plans shall provide for payment of wages to United States citizens at a rate which is no less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)). Any compensation plan established under this section may include provision for (A) leaves of absence with pay for employees in accordance with prevailing law and employment practices in the locality of employment without regard to any limitation contained in section 6310 of title 5, United States Code, (B) programs for voluntary transfers of such leave and voluntary leave banks, which shall, to the extent practicable, be established in a manner consistent with the provisions of subchapters III and IV, respectively, of chapter 63 of title 5, United States Code, and (C) payments by the Government and employees to (i) a trust or other fund in a financial insti-

tution in order to finance future benefits for employees, including provision for retention in the fund of accumulated interest and dividends for the benefit of covered employees; or (ii) a Foreign Service National Savings Fund established in the Treasury of the United States, which (I) shall be administered by the Secretary, at whose direction the Secretary of the Treasury shall invest amounts not required for the current needs of the Fund; and (II) shall be public monies, which are authorized to be appropriated and remain available without fiscal year limitation to pay benefits, to be invested in public debt obligations bearing interest at rates determined by the Secretary of the Treasury taking into consideration current average market yields on outstanding marketable obligations of the United States of comparable maturity, and to pay administrative expenses. For United States citizens under a compensation plan, the Secretary shall define those allowances and benefits provided under United States law which shall be included as part of the total compensation package, notwithstanding any other provision of law, except that this section shall not be used to override United States minimum wage requirements, or any provision of the Social Security Act or the Internal Revenue Code.

(2) The Secretary may make supplemental payments to any civil service annuitant who is a former foreign national employee of the Service (or who is receiving an annuity as a survivor of a former foreign national employee of the Service) in order to offset exchange rate losses, if the annuity being paid such annuitant is based on—

(A) a salary that was fixed in a foreign currency that has appreciated in value in terms of the United States dollar; and

(B) service in a country in which (as determined by the Secretary) the average retirement benefits being received by individuals who retire from competitive local organizations are superior to the local currency value of civil service annuities plus any other retirement benefits payable to foreign national employees who retired during similar time periods and after comparable careers with the Government.

(3)(A) Whenever a foreign national employee so elects during a one-year period established by the Secretary of State with respect to each post abroad, the Secretary of the treasury (at the direction of the Secretary of State) shall transfer such employee's interest in the Civil Service Retirement and Disability Fund to a trust or other local retirement plan certified by the United State Government under a local compensation plan established for foreign national employees pursuant to this section (excluding local social security plans).

(B) For purposes of subparagraph (A), the phrase "employee's interest in the Civil Service Retirement and Disability Fund" means the total contributions of the employee and the employing agency with respect to such employee, pursuant to sections 8331(8) and 8334(a)(1) of title 5, United States Code, respectively, plus interest at the rate provided in section 8334(e)(3) of such title.

(C) Any such transfer shall void any annuity rights or entitlement to lump-sum credit under subchapter III of chapter 83 of such title.

(b) For the purpose of performing functions abroad, any agency or other Government establishment (including any establishment in the legislative or judicial branch) may administer employment programs for its employees who are foreign nationals, are United States citizens employed in the Service abroad who were hired while residing abroad, or are family members of Government employees assigned abroad, in accordance with the applicable provisions of this Act.

(c) The Secretary of State may prescribe regulations governing the establishment and administration of local compensation plans under this section by all agencies and other Government establishments.

SEC. 409. [22 U.S.C. 3969] SALARIES OF CONSULAR AGENTS.—The Secretary of State shall establish the salary rate for each consular agent. Such salary rate shall be established after taking into account the workload of the consular agency and the prevailing wage rates in the locality where the agency is located, except that, in the case of a consular agent who is a citizen of the United States, the salary rate may not be less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

SEC. 410. [22 U.S.C. 3970] COMPENSATION FOR IMPRISONED FOREIGN NATIONAL EMPLOYEES.—(a) The head of any agency or other Government establishment (including any in the legislative or judicial branch) may compensate any current or former foreign national employee, or any foreign national who is or was employed under a personal services contract, who is or has been imprisoned by a foreign government if the Secretary of State (or, in the case of a foreign national employed by the Central Intelligence Agency, the Director of Central Intelligence) determines that such imprisonment is the result of the employment of the foreign national by the United States. Such compensation may not exceed the amount that the agency head determines approximates the salary and other benefits to which the foreign national would have been entitled had he or she been employed during the period of such imprisonment. Such compensation may be paid under such terms and conditions as the Secretary of State deems appropriate. For purposes of this section, an agency head shall have the same powers with respect to imprisoned foreign nationals who are or were employed by the agency as an agency head has under subchapter VII of chapter 55 of title 5, United States Code, to the extent that such powers are consistent with this section.

(b) Any period of imprisonment of a current or former foreign national employee which is compensable under this section shall be considered for purposes of any other employee benefit to be a period of employment by the Government, except that a period of imprisonment shall not be creditable—

(1) for purposes of subchapter III of chapter 83 of title 5, United States Code, unless it is expressly creditable under that subchapter; or

(2) for purposes of subchapter I of chapter 81 of title 5, United States Code, unless the individual was employed by the Government at the time of his or her imprisonment.

(c) No compensation or other benefit shall be awarded under this section unless a claim therefor is filed within 3 years after—

(1) the termination of the period of imprisonment giving rise to the claim, or

(2) the date of the claimant's first opportunity thereafter to file such a claim, as determined by the appropriate agency head.

(d) The Secretary of State may prescribe regulations governing payments under this section by all agencies and other Government establishments.

SEC. 411. [22 U.S.C. 3971] TEMPORARY SERVICE AS PRINCIPAL OFFICER.—For such time (in excess of such minimum period as the Secretary of State may establish) as any member of the Service is temporarily in charge of a Foreign Service post during the absence or incapacity of the principal officer, that member shall receive, in addition to the basic salary paid to the member and notwithstanding sections 5535 and 5536 of title 5, United States Code, an amount equal to that portion (which the Secretary of State may determine to be appropriate) of the difference between such salary and the basic salary provided for the principal officer, or, if there is no principal officer, for the former principal officer.

SEC. 412. [22 U.S.C. 3972] SPECIAL DIFFERENTIALS.—(a) The Secretary may pay special differentials, in addition to compensation otherwise authorized, to Foreign Service officers who are required because of the nature of their assignments to perform additional work on a regular basis in substantial excess of normal requirements.

(b) The Inspector General of the United States Agency for International Development (USAID) shall limit the payment of special differentials to USAID Foreign Service criminal investigators to levels at which the aggregate of basic pay and special differential for any pay period would equal, for such criminal investigators, the bi-weekly pay limitations on premium pay regularly placed on other criminal investigators within the Federal law enforcement community. This provision shall be retroactive to January 1, 2013.

(c) Nothing in this Act, or in subchapter V of chapter 55 of title 5, United States Code, shall preclude the granting of compensatory time off for Foreign Service officers.

SEC. 413. [22 U.S.C. 3973] DEATH GRATUITY.—(a) The Secretary may provide for payment of a gratuity to the surviving dependents of any Foreign Service employee who dies as a result of injuries sustained in the performance of duty abroad, in an amount equal to one year's salary at level II of the Executive Schedule under section 5313 of title 5, United States Code, at the time of death, except that for employees compensated under local compensation plans established under section 408 the amount shall be equal to the greater of either one year's salary at the time of death, or one year's basic salary at the highest step of the highest grade on the local compensation plan from which the employee was being paid at the time of death. Any death gratuity payment made under this section shall be held to have been a gift and shall be in addition to any other benefit payable from any source.

(b) OTHER EXECUTIVE AGENCIES.—The head of an executive agency shall, pursuant to guidance issued under subsection (c),

make a death gratuity payment authorized by this section to the survivors of any employee of that agency or of an individual in a special category serving in an uncompensated capacity for that agency, as identified in guidance issued under subsection (c), who dies as a result of injuries sustained in the performance of duty abroad while subject to the authority of the chief of mission pursuant to section 207.

(d)⁷ A death gratuity payment shall be made under this section only if the survivor entitled to payment under subsection (c) is entitled to elect monthly compensation under section 8133 of title 5, United States Code, because the death resulted from an injury (excluding a disease proximately caused by the employment) sustained in the performance of duty, without regard to whether such survivor elects to waive compensation under such section 8133.

(c)⁸ GUIDANCE.—Not later than 60 days after the date of the enactment of the Consolidated Appropriations Act, 2014, the Secretary shall, in consultation with the heads of other relevant executive agencies, issue guidance with criteria for determining eligibility for, and order of payments to, survivors and beneficiaries of any employee or of an individual in a special category serving in an uncompensated capacity for that agency who dies as a result of injuries sustained in the performance of duty while subject to the authority of the chief of mission pursuant to section 207.

(e) As used in this section—

(1) the term “Foreign Service employee” means any member of the Service or United States representative to an international organization or commission; and

(2) each of the terms “widow”, “widower”, “child”, and “parent” shall have the same meaning given each such term by section 8101 of title 5, United States Code.

SEC. 414. [22 U.S.C. 3974] BORDER EQUALIZATION PAY ADJUSTMENT.

(a) IN GENERAL.—An employee who regularly commutes from the employee’s place of residence in the continental United States to an official duty station in Canada or Mexico shall receive a border equalization pay adjustment equal to the amount of comparability payments under section 5304 of title 5, United States Code, that the employee would receive if the employee were assigned to an official duty station within the United States locality pay area closest to the employee’s official duty station.

(b) EMPLOYEE DEFINED.—For purposes of this section, the term “employee” means a person who—

(1) is an “employee” as defined under section 2105 of title 5, United States Code; and

(2) is employed by the Department of State, the United States Agency for International Development, or the International Joint Commission of the United States and Canada (established under Article VII of the treaty signed January 11,

⁷ The placement of subsection (d) is so in law. The amendment to redesignate subsection (b) as subsection (d) made by section 7082(a)(4) of division K of Public Law 113-76 probably should have included language to transfer subsection (d) (as redesignated) and insert such subsection after subsection (c) (or before subsection (e) (as reded)).

⁸ The designation for subsection (c) was added to reflect the probable intent of Congress. See the amendment made by section 7082(a)(4) of division K of Public Law 113-76.

1909) (36 Stat. 2448), except that the term shall not include members of the Service (as specified in section 103).

(c) **TREATMENT AS BASIC PAY.**—An equalization pay adjustment paid under this section shall be considered to be part of basic pay for the same purposes for which comparability payments are considered to be part of basic pay under section 5304 of title 5, United States Code.

(d) **REGULATIONS.**—The heads of the agencies referred to in subsection (b)(2) may prescribe regulations to carry out this section.

SEC. 415. [22 U.S.C. 3975] GROUP LIFE INSURANCE SUPPLEMENT APPLICABLE TO THOSE KILLED IN TERRORIST ATTACKS.

(a) **FOREIGN SERVICE EMPLOYEES.**—

(1) **IN GENERAL.**—Notwithstanding the amounts specified in chapter 87 of title 5, United States Code, a Foreign Service employee who dies as a result of injuries sustained while on duty abroad because of an act of terrorism, as defined in section 140(d) of the Foreign Relations Authorization Act, Fiscal Years 1998 and 1999 (22 U.S.C. 2656f(d)), shall be eligible for a special payment of \$400,000, which shall be in addition to any employer provided life insurance policy coverage. In the case of an employee compensated under a local compensation plan established under section 408, the amount of such payment shall be determined by regulations implemented by the Secretary of State and shall be no greater than \$400,000. The group life insurance supplement employee benefit paid or scheduled to be paid pursuant to this section should not be used to reduce any other payment to which a recipient is otherwise eligible under Federal law⁹.

(2) **DESIGNATION OF BENEFICIARY.**—A payment made under paragraph (1) shall be made in accordance with the guidance issued under section 413(c).

(b) **OTHER EXECUTIVE AGENCIES.**—The head of an executive agency shall provide the additional payment authorized by this section, consistent with the provisions set forth in subsection (a), with respect to any employee of that agency or of an individual in a special category serving in an uncompensated capacity for that agency who dies as a result of injuries sustained while on duty abroad because of an act of terrorism, as defined in section 140(d) of the Foreign Relations Authorization Act, Fiscal Years 1998 and 1999 (22 U.S.C. 2656f(d)), while subject to the authority of the chief of mission pursuant to section 207.

SEC. 416. [22 U.S.C. 3976] SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE.

(a) **FOREIGN SERVICE EMPLOYEES.**—The Secretary shall, pursuant to guidance issued under section 413(c), provide educational assistance to a beneficiary of any United States national Foreign Service employee who dies while on duty abroad as a result of an act of terrorism, as defined in section 140(d) of the Foreign Relations Authorization Act, Fiscal Years 1998 and 1999 (22 U.S.C.

⁹The last sentence was added by section 7034(k)(8) of division J of Public Law 115-31 without specifying where to insert such sentence. It was placed at the end of paragraph (1) according to the probable intent of Congress.

2656f(d)), to meet, in whole or in part, the expenses incurred by the beneficiary in pursuing a program of education at an educational institution, including subsistence, tuition, fees, supplies, books, equipment, and other educational costs.

(b) **OTHER EXECUTIVE AGENCIES.**—The head of an executive agency shall, pursuant to guidance issued under section 413(c) provide educational assistance authorized by this section to a beneficiary of any employee of that agency who dies as a result of an act of terrorism or terrorism, as defined in section 140(d) of the Foreign Relations Authorization Act, Fiscal Years 1998 and 1999 (22 U.S.C. 2656f(d)), while on duty abroad and subject to the authority of the chief of mission pursuant to section 207.

(c) **AMOUNT OF ASSISTANCE.**—Educational assistance under this section may be made available up to the amounts provided for in section 3532 of title 38, United States Code, as adjusted by section 3564 of such title, and for an aggregate period not in excess of 48 months.

(d) **PROGRAM OF EDUCATION AND EDUCATIONAL INSTITUTION DEFINED.**—For purposes of this section, the terms “program of education” and “educational institution” have the meanings given the terms in section 3501 of title 38.

CHAPTER 5—CLASSIFICATION OF POSITIONS AND ASSIGNMENTS

SEC. 501. [22 U.S.C. 3981] CLASSIFICATION OF POSITIONS.—The Secretary shall designate and classify positions in the Department and at Foreign Service posts which are to be occupied by members of the Service (other than by chiefs of mission and ambassadors at large). Positions designated under this section are excepted from the competitive service. If a position designated under this section is unfilled for more than 365 calendar days, such position may be filled, as appropriate, on a temporary basis, in accordance with section 309. Position classifications under this section shall be established, without regard to chapter 51 of title 5, United States Code, in relation to the salaries established under chapter 4. In classifying positions at Foreign Service posts abroad, the Secretary shall give appropriate weight to job factors relating to service abroad and to the compensation practices applicable to United States citizens employed abroad by United States corporations.

SEC. 502. [22 U.S.C. 3982] ASSIGNMENTS TO FOREIGN SERVICE POSITIONS.—(a)(1) The Secretary (with the concurrence of the agency concerned) may assign a member of the Service to any position classified under section 501 in which that member is eligible to serve (other than as chief of mission or ambassador at large), and may assign a member from one such position to another such position as the needs of the Service may require.

(2) In making assignments under paragraph (1), the Secretary shall assure that a member of the Service is not assigned to or prohibited from being assigned to a position at a post in a particular geographic area, or domestically, in a position working on issues relating to a particular country or geographic area, on the basis of the race, ethnicity, or religion of that member.

(b) Positions designated as Foreign Service positions normally shall be filled by the assignment of members of the Service to those positions. Subject to that limitation—

(1) Foreign Service positions may be filled by the assignment for specified tours of duty of employees of the Department and, under interagency agreements, employees of other agencies; and

(2) Senior Foreign Service positions may also be filled by other members of the Service.

(c) The President may assign a career member of the Service to serve as chargé d'affaires or otherwise as the head of a mission (or as the head of a United States office abroad which is designated under section 102(a)(3) by the Secretary of State as diplomatic in nature) for such period as the public interest may require.

(d) The Secretary of State, in conjunction with the heads of the other agencies utilizing the Foreign Service personnel system, shall implement policies and procedures to insure that Foreign Service officers and members of the Senior Foreign Service of all agencies are able to compete for chief of mission positions and have opportunities on an equal basis to compete for assignments outside their areas of specialization.

SEC. 503. [22 U.S.C. 3983] ASSIGNMENTS TO AGENCIES, INTERNATIONAL ORGANIZATIONS, AND OTHER BODIES.—(a) The Secretary may (with the concurrence of the agency, organization, or other body concerned) assign a member of the Service for duty—

(1) in a non-Foreign Service (including Senior Executive Service) position in the Department or another agency, or with an international organization, international commission, or other international body;

(2) with a domestic or international trade, labor, agricultural, scientific, or other conference, congress, or gathering;

(3) for special instruction, training, or orientation at or with a public or private organization; and

(4) in the United States (or in any territory or possession of the United States or in the Commonwealth of Puerto Rico), with a State or local government, a public or private nonprofit organization (including an educational institution), or a Member or office of the Congress.

(b)(1) The salary of a member of the Service assigned under this section shall be the higher of the salary which that member would receive but for the assignment under this section or the salary of the position to which that member is assigned.

(2) The salary of a member of the Service assigned under this section shall be paid from appropriations made available for the payment of salaries and expenses of the Service. Such appropriations may be reimbursed for all or any part of the costs of salaries and other benefits for members assigned under this section.

(3) A member of the Service assigned under subsection (a)(4) to a Member or office of the Congress shall be deemed to be an employee of the House of Representatives or the Senate, as the case may be, for purposes of payment of travel and other expenses.

(c) Except as otherwise provided in subsection (d)(5), assignments under this section may not exceed four years of continuous service for any member of the Service unless the Secretary ap-

proves an extension of such period for that member because of special circumstances.

(d)(1) The Secretary may assign a member of the Service, or otherwise detail an employee of the Department, for duty at the American Institute in Taiwan, if the Secretary determines that to do so is in the national interest of the United States.

(2) The head of any other department or agency of the United States may, with the concurrence of the Secretary, detail an employee of that department or agency to the American Institute in Taiwan, if the Secretary determines that to do so is in the national interest of the United States.

(3) In this subsection, the term “employee” does not include—

(A) a noncareer appointee, limited term appointee, or limited emergency appointee (as such terms are defined in section 3132(a) of title 5, United States Code) in the Senior Executive Service; or

(B) an employee in a position that has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.

(4) An assignment or detail under this subsection may be made with or without reimbursement from the American Institute in Taiwan.

(5) The period of an assignment or detail under this subsection shall not exceed a total of 6 years, except that the Secretary (or any other head of a department or agency of the United States, with the concurrence of the Secretary) may extend the period of an assignment or detail for an additional period of not more than 6 years.

SEC. 504. [22 U.S.C. 3984] SERVICE IN THE UNITED STATES AND ABROAD.—(a) Career members of the Service shall be obligated to serve abroad and shall be expected to serve abroad for substantial portions of their careers. The Secretary shall establish by regulation limitations upon assignments of members of the Service within the United States. A member of the Service may not be assigned to duty within the United States for any period of continuous service exceeding eight years unless the Secretary approves an extension of such period for that member because of special circumstances.

(b) Consistent with the needs of the Service, the Secretary shall seek to assign each career member of the Service who is a citizen of the United States (other than those employed in accordance with section 311) to duty within the United States at least once during each period of fifteen years that the member is in the Service.

(c) The Secretary may grant a sabbatical to a career member of the Senior Foreign Service for not to exceed eleven months in order to permit the member to engage in study or uncompensated work experience which will contribute to the development and effectiveness of the member. A sabbatical may be granted under this subsection under conditions specified by the Secretary in light of the provisions of section 3396(c) of title 5, United States Code, which apply to sabbaticals granted to members of the Senior Executive Service.

SEC. 505. [22 U.S.C. 3985] TEMPORARY DETAILS.—A period of duty of not more than six months in duration by a member of the Service shall be considered a temporary detail and shall not be considered an assignment within the meaning of this chapter.

CHAPTER 6—PROMOTION AND RETENTION

SEC. 601. [22 U.S.C. 4001] PROMOTIONS.—(a) Career members of the Senior Foreign Service are promoted by appointment under section 302(a) to a higher salary class in the Senior Foreign Service. Members of the Senior Foreign Service serving under career candidate appointments or noncareer appointments are promoted by appointment under section 303 to a higher salary class in the Senior Foreign Service. Foreign Service officers, and Foreign Service personnel who are assigned to a class in the Foreign Service Schedule, are promoted by appointment under section 302(a) as career members of the Senior Foreign Service or by assignment under section 404 to a higher salary class in the Foreign Service Schedule.

(b) Except as provided in section 606(a), promotions of—

- (1) members of the Senior Foreign Service, and
- (2) members of the Service assigned to a salary class in the Foreign Service Schedule (including promotions of such members into the Senior Foreign Service).

shall be based upon the recommendations and rankings of selection boards established under section 602, except that the Secretary may by regulation specify categories of career members, categories of career candidates, and other members of the Service assigned to salary classes in the Foreign Service Schedule who may receive promotions on the basis of satisfactory performance.

(c)(1) Promotions into the Senior Foreign Service shall be recommended by selection boards only from among career members of the Service assigned to class 1 in the Foreign Service Schedule who request that they be considered for promotion into the Senior Foreign Service. The Secretary shall prescribe the length of the period after such a request is made (within any applicable time in class limitation established under section 607(a)) during which such members may be considered by selection boards for entry into the Senior Foreign Service. A request by a member for consideration for promotion into the Senior Foreign Service under this subsection may be withdrawn by the member, but if it is withdrawn, that member may not thereafter request consideration for promotion into the Senior Foreign Service.

(2) Decisions by the Secretary on the numbers of individuals to be promoted into and retained in the Senior Foreign Service shall be based upon a systematic long-term projection of personnel flows and needs designed to provide—

- (A) a regular, predictable flow of recruitment in the Service;
- (B) effective career development patterns to meet the needs of the Service; and
- (C) a regular, predictable flow of talent upward through the ranks and into the Senior Foreign Service.

(3) The affidavit requirements of sections 3332 and 3333(a) of title 5, United States Code, shall not apply with respect to a member of the Service who has previously complied with those requirements and who subsequently is promoted by appointment to any class in the Senior Foreign Service without a break in service.

【Paragraphs (4) and (5) were repealed by section 715(b)(5) of Public Law 114-323.】

(6)(A) The promotion, on or after January 1, 2017, of any Foreign Service officer, appointed under section 302(a)(1), who has general responsibility for carrying out the functions of the Service to the Senior Foreign Service shall be contingent upon such individual completing at least one tour in—

- (i) a global affairs bureau; or
- (ii) a global affairs position.

(B) The requirements under subparagraph (A) shall not apply if the Secretary certifies that the individual proposed for promotion to the Senior Foreign Service—

- (i) has met all other requirements applicable to such promotion; and
- (ii) was unable to complete a tour in a global affairs bureau or global affairs position because there was not a reasonable opportunity for such individual to be assigned to such a position.

(C) In this paragraph—

(i) the term “global affairs bureau” means any bureau of the Department that is under the responsibility of—

- (I) the Under Secretary for Economic Growth, Energy, and Environment;
- (II) the Under Secretary for Arms Control and International Security Affairs;
- (III) the Under Secretary for Management;
- (IV) the Assistant Secretary for International Organization Affairs;
- (V) the Under Secretary for Public Diplomacy and Public Affairs; or
- (VI) the Under Secretary for Civilian, Security, Democracy, and Human Rights; and

(ii) the term “global affairs position” means any position funded with amounts appropriated to the Department under the heading “Diplomatic Policy and Support”.

SEC. 602. 【22 U.S.C. 4002】 SELECTION BOARDS.—(a) The Secretary shall establish selection boards to evaluate the performance of members of the Senior Foreign Service and members of the Service assigned to a salary class in the Foreign Service Schedule. Selection boards shall, in accordance with precepts prescribed by the Secretary, rank the members of a salary class on the basis of relative performance and may make recommendations for—

- (1) promotions in accordance with section 601;
- (2) awards of performance pay under section 405(c);
- (3) denials of within-class step increases under section 406(a);
- (4) offer or renewal of limited career extensions under section 607(b); and

(5) such other actions as the Secretary may prescribe by regulation.

(b) All selection boards established under this section shall include public members. The Secretary shall assure that a substantial number of women and members of minority groups are appointed to each selection board established under this section.

(c) No public members appointed pursuant to this section may be, at the time of the appointment or during their appointment, an agent of a foreign principal (as defined by section 1(b) of the Foreign Agents Registration Act of 1938) or a lobbyist for a foreign entity (as defined in section 3(6) of the Lobbying Disclosure Act of 1995) or receive income from a government of a foreign country.

SEC. 603. [22 U.S.C. 4003] BASIS FOR SELECTION BOARD REVIEW.—(a) Recommendations and rankings by selection boards shall be based upon records of the character, ability, conduct, quality of work, industry, experience, dependability, usefulness, and general performance of members of the Service. Such records may include reports prepared by or on behalf of the Inspector General of the Department of State and the Foreign Service, performance evaluation reports of supervisors, records of commendations, reports of language test scores from the Foreign Service Institute, awards, reprimands, and other disciplinary actions, and (with respect to members of the Senior Foreign Service) records of current and prospective assignments.

(b) Precepts for selection boards shall include a description of the needs of the Service for performance requirements, skills, and qualities, which are to be considered in recommendations for promotion. The precepts for selection boards responsible for recommending promotions into and within the Senior Foreign Service shall emphasize performance which demonstrates the strong policy formulation capabilities, executive leadership qualities, and highly developed functional and area expertise, which are required for the Senior Foreign Service. The precepts for selection boards shall include, whether the member of the Service or the member of the Senior Foreign Service, as the case may be, and when occupying positions for which the following is, to any degree, an element of the member's duties, has demonstrated—

(1) a willingness and ability to explain United States policies in person and through the media;

(2) experience serving at an international organization, multilateral institution, or engaging in multinational negotiations;

(3) willingness to serve in hardship posts overseas where applicable and across geographically distinct regions;

(4) experience advancing policies or developing expertise that enhance the United States' competitiveness with regard to critical and emerging technologies;

(5) willingness to participate in appropriate and relevant professional development opportunities offered by the Foreign Service Institute or other educational institutions associated with the Department;

(6) willingness to enable and encourage subordinates at various levels to avail themselves of appropriate and relevant professional development opportunities offered by the Foreign

Service Institute or other educational institutions associated with the Department;

(7) a willingness and ability to regularly and meaningfully engage with civil society and other local actors in country;

(8) other demonstrated experience in public diplomacy; or

(9) the ability to effectively manage and assess risk associated with the conduct of diplomatic operations.

(c)(1) A member of the Service or member of the Senior Foreign Service whose performance will be evaluated by a selection board may submit to such selection board a gap memo in advance of such evaluation.

(2) Members of a selection board may not consider as negative the submission of a gap memo by a member described in paragraph (1) when evaluating the performance of such member.

(3) In this subsection, the term “gap memo” means a written record, submitted to a selection board in a standard format established by the Director General of the Foreign Service, which indicates and explains a gap in the record of a member of the Service or member of the Senior Foreign Service whose performance will be evaluated by such selection board, which gap is due to personal circumstances, including for health, family, or other reason as determined by the Director General in consultation with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

SEC. 604. [22 U.S.C. 4004] RECORDS.—(a) The records described in section 603(a) shall be maintained in accordance with regulations prescribed by the Secretary. Except to the extent that they pertain to the receipt, disbursement, and accounting for public funds, such records shall be confidential and subject to inspection only by the President, the Secretary, such employees of the Government as may be authorized by law or assigned by the Secretary to work on such records, the legislative and appropriations committees of the Congress charged with considering legislation and appropriations for the Service, and representatives duly authorized by such committees. Access to such records relating to a member of the Service shall be granted to such member, upon written request.

(b) Notwithstanding subsection (a), any record of disciplinary action that includes a suspension of more than five days taken against a member of the Service, including any correction of that record under section 1107(b)(1), shall remain a part of the personnel records until the member is tenured as a career member of the Service or next promoted.

SEC. 605. [22 U.S.C. 4005] IMPLEMENTATION OF SELECTION BOARD RECOMMENDATIONS.—(a) Recommendations for promotion made by selection boards shall be submitted to the Secretary in rank order by salary class or in rank order by specialization within a salary class. The Secretary shall make promotions and, with respect to career appointments into or within the Senior Foreign Service, shall make recommendations to the President for promotions, in accordance with the rankings of the selection boards.

(b) Notwithstanding subsection (a), in special circumstances set forth by regulation, the Secretary may remove the name of an individual from the rank order list submitted by a selection board or delay the promotion of an individual named in such a list.

SEC. 606. [22 U.S.C. 4006] OTHER BASES FOR INCREASING PAY.—(a) The Secretary may pursuant to a recommendation of the Foreign Service Grievance Board, an equal employment opportunity appeals examiner, or the Special Counsel of the Merit Systems Protection Board, and shall pursuant to a decision or order of the Merit Systems Protection Board—

(1) recommend to the President a promotion of a member of the Service under section 302(a);

(2) promote a member of the Service under section 303;

(3) grant performance pay to a member of the Senior Foreign Service under section 405(c); or

(4) grant a within-class salary increase under section 406 to a member of the Service who is assigned to a salary class in the Foreign Service Schedule.

(b) In implementing subsection (a) of this section and in cases in which the Secretary has exercised the authority of section 605(b), the Secretary may, in special circumstances set forth by regulation, make retroactive promotions, grant performance pay, make retroactive within-class salary increases, and recommend retroactive promotions by the President.

SEC. 607. [22 U.S.C. 4007] RETIREMENT FOR EXPIRATION OF TIME IN CLASS.—(a)(1) The Secretary shall, by regulation, establish maximum time in class limitations for—

(A) career members of the Senior Foreign Service,

(B) Foreign Service officers, and

(C) other career members of the Service who are in such occupational categories as may be designated by the Secretary and who are assigned to salary classes in the Foreign Service Schedule to which Foreign Service officers may also be assigned.

(2) Maximum time in class limitations under this subsection (which may not be less than 3 years for career members of the Senior Foreign Service) may apply with respect to the time a member may remain in a single salary class or in a combination of salary classes.

(3) The Secretary may, by regulation, increase or decrease any maximum time in class established under this subsection as the needs of the Service may require. If maximum time in class is decreased, the Secretary shall provide any member of the Service who is in a category and salary class subject to the new time in class limitation an opportunity to remain in class (notwithstanding the new limitations) for a period which is at least as long as the shorter of—

(A) the period which the member would have been permitted to remain in class but for the decrease in maximum time in class, or

(B) such minimum period as the Secretary determines is necessary to provide members of the Service who are in the same category and salary class as that member a reasonable opportunity to be promoted into the next higher class or combination of classes, as the case may be.

(b) members of the Service whose maximum time in class under subsection (a) expires—

(1) after they have attained the highest salary class for their respective occupational categories, or

(2) in the case of members of the Senior Foreign Service, while they are in salary classes designated by the Secretary, may continue to serve only under limited extensions of their career appointment. Such limited extensions may not exceed 5 years in duration and may be granted and renewed by the Secretary in accordance with the recommendations of selection boards established under section 602. Members of the Service serving under such limited career extensions shall continue to be career members of the Service.

(c) Any member of the Service—

(1) whose maximum time in class under subsection (a) expires and who is not promoted to a higher class or combination of classes, as the case may be, or

(2) whose limited career extension under subsection (b) expires and is not renewed, shall be retired from the Service and receive benefits in accordance with section 609, subject to any career extension under subsection (d) of this section.

(d) Notwithstanding any other provision of this section—

(1) the career appointment of a member of the Service whose maximum time in class under subsection (a) expires, or whose limited career extension under subsection (b) expires, while that member is occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, shall be extended until the appointment to that position is terminated; and

(2) If the Secretary determines it to be in the public interest, the Secretary may extend temporarily the career appointment of a career member of the Service whose maximum time in class or limited career extension expires, but in no case may any extension under this paragraph exceed one year and such extensions may be granted only in special circumstances.

SEC. 608. [22 U.S.C. 4008] RETIREMENT BASED ON RELATIVE PERFORMANCE.—(a) The Secretary shall prescribe regulations concerning the standards of performance to be met by career members of the Service who are citizens of the United States. Whenever a selection board review indicates that the performance of such a career member of the Service may not meet the standards of performance for his or her class, the Secretary shall provide for administrative review of the performance of the member. The review shall include an opportunity for the member to be heard.

(b) In any case where the administrative review conducted under subsection (a) substantiates that a career member of the Service has failed to meet the standards of performance for his or her class, the member shall be retired from the Service and receive benefits in accordance with section 609.

SEC. 609. [22 U.S.C. 4009] RETIREMENT BENEFITS.—(a) A member of the Service—

(1) who is retired under section 607(c)(2); or

(2) who is retired under section 607(c)(1) or 608(b) or 611—

(A) after becoming eligible for voluntary retirement under section 811 or any other applicable provision of chapter 84 of title 5, United States Code,¹⁰ or
 (B) from the Senior Foreign Service or while assigned to class 1 in the Foreign Service Schedule,
 shall receive retirement benefits in accordance with section 806 or section 855, as appropriate.

(b) Any member of the Service (other than a member to whom subsection (a) applies) who is retired under section 607(c)(1) or 608(b) or 611 shall receive—

(1) one-twelfth of a year's salary at his or her then current salary rate for each year of service and proportionately for a fraction of a year, but not exceeding a total of one year's salary at his or her then current salary rate, payable without interest from the Foreign Service Retirement and Disability Fund in 3 equal installments, such installments to be paid on January 1 of each of the first 3 calendar years beginning after the retirement of the member (except that in special cases, the Secretary of State may accelerate or combine such installments); and

(2)(A) for those participants in the Foreign Service Retirement and Disability System, a refund as provided in section 815 of the contributions made by the members to the Foreign Service Retirement and Disability Fund, except that in lieu of such refund a member who has at least 5 years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military and naval service) may elect to receive an annuity, computed under section 806, commencing at age 60; and (B) for those participants in the Foreign Service Pension System, benefits as provided in section 851.

In the event that a member of the Service has elected to receive retirement benefits under paragraph (2) and dies before reaching age 60 (for participants in the Foreign Service Retirement and Disability System) or age 62 (for participants in the Foreign Service Pension System), his or her death shall be considered a death in service within the meaning of section 809.

SEC. 610.¹¹ [22 U.S.C. 4010] SEPARATION FOR CAUSE; SUSPENSION.—(a)(1) The Secretary may separate any member from the Service for such cause as will promote the efficiency of the Service, including upon receiving notification from the Bureau of Diplomatic Security that such member has engaged in criminal misconduct, such as murder, rape, or other sexual assault.

(2)(A) Except as provided in subparagraph (B), whenever the Secretary decides under paragraph (1) to separate, on the basis of misconduct, any member of the Service (other than a United States citizen employed under section 311 of the Foreign Service Act of 1980 who is not a family member) who either—

- (i) is serving under a career appointment, or
- (ii) is serving under a limited appointment,

¹⁰So in original. See section 2312(a)(1) of Public Law 105277 (112 Stat. 2681-???).

¹¹Section 415(a)(1) of Public Law 114-323 provides for an amendment to strike and insert the section heading for section 610 of the Foreign Service Act of 1980, which is reflected above; however, the style as shown in the printed version of such Public Law appears in all caps bold-face.

the member may not be separated from the Service until the member receives a hearing before the Foreign Service Grievance Board and the Board decides that cause for separation has been established, unless the member waives, in writing, the right to such a hearing, or the member's appointment has expired, whichever is sooner.

(B) The right to a hearing in subparagraph (A) does not apply in the case of an individual who has been convicted of a crime for which a sentence of imprisonment of more than one year may be imposed.

(3) If the Board decides that cause for separation has not been established, the Board may direct the Department to pay reasonable attorneys' fees to the extent and in the manner provided by section 1107(b)(5). The hearing provided under this paragraph shall be conducted in accordance with the hearing procedures applicable to grievances under section 1106 and shall be in lieu of any other administrative procedure authorized or required by this or any other Act. Section 1110 shall apply to proceedings under this paragraph.

(4) Notwithstanding the hearing required by paragraph (2), at the time that the Secretary decides to separate a member of the Service for cause, the member shall be placed on leave without pay. If the member does not waive the right to a hearing, and the Board decides that cause for separation has not been established, the member shall be reinstated with back pay.

(b) Any participant in the Foreign Service Retirement and Disability System who is separated under subsection (a) shall be entitled to receive a refund as provided in section 815 of the contributions made by the participant to the Foreign Service Retirement and Disability Fund. Except in cases where the Secretary determines that separation was based in whole or in part on the ground of disloyalty to the United States, a participant who has at least 5 years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military and naval service) may elect, in lieu of such refund, to an annuity, computed under section 806, commencing at age 60.

(c)(1) In order to promote the efficiency of the Service, the Secretary may indefinitely suspend without duties a member of the Service when—

(A) the member's security clearance is suspended; or

(B) there is reasonable cause to believe that the member has committed a crime for which a sentence of imprisonment may be imposed.

(2) Any member of the Service for whom a suspension is proposed under this subsection shall be entitled to—

(A) written notice stating the specific reasons for the proposed suspension;

(B) a reasonable time to respond orally and in writing to the proposed suspension;

(C) obtain at such member's own expense representation by an attorney or other representative; and

(D) a final written decision, including the specific reasons for such decision, as soon as practicable.

(3) Any member suspended under this subsection may file a grievance in accordance with the procedures applicable to grievances under chapter 11 of title I.

(4) If a grievance is filed pursuant to paragraph (3)—

(A) the review by the Foreign Service Grievance Board shall be limited to a determination of whether the provisions of paragraphs (1) and (2) have been fulfilled; and

(B) the Board may not exercise the authority provided under section 1106(8).

(5)¹² For each member of the Service suspended under paragraph (1)(A) whose security clearance remains suspended for more than one calendar year, not later than 30 days after the end of such calendar year, the Secretary of State shall report to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate in writing regarding the specific reasons relating to the duration of each such suspension.

(6)¹² Any member of the Service suspended under this subsection may be suspended without pay only after a final written decision is provided to such member pursuant to paragraph (2).

(7) In this subsection, the term “reasonable time” means—

(A) with respect to a member of the Service assigned to duty in the United States, 15 days after receiving notice of the proposed suspension; and

(B) with respect to a member of the Service assigned to duty outside the United States, 30 days after receiving notice of the proposed suspension.

SEC. 611. [22 U.S.C. 4010a] REDUCTIONS IN FORCE.—(a) The Secretary may conduct reductions in force and shall prescribe regulations for the separation of members of the Service holding a career or career candidate appointment under chapter 3 of this Act, under such reductions in force which give due effect to the following:

(1) Organizational changes.

(2) Documented employee knowledge, skills, or competencies.

(3) Tenure of employment.

(4) Documented employee performance.

(5) Military preference, subject to section 3501(a)(3) of title 5, United States Code.

(b) The provisions of section 609 shall be applicable to any member of the Service holding a career or career candidate appointment under chapter 3 of this Act, who is separated under the provisions of this section.

(c) An employee against whom action is taken under this section may elect either to file a grievance under chapter 11 or to appeal to the Merit Systems Protection Board under procedures prescribed by the Board. Grievances under chapter 11 shall be limited to cases of reprisal, interference in the conduct of an employee's of-

¹² Margins for paragraphs (5) and (6) are so in law (as added by section 5317(3) of division E of Public Law 117-81).

ficial duties, or similarly inappropriate use of the authority of this section.

SEC. 612. [22 U.S.C. 4011] **TERMINATION OF LIMITED APPOINTMENTS.**—Except as provided in section 610(a)(2), the Secretary may terminate at any time the appointment of any member of the Service serving under a limited appointment who is in the Senior Foreign Service, who is assigned to a salary class in the Foreign Service Schedule or who is paid in accordance with section 407 or is a United States citizen paid under a compensation plan under section 408.

SEC. 613. [22 U.S.C. 4012] **TERMINATION OF APPOINTMENTS OF CONSULAR AGENTS AND FOREIGN NATIONAL EMPLOYEES.**—(a) The Secretary of State may terminate at any time the appointment of any consular agent in light of the criteria and procedures normally followed in the locality in similar circumstances.

(b) The Secretary may terminate at any time the appointment of any foreign national employee in light of the criteria and procedures normally followed in the locality in similar circumstances.

SEC. 614. [22 U.S.C. 4013] **DEPARTMENT AWARDS.**—The President shall establish a system of awards to confer appropriate recognition of outstanding contributions to the Nation by members of the Service or Civil Service. The awards system established under this section shall provide for presentation by the President and by the Secretary of medals or other suitable commendations for performance in the course of or beyond the call of duty which involves distinguished, meritorious service to the Nation, including extraordinary valor in the face of danger to life or health. Distinguished, meritorious service in the promotion of internationally recognized human rights, including the right to freedom of religion, shall serve as a basis for granting awards under this section.

CHAPTER 7—CAREER DEVELOPMENT, TRAINING, AND ORIENTATION

SEC. 701. [22 U.S.C. 4021] **INSTITUTION FOR TRAINING.**—(a) The Secretary of State shall maintain and operate an institution or center for training (hereinafter in this chapter referred to as the “institution”), originally established under section 701 of the Foreign Service Act of 1946, in order to promote career development within the Service and to provide necessary training and instruction in the field of foreign relations to members of the Service and to employees of the Department and of other agencies. The institution shall be headed by a Director, who shall be appointed by the Secretary of State. The institution shall be designated the “George P. Shultz National Foreign Affairs Training Center”¹³

(b) To the extent practicable, the Secretary of State shall provide training under this chapter which meets the needs of all agencies, and other agencies shall avoid duplicating the facilities and training provided by the Secretary of State through the institution and otherwise.

(c) Training and instruction may be provided at the Institute for not to exceed sixty citizens of the Trust Territory of the Pacific

¹³ Lack of punctuation so in law. Section 1(a) of P.L. 107-132 (115 Stat. 2412) amends this subsection by adding at the end “The institution shall be designated the ‘George P. Shultz National Foreign Affairs Training Center’”. There should probably be a period after “Center”.

Islands in order to prepare them to serve as members of the foreign services of the Federated States of Micronesia, the Marshall Islands, and Palau. The authority of this subsection shall expire when the Compact of Free Association is approved by the Congress.

(d)(1) The Secretary of State is authorized to provide for special professional foreign affairs training and instruction of employees of foreign governments through the institution.

(2) Training and instruction under paragraph (1) shall be on a reimbursable or advance-of-funds basis. Such reimbursements or advances to the Department of State may be provided by an agency of the United States Government or by a foreign government and shall be credited to the currently available applicable appropriation account.

(3) In making such training available to employees of foreign governments, priority consideration should be given to officials of newly emerging democratic nations and then to such other countries as the Secretary determines to be in the national interest of the United States.

(e)(1) The Secretary may provide appropriate training or related services, except foreign language training, through the institution to any United States person (or any employee or family member thereof) that is engaged in business abroad.

(2) The Secretary may provide job-related training or related services, including foreign language training, through the institution to a United States person under contract to provide services to the United States Government or to any employee thereof that is performing such services.

(3) Training under this subsection may be provided only to the extent that space is available and only on a reimbursable or advance-of-funds basis. Reimbursements and advances shall be credited to the currently available applicable appropriation account.

(4) Training and related services under this subsection is authorized only to the extent that it will not interfere with the institution's primary mission of training employees of the Department and of other agencies in the field of foreign relations.

(5) In this subsection, the term "United States person" means—

(A) any individual who is a citizen or national of the United States; or

(B) any corporation, company, partnership, association, or other legal entity that is 50 percent or more beneficially owned by citizens or nationals of the United States.

(f)(1) The Secretary is authorized to provide, on a reimbursable basis, training programs to Members of Congress or the Judiciary.

(2) Employees of the legislative branch and employees of the judicial branch may participate, on a reimbursable basis, in training programs offered by the institution.

(3) Reimbursements collected under this subsection shall be credited to the currently available applicable appropriation account.

(4) Training under this subsection is authorized only to the extent that it will not interfere with the institution's primary mission of training employees of the Department and of other agencies in the field of foreign relations.

(g) The authorities of section 704 shall apply to training and instruction provided under this section.

SEC. 702. [22 U.S.C. 4022] FOREIGN LANGUAGE REQUIREMENTS.—(a) The Secretary shall establish foreign language proficiency requirements for members of the Service who are to be assigned abroad in order that Foreign Service posts abroad will be staffed by individuals having a useful knowledge of the language or dialect common to the country in which the post is located.

(b) The Secretary of State shall arrange for appropriate language training of members of the Service by the institution or otherwise in order to assist in meeting the requirements established under subsection (a).

SEC. 703. [22 U.S.C. 4023] CAREER DEVELOPMENT.—(a) The Secretary shall establish a professional development program to assure that members of the Service obtain the skills and knowledge required at the various stages of their careers. With regard to Foreign Service officers, primary attention shall be given to training for career candidate officers and for midcareer officers, both after achieving tenure and as they approach eligibility for entry to the Senior Foreign Service, to enhance and broaden their qualifications for more senior levels of responsibility in the Service. Training for other members of the Service shall emphasize programs designed to enhance their particular skills and expert knowledge, including development of the management skills appropriate to their occupational categories.

(b) Junior Foreign Service officer training shall be directed primarily toward providing expert knowledge in the basic functions of analysis and reporting as well as in consular, administrative, and linguistic skills relevant to the full range of future job assignments. Midcareer training shall be directed primarily toward development and perfection of management, functional, negotiating, and policy development skills to prepare the officers progressively for more senior levels of responsibility.

(c) At each stage the program of professional development should be designed to provide members of the Service with the opportunity to acquire skills and knowledge relevant to clearly established professional standards of expected performance. Career candidates should satisfactorily complete candidate training prior to attainment of career status. Members of the Service should satisfactorily complete midcareer training before appointment to the Senior Foreign Service.

(d) In formulating programs under this section, the Secretary should establish a system to provide, insofar as possible, credit toward university degrees for successful completion of courses comparable to graduate-level, university courses.

(e) Training provided under this section shall be conducted by the Department and by other governmental and nongovernmental institutions as the Secretary may consider appropriate.

(f) [Repealed—1987]

SEC. 704. [22 U.S.C. 4024] TRAINING AUTHORITIES.—(a) In the exercise of functions under this chapter, the Secretary of State may—

(1) provide for the general nature of the training and instruction to be furnished by the institution including functional and geographic area specializations;

(2) correlate training and instruction furnished by the institution with courses given at other Government institutions and at private institutions which furnish training and instruction useful in the field of foreign affairs;

(3) encourage and foster programs complementary to those furnished by the institution, including through grants and other gratuitous assistance to nonprofit institutions cooperating in any of the programs under this chapter;

(4)(A) employ in accordance with the civil service laws such personnel as may be necessary to carry out the provisions of this chapter, and

(B) if and to the extent determined to be necessary by the Secretary of State, obtain without regard to the provisions of law governing appointments in the competitive service, by appointment or contract (subject to the availability of appropriations), the services of individuals to serve as education and training specialists, including language instructors and linguists, and other specialists who perform work directly relating to the design, delivery, oversight, or coordination of training delivered by the institution (including, in the absence of suitably qualified United States citizens, qualified individuals who are not citizens of the United States); and

(5) acquire such real and personal property and equipment as may be necessary for the establishment, maintenance, and operation of the facilities necessary to carry out the provisions of this chapter without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5) and section 302 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252).

(b) In furtherance of the objectives of this Act, the Secretary may—

(1) pay the tuition and other expenses of members of the Service and employees of the Department who are assigned or detailed in accordance with law for special instruction or training, including orientation, language, and career development training;

(2) pay the salary (excluding premium pay or any special differential under section 412) of members of the Service selected and assigned for training; and

(3) provide special monetary or other incentives to encourage members of the Service to acquire or retain proficiency in foreign languages or special abilities needed in the Service.

(c) The Secretary may provide to family members of members of the Service or of employees of the Department or other agencies, in anticipation of their assignment abroad or while abroad—

(1) appropriate orientation and language training; and

(2) functional training for anticipated prospective employment under section 311.

(d)(1) Before a United States citizen employee (other than a diplomatic or consular officer of the United States) may be designated by the Secretary of State, pursuant to regulation, to per-

form a consular function abroad, the United States citizen employee shall—

(A) be required to complete successfully a program of training essentially equivalent to the training that a consular officer who is a member of the Foreign Service would receive for purposes of performing such function; and

(B) be certified by an appropriate official of the Department of State to be qualified by knowledge and experience to perform such function.

(2) As used in this subsection, the term “consular function” includes the issuance of visas, the performance of notarial and other legalization functions, the adjudication of passport applications, the adjudication of nationality, and the issuance of citizenship documentation.

SEC. 705. [22 U.S.C. 4025] TRAINING GRANTS.—(a) To facilitate training provided to members of families of Government employees under this chapter, the Secretary may make grants (by advance payment or by reimbursement) to family members attending approved programs of study. No such grant may exceed the amount actually expended for necessary costs incurred in conjunction with such attendance.

(b) If a member of the Service who is assigned abroad, or a member of his or her family, is unable to participate in language training furnished by the Government through the institution or otherwise, the Secretary may compensate that individual for all or part of the costs of language training, related to the assignment abroad, which is undertaken at a public or private institution.

SEC. 706. [22 U.S.C. 4026] CAREER COUNSELING.—(a) In order to facilitate their transition from the Service, the Secretary may provide (by contract or otherwise, subject to the availability of appropriations) professional career counseling, advice, and placement assistance to members of the Service, and to former members of the Service who were assigned to receive counseling and assistance under this subsection before they were separated from the Service, other than those separated for cause. Career counseling and related services provided pursuant to this Act shall not be construed to permit an assignment that consists primarily of paid time to conduct a job search and without other substantive duties for more than one month.

(b)(1) The Secretary shall implement such measures as the Secretary considers necessary to facilitate the employment of spouses and members of the Service. The measures may include—

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(A) providing regular career counseling for such spouses;

(B) maintaining a centralized system for cataloging their skills and the various governmental and nongovernmental employment opportunities available to them; and

¹⁴Section 6203(1)(A) of division F of Public Law 117-81 provides for an amendment to strike “The Secretary may facilitate the employment of spouses of members of the Foreign Service by—” and insert “The Secretary shall implement such measures as the Secretary considers necessary to facilitate the employment of spouses and members of the Service. The measures may include—”. Such amendment should have not included the word “Foreign” in the stricken matter because it does not appear in law; however, it was executed to reflect the probable intent of Congress.

- (D)¹⁵ otherwise assisting them in obtaining employment.
- (2)¹⁶ The Secretary may prescribe regulations—
- (A) to provide preference to eligible family members in hiring for any civilian position in the Department, notwithstanding the prohibition on marital discrimination found in 5 U.S.C. 2302(b)(1)(E), if —
 - (i) the eligible family member is among persons determined to be best qualified for the position; and
 - (ii) the position is located in the overseas country of assignment of their sponsoring employee;
 - (B) to ensure that notice of any vacant position in the Department is provided in a manner reasonably designed to reach eligible family members of sponsoring employees whose permanent duty stations are in the same country as that in which the position is located; and
 - (C) to ensure that an eligible family member who applies for a vacant position in the Department shall, to the extent practicable, be considered for any such position located in the same country as the permanent duty station of their sponsoring employee.
- (3) Nothing in this section may be construed to provide an eligible family member with entitlement or preference in hiring over an individual who is preference eligible.
- (4) Under regulations prescribed by the Secretary, a chief of mission may, consistent with all applicable laws and regulations pertaining to the ICASS system, make available to an eligible family member and a non-Department entity space in an embassy or consulate for the purpose of the non-Department entity providing employment-related training for eligible family members.
- (5) The Secretary may work with the Director of the Office of Personnel Management and the heads of other Federal departments and agencies to expand and facilitate the use of existing Federal programs and resources in support of eligible family member employment.
- (6) The Secretary shall establish a family liaison office to carry out this subsection and such other functions as the Secretary may determine.
- (7) In this subsection, the term “eligible family member” refers to family members of government employees assigned abroad or hired for service at their post of residence who are appointed by the Secretary of State or the Administrator of the United States Agency for International Development pursuant to sections 102, 202, 303, and 311.

¹⁵There is no subparagraph (C) in law. Section 6203(1)(B) and (C) of division F of Public Law 117-81 provides for amendments to redesignate subparagraph (C) as subparagraph (D) and by “amending subparagraph (C) to read as follows:”. The latter amendment could not be executed because there was no subparagraph (C) to amend to read due to its prior redesignation as subparagraph (D). The quoted block of subparagraph (C) reads as follows:

“(C) establishing a program for assisting eligible family members in accessing employment and education opportunities, as appropriate, including by exercising the authorities, in relevant part, under sections 1784 and 1784a of title 10, United States Code, and subject to such regulations as the Secretary may prescribe modeled after those prescribed pursuant to subsection (b) of such section 1784.”

¹⁶Margins of paragraphs (2) through (5) (as added by section 6203(3) of division F of Public Law 117-81) do not conform with margins of existing paragraphs in this subsection.

SEC. 707. [22 U.S.C. 4027] VISITING SCHOLARS PROGRAM.

(a) **ESTABLISHMENT OF PROGRAM.**—There is authorized to be established at the institution a program whereby selected scholars would participate fully in the educational and training activities of the institution. This program may be referred to as the “Visiting Scholars Program”.

(b) SELECTION AND APPOINTMENT OF SCHOLARS.—

(1) Scholars participating in the Visiting Scholars Program shall be selected by a five-member board described in subsection (c).

(2) Each visiting scholar shall serve a term of one year, except that such term may be extended for one additional one-year period.

(c) **ESTABLISHMENT OF SELECTION BOARD.**—The board referred to in subsection (b) shall be composed of the director of the foreign service institution, who shall serve as chairperson, and four other members appointed by the Secretary of State.

SEC. 708. [22 U.S.C. 4028] TRAINING FOR FOREIGN SERVICE OFFICERS.

(a) **HUMAN RIGHTS, RELIGIOUS FREEDOM, AND HUMAN TRAFFICKING TRAINING.**—

(1) **IN GENERAL.**—The Secretary of State, with the assistance of other relevant officials, such as the Ambassador at Large for International Religious Freedom appointed under section 101(b) of the International Religious Freedom Act of 1998, the Director of the Office to Monitor and Combat Trafficking, and the director of the George P. Shultz National Foreign Affairs Training Center, shall establish as part of the standard training provided after January 1, 1999, for officers of the Service, including chiefs of mission, instruction in the field of internationally recognized human rights. Such training shall include—

(A) instruction on international documents and United States policy in human rights, which shall be mandatory for all members of the Service having reporting responsibilities relating to human rights and for chiefs of mission;

(B) instruction on the internationally recognized right to freedom of religion, the nature, activities, and beliefs of different religions, and the various aspects and manifestations of violations of religious freedom;

(C) instruction on international documents and United States policy on trafficking in persons, including provisions of the Trafficking Victims Protection Act of 2000 (division A of Public Law 106-386; 22 U.S.C. 7101 et seq.) which may affect the United States bilateral relationships; and

(D) for Foreign Service Officers who will be assigned to a country experiencing or at risk of mass atrocities, as determined by the Secretary of State, in consultation with the Director of National Intelligence and relevant civil society organizations, instruction on recognizing patterns of escalation and early warning signs of potential atrocities, and methods of preventing and responding to atrocities, including conflict assessment methods, peacebuilding, medi-

ation for prevention, early action and response, and appropriate transitional justice measures to address atrocities.

(2) RELIGIOUS FREEDOM TRAINING.—

(A) IN GENERAL.—In carrying out the training required under paragraph (1)(B), the Director of the George P. Shultz National Foreign Affairs Training Center shall, not later than the one year after the date of the enactment of the Frank R. Wolf International Religious Freedom Act, conduct training on religious freedom for all Foreign Service officers, including all entry level officers, all officers prior to departure for posting outside the United States, and all outgoing deputy chiefs of mission and ambassadors. Such training shall be included in—

(i) the A-100 course attended by all Foreign Service officers;

(ii) the courses required of every Foreign Service officer prior to a posting outside the United States, with segments tailored to the particular religious demography, religious freedom conditions, and United States strategies for advancing religious freedom, in each receiving country; and

(iii) the courses required of all outgoing deputy chiefs of mission and ambassadors.

(B) DEVELOPMENT OF CURRICULUM.—In carrying out the training required under paragraph (1)(B), the Ambassador at Large for International Religious Freedom, in coordination with the Director of the George P. Shultz National Foreign Affairs Training Center and other Federal officials, as appropriate, and in consultation with the United States Commission on International Religious Freedom established under section 201(a) of the International Religious Freedom Act of 1998 (22 U.S.C. 6431(a)), shall make recommendations to the Secretary of State regarding a curriculum for the training of United States Foreign Service officers under paragraph (1)(B) on the scope and strategic value of international religious freedom, how violations of international religious freedom harm fundamental United States interests, how the advancement of international religious freedom can advance such interests, how United States international religious freedom policy should be carried out in practice by United States diplomats and other Foreign Service officers, and the relevance and relationship of international religious freedom to United States defense, diplomacy, development, and public affairs efforts. The Secretary of State should ensure the availability of sufficient resources to develop and implement such curriculum.

(C) INFORMATION SHARING.—The curriculum and training materials developed under this paragraph shall be shared with the United States Armed Forces and other Federal departments and agencies with personnel who are stationed overseas, as appropriate, to provide training on—

(i) United States religious freedom policies;

(ii) religious traditions;

- (iii) religious engagement strategies;
- (iv) religious and cultural issues; and
- (v) efforts to counter violent religious extremism.

(b) REFUGEES.—The Secretary of State shall provide sessions on refugee law and adjudications and on religious persecution to each individual seeking a commission as a United States consular officer. The Secretary shall also ensure that any member of the Service who is assigned to a position that may be called upon to assess requests for consideration for refugee admissions, including any consular officer, has completed training on refugee law and refugee adjudications in addition to the training required in this section.

(c) CHILD SOLDIERS.—The Secretary of State, with the assistance of other relevant officials, shall establish as part of the standard training provided for chiefs of mission, deputy chiefs of mission, and other officers of the Service who are or will be involved in the assessment of child soldier use or the drafting of the annual Human Rights Report instruction on matters related to child soldiers, and the substance of the Child Soldiers Prevention Act of 2008.

(d) ECONOMIC AND COMMERCIAL DIPLOMACY.—The Secretary of State, with the assistance of other relevant officials and the private sector, shall establish as part of the standard training provided for economic and commercial officers of the Foreign Service, chiefs of mission, and deputy chiefs of mission, training on matters related to economic and commercial diplomacy, with particular attention to market access and other elements of an enabling framework for United States businesses, commercial advocacy, and United States foreign economic policy, in addition to awareness about the support of the United States Government available to United States businesses, including support provided by the Department of Agriculture, the Department of Commerce, the Export-Import Bank of the United States, the Millennium Challenge Corporation, the Trade and Development Agency, the Department of the Treasury, the United States Agency for International Development, and the United States International Development Finance Corporation.

(e) TRAINING IN MULTILATERAL DIPLOMACY.—

(1) IN GENERAL.—The Secretary, in consultation with other senior officials as appropriate, shall establish training courses on—

(A) the conduct of diplomacy at international organizations and other multilateral institutions; and

(B) broad-based multilateral negotiations of international instruments.

(2) REQUIRED TRAINING.—Members of the Service, including appropriate chiefs of mission and other officers who are assigned to United States missions representing the United States to international organizations and other multilateral institutions or who are assigned in other positions that have as their primary responsibility formulation of policy related to such organizations and institutions, or participation in negotiations of international instruments, shall receive specialized training in the areas described in paragraph (1) prior to the beginning of service for such assignment or, if receiving such

training at that time is not practical, within the first year of beginning such assignment.

CHAPTER 8—FOREIGN SERVICE RETIREMENT AND DISABILITY

SUBCHAPTER I—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

SEC. 801. [22 U.S.C. 4041] ADMINISTRATION OF THE SYSTEM.—In accordance with such regulations as the President may prescribe, the Secretary of State shall administer the Foreign Service Retirement and Disability System (hereinafter in this subchapter referred to as the “System”), originally established pursuant to section 18 of the Act of May 24, 1924 (43 Stat. 144).

SEC. 802. [22 U.S.C. 4042] MAINTENANCE OF THE FUND.—The Secretary of the Treasury shall maintain the special fund known as the Foreign Service Retirement and Disability Fund (hereinafter in this subchapter referred to as the “Fund”), originally created by section 18 of the Act of May 24, 1924 (43 Stat. 144).

SEC. 803. [22 U.S.C. 4043] PARTICIPANTS.—(a) Except as provided in subsection (d), the following members of the Service (hereinafter in this subchapter referred to as “participants”) shall be entitled to the benefits of the System:

(1) Every member who is serving under a career appointment or as a career candidate under section 306—

(A) in the Senior Foreign Service, or

(B) assigned to a salary class in the Foreign Service Schedule.

(2) Every chief of mission, who is not a participant under paragraph (1), who—

(A) has served as chief of mission for an aggregate period of 20 years or more, and

(B) has paid into the Fund a special contribution for each year of such service in accordance with section 805.

(b) Any otherwise eligible member of the Service who is appointed to a position in the executive branch by the President, by and with the advice and consent of the Senate, or by the President alone, shall not by virtue of the acceptance of such appointment cease to be eligible to participate in the System.

(c) In addition to the individuals who are participants in the System under subsection (a), any individual who was appointed as a Binational Center Grantee and who completed at least 5 years of satisfactory service as such a grantee or under any other appointment under the Foreign Service Act of 1946 may become a participant in the System, and shall receive credit for such service if an appropriate special contribution is made to the Fund in accordance with section 805(d) or (f).

(d) An individual subject to the Foreign Service Pension System (described in subchapter II) is not a participant in this System.

SEC. 804. [22 U.S.C. 4044] DEFINITIONS.—As used in this subchapter, unless otherwise specified, the term—

(1) “annuitant” means any individual, including a former participant or survivor, who meets all requirements for an annuity from the Fund under this or any other Act and who has filed a claim for such annuity;

- (2) “child” means an individual—
- (A) who—
 - (i) is an offspring or adopted child of the participant,
 - (ii) is a stepchild or recognized natural child of the participant and who received more than one-half support from the participant, or
 - (iii) lived with the participant, for whom a petition of adoption was filed by the participant, and who is adopted by the surviving spouse of the participant after the death of the participant;
 - (B) who is unmarried; and
 - (C) who—
 - (i) is under the age of 18 years,
 - (ii) is a student under the age of 22 years (for purposes of this clause, an individual whose 22d birthday occurs before July 1 or after August 31 of the calendar year in which that birthday occurs, and while the individual is a student, is deemed to become 22 years of age on the first July 1 which occurs after that birthday), or
 - (iii) is incapable of self-support because of a physical or mental disability which was incurred before the individual reached the age of 18 years;
- (3) “court” means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court as defined by section 201(3) of the Act entitled “An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes”, approved April 11, 1968 (25 U.S.C. 1301(3); 82 Stat. 77);
- (4) “court order” means any court decree of divorce or annulment, or any court order or court approved property settlement agreement incident to any court decree of divorce or annulment;
- (5) “Foreign Service normal cost” means the level percentage of payroll required to be deposited in the Fund to meet the cost of benefits payable under the System (computed in accordance with generally accepted actuarial practice on an entry-age basis) less the value of retirement benefits earned under another retirement system for Government employees and less the cost of credit allowed for military and naval service;
- (6) “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 periods of service by that participant which are creditable under section 816;
- (7) “Fund balance” means the sum of—
- (A) the investments of the Fund calculated at par value, plus
 - (B) the cash balance of the Fund on the books of the Treasury;
- (8) “lump-sum credit” means the compulsory and special contributions to the credit of a participant or former participant in the Fund plus interest on such contributions at 4 per-

cent a year compounded annually to December 31, 1976, and after such date, for a participant who separates from the Service after completing at least 1 year of civilian service and before completing 5 years of such service, at the rate of 3 percent per year to the date of separation (except that interest shall not be paid for a fractional part of a month in the total service or on compulsory and special contributions from an annuitant for recall service or other service performed after the date of separation which forms the basis for annuity);

(9) “military and naval service” means honorable active service—

(A) in the Armed Forces of the United States,

(B) in the Regular or Reserve Corps of the Public Health Service after June 30, 1960, or

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

but does not include service in the National Guard except when ordered to active duty in the service of the United States;

(10) “pro rata share”, in the case of any former spouse of any participant or former participant, means a percentage which is equal to the percentage that (A) the number of years during which the former spouse was married to the participant during the creditable service (creditable under subchapter I or II) of that participant is of (B) the total number of years of such creditable service (creditable under subchapter I or II);

(11) “spousal agreement” means any written agreement between—

(A) a participant or former participant; and

(B) his or her spouse or former spouse;

(12) “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, college, university, or comparable recognized educational institution (for purposes of this paragraph, a child who is a student shall not be deemed to have ceased to be a student during any period between school years, semesters, or terms if the period of nonattendance does not exceed 5 calendar months and if the child shows to the satisfaction of the Secretary of State that he or she has a bona fide intention of continuing to pursue his or her course of study during the school year, semester, or term immediately following such period);

(13) “surviving spouse” means the surviving wife or husband of a participant or annuitant who was married to the participant or annuitant for at least 9 months immediately preceding his or her death or is a parent of a child born of the marriage, except that the requirement for at least 9 months of marriage shall be deemed satisfied in any case in which the participant or annuitant dies within the applicable 9-month period, if—

(A) the death of such participant or annuitant was accidental; or

(B) the surviving spouse of such individual had been previously married to the individual and subsequently di-

forced and the aggregate time married is at least 9 months;

(14) “unfunded liability” means the estimated excess of the present value of all benefits payable from the Fund over the sum of—

(A) the present value of deductions to be withheld from the future basic salary of participants and of future agency contributions to be made on their behalf, plus

(B) the present value of Government payments to the Fund under section 821, plus

(C) the Fund balance as of the date the unfunded liability is determined; and

(15) “special agent” means an employee of the Department of State with a primary skill code of 2501—

(A) the duties of whose position—

(i) are primarily—

(I) the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States; or

(II) the protection of persons pursuant to section 2709(a)(3) of title 22, United States Code, against threats to personal safety; and

(ii) are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the Secretary of State pursuant to section 4823 of title 22, United States Code;

(B) performing duties described in subparagraph (A) before, on, or after the date of the enactment of this paragraph; or

(C) transferred directly to a position which is supervisory or administrative in nature after performing duties described in subparagraph (A) for at least 3 years.

SEC. 805. [22 U.S.C. 4045] CONTRIBUTIONS TO THE FUND.—

(a)(1) Except as otherwise provided in this section, 7.25 percent of the basic salary received by each participant shall be deducted from the salary and contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. The contribution by the employing agency shall be a percentage of basic salary equal to the percentage in effect under section 7001(d)(1) of the Balanced Budget Act of 1997 (Public Law 105-33; 22 U.S.C. 4045 note), and section 505(h) of the Department of Transportation and Related Agencies Appropriations Act, 2001 (as enacted by Public Law 106-346; 114 Stat. 1356A-54), plus .25 percent of basic salary, and shall be made from the appropriations or fund used for payment of the salary of the participant. The employing agency shall deposit in the Fund the amounts deducted and withheld from basic salary and the amounts contributed by the employing agency.

(2) Notwithstanding the percentage limitation contained in paragraph (1) of this subsection—

(A) the employing agency shall deduct and withhold from the basic pay of a Foreign Service criminal investigator/inspector of the Office of the Inspector General, Agency for Inter-

national Development, who is qualified to have his annuity computed in the same manner as that of a law enforcement officer pursuant to section 8339(d) of title 5, an amount equal to that to be withheld from a law enforcement officer pursuant to section 8334(a)(1) of title 5, plus an amount equal to .25 percent of basic pay. The amounts so deducted shall be contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. An equal amount shall be contributed by the employing agency from the appropriations or fund used for payment of the salary of the participant. The employing agency shall deposit in the Fund the amount deducted and withheld from basic salary and amounts contributed by the employing agency.

(B) The employing agency shall deduct and withhold from the basic pay of a Foreign Service criminal investigator/inspector of the Office of the Inspector General, Agency for International Development, who is qualified to have his annuity computed pursuant to section 8415(e) of title 5, an amount equal to that to be withheld from a law enforcement officer pursuant to section 8422(a)(2)(B) of title 5, plus an amount equal to .25 percent of basic pay. The amounts so deducted shall be contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. An equal amount shall be contributed by the employing agency from the appropriations or fund used for payment of the salary of the participant. The employing agency shall deposit in the Fund the amounts deducted and withheld from basic salary and amounts contributed by the employing agency.

(3) For service as a special agent, paragraph (1) shall be applied by substituting for “7 percent” the percentage that applies to law enforcement officers under section 8334(a)(1) of title 5, United States Code, plus .25 percent¹⁷.

(b) Each participant shall be deemed to consent and agree to such deductions from basic salary. Payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services during the period covered by such payment, except the right to the benefits to which the participant shall be entitled under this Act, notwithstanding any law, rule, or regulation affecting the salary of the individual.

(c)(1) If a member of the Service who is under another retirement system for Government employees becomes a participant in the System by direct transfer, the total contributions and deposits of that member that would otherwise be refundable on separation (except voluntary contributions), including interest thereon, shall be transferred to the Fund effective as of the date such member becomes a participant in the System. Each such member shall be deemed to consent to the transfer of such funds, and such transfer shall be a complete discharge and acquittance of all claims and demands against the other Government retirement fund on account of service rendered by such member prior to becoming a participant in the System.

¹⁷Section 322(a)(2)(D) of Public Law 107-228 (116 Stat. 1384) provides for an amendment to insert “, plus .25 percent” at the end of the first sentence. The amendment was executed by inserting such language before the period in order to reflect the probable intent of Congress.

(2) A member of the Service whose contributions are transferred to the Fund pursuant to paragraph (1) shall not be required to make additional contributions for periods of service for which required contributions were made to the other Government retirement fund; nor shall any refund be made to any such member on account of contributions made during any period to the other Government retirement fund at a higher rate than that fixed by subsection (d).

(d)(1) Any participant credited with civilian service after July 1, 1924—

(A) for which no retirement contributions, deductions, or deposits have been made, or

(B) for which a refund of such contributions, deductions, or deposits has been made which has not been redeposited, may make a special contribution to the Fund. Special contributions for purposes of subparagraph (A) shall equal the following percentages of basic salary received for such service:

Time of service:	Percent of basic salary
July 1, 1924, through October 15, 1960, inclusive	5
October 16, 1960, through December 31, 1969, inclusive	6½
January 1, 1970, through December 31, 1998, inclusive	7
January 1, 1999, through December 31, 1999, inclusive	7.25
January 1, 2000, through December 31, 2000, inclusive	7.4
After December 31, 2000	7

Special contributions for refunds under subparagraph (B) shall equal the amount of the refund received by the participant.

(2) Notwithstanding paragraph (1), a special contribution for prior nondeposit service as a National Guard technician which would be creditable toward retirement under subchapter III of chapter 83 of title 5, United States Code, and for which a special contribution has not been made, shall be equal to the special contribution for such service computed in accordance with the schedule in paragraph (1) multiplied by the percentage of such service that is creditable under section 816.

(3) Special contributions under this subsection shall include interest computed from the midpoint of each service period included in the computation, or from the date refund was paid, to the date of payment of the special contribution or commencing date of annuity, whichever is earlier. Interest shall be compounded at the annual rate of 4 percent to December 31, 1976, and 3 percent thereafter. No interest shall be charged on special contributions for any period of separation from Government service which began before October 1, 1956. Special contributions may be paid in installments (including by allotment of pay) when authorized by the Secretary of State.

(4) Notwithstanding the preceding provisions of this subsection and any provision of section 206(b)(3) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, the percentage of basic pay required under this subsection in the case of a participant described in section 853(c) shall, with respect to any covered service (as defined by section 203(a)(3) of such Act) performed by such individual after December 31, 1983, and before January 1, 1987, be equal to 1.3 percent.

(5) Notwithstanding paragraph (1), a special contribution for past service as a Foreign Service criminal investigator/inspector of the Office of the Inspector General, Agency for International Development which would have been creditable toward retirement under either section 8336(c) or 8412(d)(1) of title 5, and for which a special contribution has not been made shall be equal to the difference between the amount actually contributed pursuant to either section 4045 or 4071e of title 22 and the amount that should have been contributed pursuant to either section 8334 or 8422 of title 5.

(6) Subject to paragraph (4) and subsection (h), for purposes of applying this subsection with respect to prior service as a special agent, the percentages of basic pay set forth in section 8334(c) of title 5, United States Code, with respect to a law enforcement officer, shall apply instead of the percentages set forth in paragraph (1).

(e)(1) Subject to paragraph (5), each participant who has performed military or naval service before the date of separation on which the entitlement to any annuity under this chapter is based may pay to the Secretary a special contribution equal to 7 percent of the amount of the basic pay paid under section 204 of title 37 of the United States Code, to the participant for each period of military or naval service after December 1956. The amount of such payments shall be based on such evidence of basic pay for military service as the participant may provide or if the Secretary determines sufficient evidence has not been so provided to adequately determine basic pay for military or naval service, such payment shall be based upon estimates of such basic pay provided to the Department under paragraph (4).

(2) Any deposit made under paragraph (1) of this subsection more than two years after the later of—

(A) the effective date of this Order, or

(B) the date on which the participant making the deposit first became a participant in a Federal staff retirement system for civilian employees—

shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the two-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under subsection (d) of this section.

(3) Any payment received by the Secretary under this section shall be remitted to the Fund.

(4) The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, as appropriate, shall furnish such information to the Secretary as the Secretary may determine to be necessary for the administration of this subsection.

(5) Effective with respect to any period of military or naval service after December 31, 1998, the percentage of basic pay under section 204 of title 37, United States Code, payable under paragraph (1) shall be equal to the same percentage as would be applicable under section 8334(c) of title 5, United States Code, for that same period for service as an employee.

(f) Contributions shall only be required to obtain credit for periods of military or naval service to the extent provided under sec-

tion 805(e) and section 816(a), except that credit shall be allowed in the absence of contributions to individuals of Japanese ancestry under section 816 for periods of internment during World War II.

(g) A participant or survivor may make a special contribution at any time before receipt of annuity and may authorize payment by offset against initial annuity accruals.

(h) Effective with respect to pay periods beginning after December 31, 1986, in administering this section with respect to a participant described in section 853(c) whose service is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954, contributions to the Fund and interest thereon shall be computed as if section 8334(k) of title 5, United States Code, were applicable.

SEC. 806. [22 U.S.C. 4046] COMPUTATION OF ANNUITIES.—

(a)(1) The annuity of a participant shall be equal to 2 percent of his or her basic salary for the highest 3 consecutive years of service multiplied by the number of years, not exceeding 35, of service credit obtained in accordance with sections 816 and 817, except that the highest 3 years of service shall be used in computing the annuity of any participant who serves an assignment in a position, as described in section 302(b), to which the participant was appointed by the President and whose continuity of service in that position is interrupted prior to retirement by appointment or assignment to any other position determined by the Secretary of State to be of comparable importance. In determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, shall not be counted. The annuity shall be reduced by 10 percent of any special contribution described in section 805(d) which is due for service for which no contributions were made and which remains unpaid unless the participant elects to eliminate the service involved for purposes of annuity computation.

(2) Notwithstanding the percentage limitation contained in paragraph (1) of this subsection—

(A) utilizing the definition of average pay contained in section 8331(4) of title 5, United States Code, the annuity of a Foreign Service criminal investigator/inspector of the Office of the Inspector General, Agency for International Development, who was appointed to a law enforcement position, as defined in section 8331(20) of title 5, United States Code, prior to January 1, 1984, and would have been eligible to retire pursuant to section 8336(c) of that title, after attaining 50 years of age and completing 20 years as a law enforcement officer had the employee remained in the civil service shall be computed in the same manner as that of a law enforcement officer pursuant to section 8339(d) of that title, except as provided in paragraph (3); and

(B) the annuity of a Foreign Service criminal investigator/inspector of such office, who was appointed to a law enforcement position as defined in section 8401(17) of that title on or after January 1, 1984, and who would have been eligible to retire pursuant to section 8412(d) of that title, after attaining 50 years of age and completing 20 years of service as such a law enforcement officer, had the employee remained in the civil

service, shall be computed in the same manner as that of a law enforcement officer pursuant to section 8415(e) of that title.

(3) The annuity of a Foreign Service investigator/inspector of the Office of the Inspector General, Agency for International Development, appointed to a law enforcement position prior to January 1, 1984, who exercised election rights under section 860 of the Foreign Service Act of 1980, shall be computed as follows: for the period prior to election the annuity shall be computed in accordance with section 8339(d) of title 5, United States Code; for the period following election the annuity shall be computed in accordance with section 8415(e) of that title.

(4) All service in a law enforcement position, as defined in section 8331(20) or 8401(17) of that title, as applicable, in any agency or combination of agencies shall be included in the computation of time for purposes of this paragraph.

(5) The annuity of a Foreign Service criminal investigator/inspector of the Office of the Inspector General of the Agency for International Development who has not completed 20 years of service as a law enforcement officer, as defined in section 8331(20) or 8401(17) of that title, shall be computed in accordance with paragraph (1).

(6)(A) The annuity of a special agent under this subchapter shall be computed under paragraph (1) except that, in the case of a special agent described in subparagraph (B), paragraph (1) shall be applied by substituting for “2 percent”—

(i) the percentage under subparagraph (A) of section 8339(d)(1) of title 5, United States Code, for so much of the participant’s total service as is specified thereunder; and

(ii) the percentage under subparagraph (B) of section 8339(d)(1) of title 5, United States Code, for so much of the participant’s total service as is specified thereunder.

(B) A special agent described in this subparagraph is any such agent or former agent who—

(i)(I) retires voluntarily or involuntarily under section 607, 608, 611, 811, 812, or 813, under conditions authorizing an immediate annuity, other than for cause on charges of misconduct or delinquency, or retires for disability under section 808; and

(II) at the time of retirement—

(aa) if voluntary, is at least 50 years of age and has completed at least 20 years of service as a special agent; or

(bb) if involuntary or disability, has completed at least 20 years of service as a special agent; or

(ii) dies in service after completing at least 20 years of service as a special agent, when an annuity is payable under section 809.

(C) For purposes of subparagraph (B), included with the years of service performed by an individual as a special agent shall be any service performed by such individual as a law enforcement officer (within the meaning of section 8331(20) or section 8401(17) of title 5, United States Code), or a member of the Capitol Police.

(D)(i) In this subparagraph—

(I) the term “affected special agent” means an individual covered under this subchapter who—

(aa) is performing service as a special agent;

(bb) while on duty as a special agent, becomes ill or is injured as a direct result of the performance of such duties before the date on which the individual becomes entitled to an annuity under section 811;

(cc) because of the illness or injury described in item (bb), is permanently unable to render useful and efficient service in the employee's covered position, as determined by the Secretary; and

(dd) is appointed to a position in the Foreign Service that is not a covered position; and

(II) the term "covered position" means a position as—

(aa) a law enforcement officer described in section 8331(20) or 8401(17) of title 5, United States Code;

(bb) a customs and border protection officer described in section 8331(31) or 8401(36) of title 5, United States Code;

(cc) a firefighter described in section 8331(21) or 8401(14) of title 5, United States Code;

(dd) an air traffic controller described in section 8331(30) or 8401(35) of title 5, United States Code;

(ee) a nuclear materials courier described in section 8331(27) or 8401(33) of title 5, United States Code;

(ff) a member of the United States Capitol Police;

(gg) a member of the Supreme Court Police;

(hh) an employee of the Agency designated under section 302(a) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2152(a)); or

(ii) a special agent.

(ii) Unless an affected special agent files an election described in clause (iv), creditable service by the affected special agent in a position described in clause (i)(I)(dd) shall be treated as creditable service as a special agent for purposes of this subchapter, including determining the amount to be deducted and withheld from the pay of the individual under section 805.

(iii) Clause (ii) shall only apply if the special agent transitions to a position described in clause (i)(I)(dd) without a break in service exceeding 3 days.

(iv) The service of an affected employee shall no longer be eligible for treatment under clause (ii) if such service occurs after the employee is transferred to a supervisory or administrative position related to the activities of the former covered position of the employee.

(v) In accordance with procedures established by the Secretary, an affected special agent may file an election to have any creditable service performed by the affected special agent treated in accordance with this subchapter, without regard to clause (ii).

(7) In the case of a special agent who becomes or became subject to subchapter II—

(A) for purposes of paragraph (6)(B), any service performed by the individual as a special agent (whether under this subchapter or under subchapter II), as a law enforcement officer (within the meaning of section 8331(20) or

section 8401(17) of title 5, United States Code), or as a member of the Capitol Police shall be creditable; and

(B) if the individual satisfies paragraph (6)(B), the portion of such individual's annuity which is attributable to service under the Foreign Service Retirement and Disability System or the Civil Service Retirement System shall be computed in conformance with paragraph (6).

(8) For purposes of paragraphs (2), (3), (4), and (6) of this subsection, the term "basic pay" includes pay as provided in accordance with section 412 of this Act or section 5545(c)(2) of title 5, United States Code.

(9) For purposes of any annuity computation under this subsection, the basic salary or basic pay of any member of the Service whose official duty station is outside the continental United States shall be considered to be the salary or pay that would have been paid to the member had the member's official duty station been Washington, D.C., including locality-based comparability payments under section 5304 of title 5, United States Code, that would have been payable to the member if the member's official duty station had been Washington, D.C.

(b)(1)(A) Except to the extent provided, otherwise under a written election under subparagraph (B) or (C), if at the time of retirement a participant or former participant is married (or has a former spouse who has not remarried before attaining age 60), the participant shall receive a reduced annuity and provide a survivor annuity for his or her spouse under this subsection or former spouse under section 814(b), or a combination of such annuities, as the case may be.

(B) At the time of retirement, a married participant or former participant and his or her spouse may jointly elect in writing to waive a survivor annuity for that spouse under this section (or under section 814(b) if the spouse later qualifies as a former spouse under section 804(6)), or to reduce such survivor annuity under this section (or section 814(b)) by designating a portion of the annuity of the participant as the base for the survivor benefit. In the event the marriage is dissolved following an election for such a reduced annuity and the spouse qualifies as a former spouse, the base used in calculating any annuity of the former spouse under section 814(b) may not exceed the portion of the participant's annuity designated under this subparagraph.

(C) If a participant or former participant has a former spouse, the participant and such former spouse may jointly elect by spousal agreement under section 820(b)(1) to waive a survivor annuity under section 814(b) for that former spouse if the election is made (i) before the end of the 24-month period after the divorce or annulment involving that former spouse becomes final or (ii) at the time of retirement whichever occurs first.

(D) The Secretary of State may prescribe regulations under which a participant or former participant may make an election under subparagraph (B) or (C) without the participant's spouse or former spouse if the participant establishes to the satisfaction of the Secretary of State that the participant does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse or former spouse.

(2) The annuity of a participant or former participant providing a survivor benefit under this section (or section 814(b)), excluding any portion of the annuity not designated or committed as a base for any survivor annuity, shall be reduced by 2½ percent of the first \$3,600 plus 10 percent of any amount over \$3,600. The reduction under this paragraph shall be calculated before any reduction under section 814(a)(5).

(3)(A) If a former participant entitled to receive a reduced annuity under this subsection dies and is survived by a spouse, a survivor annuity shall be paid to the surviving spouse equal to 55 percent of the full amount of the participant's annuity computed under subsection (a), or 55 percent of any lesser amount elected as the base for the survivor benefit under paragraph (1)(B).

(B) Notwithstanding subparagraph (A), the amount of the annuity calculated under subparagraph (A) for a surviving spouse in any case in which there is also a surviving former spouse of the participant who qualifies for an annuity under section 814(b) may not exceed 55 percent of the portion (if any) of the base for survivor benefits which remains available under section 814(b)(4)(B).

(C) An annuity payable from the Fund under this subchapter to a surviving spouse under this paragraph shall commence on the day after the participant dies and shall terminate on the last day of the month before the surviving spouse's death or remarriage before attaining age 60. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(c)(1) If an annuitant who was a participant dies and is survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant and by a child or children, in addition to the annuity payable to the surviving spouse, there shall be paid to or on behalf of each child an annuity equal to the smaller of—

(A) \$900, or

(B) \$2,700 divided by the number of children.

(2) If an annuitant who was a participant dies and is not survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant but by a child or children, each surviving child shall be paid an annuity equal to the smaller of—

(A) \$1,080, or

(B) \$3,240 divided by the number of children.

(3) The amounts specified in this subsection are subject to—

(A) cost-of-living adjustments as specified under section 826(c)(3), and

(B) the minimum specified in subsection (1)(2) of this section.

(d) On the death of the surviving spouse or former spouse or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though the spouse, former spouse, or child had not survived the 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.

(e) The annuity payable to a child under subsection (c) or (d) shall begin on the day after the participant dies, or if the child is not then qualified, on the first day of the month in which the child becomes eligible. The annuity of a child shall terminate on the last day of the month which precedes the month in which eligibility ceases.

(f) At the time of retirement an unmarried participant who does not have a former spouse for whose benefit a reduction is made under subsection (b) may elect to receive a reduced annuity and to provide for an annuity equal to 55 percent of the reduced annuity payable after his or her death to a beneficiary whose name is designated in writing to the Secretary of State. The annuity payable to a participant making such election shall be reduced by 10 percent of an annuity computed under subsection (a) and by 5 percent of an annuity so computed for each full 5 years the designated beneficiary is younger than the retiring participant, but such total reduction shall not exceed 40 percent. No such election of a reduced annuity payable to a beneficiary shall be valid until the participant has satisfactorily passed a physical examination as prescribed by the Secretary of State. The annuity payable to a beneficiary under this subsection shall begin on the day after the annuitant dies and shall terminate on the last day of the month preceding the death of the beneficiary. An annuity which is reduced under this subsection (or any similar prior provision of law) shall, effective the first day of the month following the death of the beneficiary named under this subsection, be recomputed and paid as if the annuity had not been so reduced.

(g) A participant or former participant who was unmarried at retirement and who later marries may, within one year after such marriage, irrevocably elect in writing to receive a reduced annuity and to provide a survivor annuity for the spouse (if such spouse qualifies as a surviving spouse under section 804(13)). Receipt by the Secretary of State of notice of an election under this subsection voids prospectively any election previously made under subsection (f). The reduction in annuity required by an election under this subsection shall be computed and the amount of the survivor annuity shall be determined in accordance with subsections (b) (2) and (3). The annuity reduction or recomputation shall be effective the first day of the month beginning one year after the date of marriage.

(h) A surviving spouse or surviving former spouse of any participant or former participant 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 he or she may be entitled under this or any other retirement system for Government employees on the basis of a marriage to someone other than that participant.

(i)(1) Any married annuitant who reverts to retired status with entitlement to a supplemental annuity under section 823 shall, unless the annuitant and his or her spouse jointly elect in writing to the contrary at that time, have the supplemental annuity reduced by 10 percent to provide a supplemental survivor annuity for his

or her spouse. Such supplemental survivor annuity shall be equal to 55 percent of the supplemental annuity of the annuitant and shall be payable to a surviving spouse to whom the annuitant was married at the time of reversion to retired status or whom the annuitant subsequently married.

(2) The Secretary of State shall issue regulations to provide for the application of paragraph (1) of this subsection and of section 823 in any case in which an annuitant has a former spouse who was married to the participant at any time during a period of recall service and who qualifies for an annuity under this subchapter.

(j) An annuity which is reduced under this section or any similar prior provision of law to provide a survivor benefit for a spouse shall, if the marriage of the participant to such spouse is dissolved, be recomputed and paid for each full month during which an annuitant is not married (or is remarried if there is no election in effect under the following sentence) as if the annuity had not been so reduced, subject to any reduction required to provide a survivor benefit under section 814 (b) or (c). Upon remarriage the retired participant may irrevocably elect, by means of a signed writing received by the Secretary within one year after such remarriage, to receive during such marriage a reduction in annuity for the purpose of allowing an annuity for the new spouse of the annuitant in the event such spouse survives the annuitant. Such reduction shall be equal to the reduction in effect immediately before the dissolution of the previous marriage (unless such reduction is adjusted under section 814(b)(5)), and shall be effective the first day of the first month beginning one year after the date of remarriage. A survivor annuity elected under this subsection shall be treated in all respects as a survivor annuity under subsection (b).

(k) The Secretary of State shall, on an annual basis—

(1) inform each participant of his or her right of election under subsections (g) and (j); and

(2) to the maximum extent practicable, inform spouses or former spouses of participants or former participants of their rights under this section and section 814.

(l) ~~【Repealed—1988】~~

(m) The retirement, disability, or survivor annuity payable to any person based on the service of an individual subject to section 805(h) beginning with the first day of the month for which such person first becomes—

(1) eligible for an annuity under this subchapter based on the service of such individual, and

(2) entitled, or would, upon proper application, be entitled to old age, disability, or survivor benefits under title II of the Social Security Act based on the service of such individual under this subchapter,

shall be computed as if section 8349 of title 5, United States Code, were applicable.

(n)(1)(A) A participant—

(i) who, at the time of retirement, is married; and

(ii) who elects at such time (in accordance with subsection

(b)) to waive a survivor annuity,

may, during the 18-month period beginning on the date of the retirement of such participant, elect to have a reduction under sub-

section (b) made in the annuity of the participant (or in such portion thereof as the participant may designate) in order to provide a survivor annuity for the spouse of such participant.

(B) A participant—

(i) who, at the time of retirement, is married, and
(ii) who at such time designates (in accordance with subsection (b)) that a limited portion of the annuity of such participant is to be used as the base for a survivor annuity, may, during the 18-month period beginning on the date of the retirement of such participant, elect to have a greater portion of the annuity of such participant so used.

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

(B) The amount to be deposited with respect to an election under this subsection is an amount equal to the sum of—

(i) the additional cost to the System which is associated with providing a survivor annuity under subsection (b) of this section and results from such election taking into account (I) the difference (for the period between the date on which the annuity of the former participant commences and the date of the election) between the amount paid to such former participant under this subchapter and the amount which would have been paid if such election had been made at the time the participant or former participant applied for the annuity, and (II) the costs associated with providing the later election; and

(ii) interest on the additional cost determined under clause (i)(I) of this subparagraph computed using the interest rate specified or determined under section 805(d)(3) for the calendar year in which the amount to be deposited is determined.

(3) An election by a participant under this subsection voids prospectively any election previously made in the case of such participant under subsection (b).

(4) An annuity which is reduced in connection with an election under this subsection shall be reduced by the same percentage reductions as were in effect at the time of the retirement of the participant whose annuity is so reduced.

(5) Rights and obligations resulting from the election of a reduced annuity under this subsection shall be the same as the rights and obligations which would have resulted had the participant involved elected such annuity at the time of retiring.

SEC. 807. [22 U.S.C. 4047] PAYMENT OF ANNUITY.—(a)(1) Except as otherwise provided in paragraph (2), the annuity of a participant who has met the eligibility requirements for an annuity shall commence on the first day of the month after—

(A) separation from the Service occurs; or

(B) pay ceases and the service and age requirements for entitlement to annuity are met.

(2) The annuity of—

(A) a participant who is retired and is eligible for benefits under section 609(a) or a participant who is retired under section 813 or is otherwise involuntarily separated from the Serv-

ice, except by removal for cause on charges of misconduct or delinquency,

(B) a participant retiring under section 808 due to a disability, and

(C) a participant who serves 3 days or less in the month of retirement—

shall commence on the day after separation from the Service or the day after pay ceases and the requirements for entitlement to annuity are met.

(b) The annuity to a survivor shall become effective as otherwise specified but shall not be paid until the survivor submits an application for such annuity, supported by such proof of eligibility as the Secretary of State may require. If such application or proof of eligibility is not submitted during the lifetime of an otherwise eligible individual, no annuity shall be due or payable to his or her estate.

(c) An individual entitled to annuity from the Fund may decline to accept all or any part of the annuity by submitting a signed waiver to the Secretary of State. The waiver may be revoked in writing at any time. Payment of the annuity waiver may not be made for the period during which the waiver was in effect.

(d) Recovery of overpayments under this subchapter may not be made from an individual when, in the judgment of the Secretary of State, the individual is without fault and recovery would be against equity and good conscience or administratively infeasible.

(e)(1) The Secretary of State shall prescribe regulations under which any participant who has a life-threatening affliction or other critical medical condition may, at the time of retiring under this subchapter (other than under section 808), elect annuity benefits under this section instead of any other benefits under this subchapter (including survivor benefits) based on the service of the participant.

(2) Subject to paragraph (3), the Secretary of State shall by regulation provide for such alternative forms of annuities as the Secretary considers appropriate, except that among the alternatives offered shall be—

(A) an alternative which provides for—

(i) payment of the lump-sum credit (excluding interest) to the participant; and

(ii) payment of an annuity to the participant for life; and

(B) in the case of a participant who is married at the time of retirement, an alternative which provides for—

(i) payment of the lump-sum credit (excluding interest) to the participant; and

(ii) payment of an annuity to the participant for life, with a survivor annuity payable for the life of a surviving spouse.

(3) Each alternative provided for under paragraph (2) shall, to the extent practicable, be designed such that the total value of the benefits provided under such alternative (including any lump-sum credit) is actuarially equivalent to the value of the annuity which would otherwise be provided the participant under this subchapter, as computed under section 806(a).

(4) A participant who, at the time of retiring under this subchapter—

(A) is married, shall be ineligible to make an election under this section unless a waiver is made under section 806(b)(1)(B); or

(B) has a former spouse, shall be ineligible to make an election under this section if the former spouse is entitled to benefits under this subchapter (based on the service of the participant) unless a waiver has been made under section 806(b)(1)(C).

(5) A participant who is married at the time of retiring under this subchapter and who makes an election under this section may, during the 18-month period beginning on the date of retirement, make the election provided for under section 806(n), subject to the deposit requirement thereunder.

(6) Notwithstanding any other provision of law, any lump-sum credit provided to an election under this subsection shall not preclude an individual from receiving any other benefits under this subsection.

SEC. 808. [22 U.S.C. 4048] RETIREMENT FOR DISABILITY OR INCAPACITY.—(a) Any participant who has at least 5 years of service credit toward retirement under the System (excluding military and naval service) and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury (not due to vicious habits, intemperance, or willful conduct of the participant) shall upon his or her own application or upon order of the Secretary, be retired on an annuity computed as prescribed in section 806. If the disabled or incapacitated participant has less than 20 years of service credit toward retirement under the System at the time of retirement, his or her annuity shall be computed on the assumption that the participant has had 20 years of service, except that the additional service credit that may accrue to a participant under this sentence shall in no case exceed the difference between his or her age at the time of retirement and age 60.

However, if a participant retiring under this section is receiving retired pay or retainer pay for military service (except that specified in Section 8332(c) (1) or (2) of title 5 of the United States Code) or Veterans' Administration pension or compensation in lieu of such retired or retainer pay, the annuity of that participant shall be computed under this chapter excluding extra credit authorized by this subsection and excluding credit for military service from that computation. If the amount of the annuity so computed, plus the retired or retainer pay which is received, or which would be received but for the application of the limitation in Section 5532 of title 5 of the United States Code, or the Veterans' Administration pension or compensation in lieu of such retired pay or retainer pay, is less than the annuity that would be payable under this chapter in the absence of the previous sentence, an amount equal to the difference shall be added to the annuity computed under this subchapter.

(b) Before being retired under this section, the participant shall be given a physical examination by one or more duly qualified physicians or surgeons designated by the Secretary of State to con-

duct examinations. Disability or incapacity shall be determined by the Secretary of State on the basis of the advice of such physicians or surgeons. Unless the disability or incapacity is permanent, like examinations shall be made annually until the annuitant has attained age 60. If the Secretary of State determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he or she can return to duty, the annuitant may apply for reinstatement or reappointment in the Service within 1 year from the date recovery is determined. Upon application, the Secretary shall reinstate such recovered annuitant in the class in which the annuitant was serving at time of retirement, or the Secretary may, taking into consideration the age, qualifications, and experience of such annuitant, and the present class of his or her contemporaries in the Service, appoint or recommend that the President appoint the annuitant to a higher class. Payment of the annuity shall continue until a date of 6 months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Service, whichever is earlier. Fees for examinations under this section, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the Fund. If the annuitant fails to submit to examination as required under this subsection, payment of the annuity shall be suspended until continuance of the disability or incapacity is satisfactorily established.

(c) If a recovered annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Service, he or she shall be considered to have been separated within the meaning of section 810 as of the date of retirement for disability or incapacity and shall, after the discontinuance of the annuity, be entitled to the benefits of that section or of section 815, except that he or she may elect voluntary retirement if eligible under section 811.

(d) No participant shall be entitled to receive an annuity under this subchapter and compensation for injury or disability to himself or herself under subchapter I of chapter 81 of title 5, United States Code, covering the same period of time, except that a participant may simultaneously receive both an annuity under this section and scheduled disability payments under section 8107 of title 5, United States Code. This subsection shall not bar the right of any claimant to the greater benefit conferred by either this subchapter or subchapter I of such chapter 8 for any part of the same period of time. Neither this subsection nor any provision of subchapter I of such chapter 8 shall be construed to deny the right of any participant to receive an annuity under this subchapter and to receive concurrently any payment under such subchapter I of such chapter 8 by reason of the death of any other individual.

(e) Notwithstanding any other law, the right of any individual entitled to an annuity under this subchapter shall not be affected because such person has received an award of compensation in a lump sum under section 8135 of title 5, United States Code, except that where such annuity is payable on account of the same disability for which compensation under such section has been paid, so much of such compensation as has been paid for any period extended beyond the date such annuity becomes effective, as deter-

mined by the Secretary of Labor, shall be refunded to the Department of Labor, to be paid into the Federal Employees' Compensation Fund. Before such individual receives such annuity, he or she shall—

(1) refund to the Department of Labor the amount representing such commuted payments for such extended period, or

(2) authorize the deduction of such amount from the annuity payable under this subchapter which amount shall be transmitted to the Department of Labor for reimbursement to such Fund.

Deductions from such annuity may be made from accrued and accruing payments, or may be prorated against and paid from accruing payments in such manner as the Secretary of Labor shall determine, whenever the Secretary of Labor finds that the financial circumstances of the annuitant warrant deferred refunding.

(f) A claim may be allowed under this section only if the application is filed with the Secretary of State before the participant is separated from the Service or within one year thereafter. This time limitation may be waived by the Secretary of State for a participant who at the date of separation from the Service or within one year thereafter is mentally incompetent, if the application is filed with the Secretary of State within one year from the date of restoration of the participant to competency or the appointment of a fiduciary, whichever is earlier.

SEC. 809. [22 U.S.C. 4049] DEATH IN SERVICE.—(a) If a participant dies and no claim for annuity is payable under this subchapter, the lump-sum credit shall be paid in accordance with section 815.

(b) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is survived by a spouse or former spouse qualifying for an annuity under section 814(b), such surviving spouse shall be entitled to an annuity equal to 55 percent of the annuity computed in accordance with subsections (e) and (g) of this section and section 806(a) and any surviving former spouse shall be entitled to an annuity under section 814(b) as if the participant died after being entitled to an annuity under this subchapter. If the participant had less than 3 years creditable civilian service at the time of death, the survivor annuity shall be computed on the basis of the average salary for the entire period of such service.

(c) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant, and a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(1) and (d) of section 806.

(d) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is not survived by a spouse, or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant, but by a child or children,

each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(2) and (d) of section 806.

(e) If, at the time of his or her death, the participant had less than 20 years of service credit toward retirement under the System, the annuity payable in accordance with subsection (b) shall be computed in accordance with section 806 on the assumption he or she has had 20 years of service, except that the additional service credit that may accrue to a deceased participant under this subsection shall in no case exceed the difference between his or her age on the date of death and age 60. In all cases arising under this subsection or subsection (b), (c), (d), or (g), it shall be assumed that the deceased participant was qualified for retirement on the date of death.

(f) If an annuitant entitled to a reduced annuity dies in service after being recalled under section 308 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 section 823. 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 section 806(i) as if the recall service had otherwise terminated. If the annuitant had completed sufficient recall service to attain eligibility to have his or her annuity determined anew, a surviving spouse or such a surviving former spouse may elect, in lieu of any other survivor benefit under this chapter, to have the rights of the annuitant redetermined and to receive a survivor annuity computed under subsection (b) on the basis of the total service of the annuitant.

(g) Notwithstanding subsection (b), if the participant or former participant had a former spouse qualifying for an annuity under section 814(b), the annuity of the spouse under this section shall be subject to the limitation of section 806(b)(3)(B).

(h) Annuities that become payable under this section shall commence, terminate, and be resumed in accordance with subsection (b)(4), (e), or (h) of section 806, as appropriate.

SEC. 810. [22 U.S.C. 4050] DISCONTINUED SERVICE RETIREMENT.—Any participant who voluntarily separates from the Service after obtaining at least 5 years of service credit toward retirement under the System (excluding military and naval service) may upon separation from the Service or at any time prior to becoming eligible for an annuity elect to have his or her contributions to the Fund returned in accordance with section 815, or to leave his or her contributions in the Fund and receive an annuity, computed under section 806, commencing at age 60.

SEC. 811. [22 U.S.C. 4051] VOLUNTARY RETIREMENT.—Any participant who is at least 50 years of age and has 20 years of creditable service, including at least 5 years of service credit toward retirement under the System (excluding military and naval service),

may on his or her own application and with the consent of the Secretary be retired from the Service and receive retirement benefits in accordance with section 806. The Secretary shall withhold consent for retirement under this section by any participant who has not been a member of the Service for 5 years. Any participant who voluntarily separates from the Service before completing 5 years in the System and who, on the date of separation, would be eligible for an annuity, based on a voluntary separation, under section 8336 or 8338 of title 5, United States Code, if the participant had been covered under the Civil Service Retirement System rather than subject to this chapter while a member of the Service, may receive an annuity under section 8336 or 8338, notwithstanding section 8333(b) of title 5, United States Code, if all contributions transferred to the Fund under section 805(c)(1) of this Act, as well as all contributions withheld from the participant's pay or contributed by the employer, and deposited into the Fund during the period he or she was subject to this chapter, including interest on these amounts, are transferred to the Civil Service Retirement and Disability Fund effective on the date the participant separates from the Service.

SEC. 812. [22 U.S.C. 4052] MANDATORY RETIREMENT.—(a)(1) Except as provided in subsection (b), any participant shall be retired from the Service at the end of the month in which the participant has reached age 65 and has at least 5 years of service credit toward retirement under the System (excluding military and naval service), and shall receive retirement benefits in accordance with section 806.

(2) Notwithstanding paragraph (1)—

(A) an individual described in section 4(a)(2) of the Department of State Special Agents Retirement Act of 1998 who is otherwise eligible for immediate retirement under this chapter; or

(B) a Foreign Service criminal investigator/inspector of the Office of Inspector General of the Agency for International Development who would have been eligible for retirement pursuant to either section 8336(c) or 8412(d)(1) of title 5, United States Code, as applicable, had the employee remained in civil service,

shall be separated from the Service on the last day of the month in which such individual under subparagraph (A) or such Foreign Service criminal investigator/inspector under subparagraph (B) attains 57 years of age or completes 20 years of service if then over that age. If the head of the agency judges that the public interest so requires, that agency head may exempt such an employee from automatic separation under this subsection until that employee attains 60 years of age. The employing office shall notify the employee in writing of the date of separation at least 60 days before that date. Action to separate the employee is not effective without the consent of the employee, until the last day of the month in which the 60-day notice expires.

(b)(1) Any participant who is otherwise required to retire under subsection (a) while occupying a position to which he or she was appointed by the President, by and with the advice and consent of

the Senate, may continue to serve until that appointment is terminated.

(2) Whenever the Secretary determines it to be in the public interest, any participant who is otherwise required to retire under subsection (a) may be retained on active service for a period not to exceed 5 years.

(3) Any participant who completed a period of service authorized by this subsection shall be retired at the end of the month in which such authorized service is completed.

SEC. 813. [22 U.S.C. 4053] REASSIGNMENT AND RETIREMENT OF FORMER PRESIDENTIAL APPOINTEES.—(a) A participant, who completes an assignment under section 302(b) in a position to which the participant was appointed by the President, and is not otherwise eligible for retirement—

(1) shall be reassigned within 90 days after the termination of such assignment and any period of authorized leave, or

(2) if the Secretary of State determines that reassignment is not in the interest of the Foreign Service, shall be retired from the Service and receive retirement benefits in accordance with section 806 or 855, as appropriate.

(b) A participant who completes an assignment under section 302(b) in a position to which the participant was appointed by the President and is eligible for retirement and is not reassigned within 90 days after the termination of such assignment and any period of authorized leave, shall be retired from the Service and receive retirement benefits in accordance with section 806 or section 855, as appropriate.

(c) A participant who is retired under subsection (a)(2) and is subsequently employed by the United States Government, thereafter, shall be eligible to retire only under the terms of the applicable retirement system.

SEC. 814. [22 U.S.C. 4054] FORMER SPOUSES.—(a)(1) Unless otherwise expressly provided by any spousal agreement or court order under section 820(b)(1), a former spouse of a participant or former participant is entitled to an annuity if such former spouse was married to the participant for at least 10 years during service of the participant which is creditable under this chapter with at least 5 of such years occurring while the participant was a member of the Foreign Service and—

(A) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

(B) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 50 percent of such annuity.

For the purposes of this paragraph, the term "creditable service" means service which is creditable under subchapter I or II.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of the annuity the former spouse remarries before becoming 60 years of age.

(3) The annuity of a former spouse under this subsection commences on the later of the day the participant upon whose service the annuity is based becomes entitled to an annuity under this sub-

chapter on the first day of the month in which the divorce or annulment involved becomes final. The annuity of such former spouse and the right thereto terminate on—

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

(B) the date the annuity of the participant terminates (except in the case of an annuity subject to paragraph (5)(B)).

(4) No spousal agreement or court order under section 820(b)(1) involving any participant may provide for an annuity or any combination of annuities under this subsection which exceeds the annuity of the participant, nor may any such court order relating to an annuity under this subsection be given effect if it is issued more than 24 months after the date the divorce or annulment involved becomes final.

(5)(A) The annuity payable to any participant shall be reduced by the amount of an annuity under this subsection paid to any former spouse based upon the service of that participant. Such reduction shall be disregarded in calculating the survivor annuity for any spouse, former spouse, or other survivor under this subchapter, and in calculating any reduction in the annuity of the participant to provide survivor benefits under subsection (b) or section 806(b)(3).

(B) If any annuitant whose annuity is reduced under subparagraph (A) is recalled to service under section 308, or reinstated or reappointed in the Service in the case of a recovered disability annuitant or if any annuitant is reemployed as provided for under section 824, the salary of that annuitant shall be reduced by the same amount as the annuity would have been reduced if it had continued. Amounts equal to the reductions under this subparagraph shall be deposited in the Treasury of the United States to the credit of the Fund.

(6) Notwithstanding paragraph (3), in the case of any former spouse of a disability annuitant—

(A) the annuity of the former spouse shall commence on the date the participant would qualify on the basis of his or her creditable service for an annuity under this subchapter (other than a disability annuity) or the date the disability annuity begins, whichever is later, and

(B) the amount of the annuity of the former spouse shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

(7) An annuity under this subsection shall be treated the same as a survivor annuity under subsection (b) for purposes of section 806(h) or any comparable provision of law.

(b)(1) Subject to any election under section 806(b)(1)(C) and unless otherwise expressly provided by any spousal agreement or court order under section 820(b)(1), if a former participant who is entitled to receive an annuity is survived by a former spouse, the former spouse shall be entitled to a survivor annuity—

(A) if married to the participant throughout the creditable service of the participant, equal to 55 percent of the full amount of the participant's annuity, as computed under section 806(a); or

(B) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 55 percent of the full amount of such annuity. For the purposes of this paragraph, the term "creditable service" means service which is creditable under subchapter I or II.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

(3) An annuity payable from the Fund under this subchapter to a surviving former spouse under this subsection shall commence on the day after the annuitant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(4)(A) The maximum survivor annuity or combination of survivor annuities under this section (and section 806(b)(3)) with respect to any participant or former participant may not exceed 55 percent of the full amount of the participant's annuity, as calculated under section 806(a).

(B) Once a survivor annuity has been provided for under this subsection for any former spouse, a survivor annuity may thereafter be provided for under this subsection (or section 806(b)(3)) with respect to a participant or former participant only for that portion (if any) of the maximum available which is not committed for survivor benefits for any former spouse whose prospective right to such annuity has not terminated by reason of death or remarriage.

(C) After the death of a participant or former participant, a court order under section 820(b)(1) may not adjust the amount of the annuity of any former spouse under this section.

(5)(A) For each full month after a former spouse of a participant or former participant dies or remarries before attaining age 60, the annuity of the participant, if reduced to provide a survivor annuity for that former spouse, shall be recomputed and paid as if the annuity had not been so reduced, unless an election is in effect under subparagraph (B).

(B) Subject to paragraph (4)(B), the participant may elect in writing within one year after receipt of notice of the death or remarriage of the former spouse to continue the reduction in order to provide a higher survivor annuity under section 806(b)(3) for any spouse of the participant.

(c)(1) In the case of any participant or former participant providing a survivor annuity benefit under subsection (b) for a former spouse—

(A) such participant may elect, or

(B) a spousal agreement or court order under section 820(b)(1) may provide for, an additional survivor annuity under this subsection for any other former spouse or spouse surviving the participant, if the participant satisfactorily passes a physical examination as prescribed by the Secretary of State.

(2) Neither the total amount of survivor annuity or annuities under this subsection with respect to any participant or former participant, nor the survivor annuity or annuities for any one surviving spouse or former spouse of such participant under this section and section 806, shall exceed 55 percent of the full amount of the participant's annuity, as computed under section 806(a).

(3)(A) In accordance with regulations which the Secretary of State shall prescribe, the participant involved may provide for any annuity under this subsection—

(i) by a reduction in the annuity or an allotment from the salary of the participant,

(ii) by a lump sum payment or installment payments to the Fund, or

(iii) by any combination thereof.

(B) The present value of the total amount to accrue to the Fund under subparagraph (A) to provide any annuity under this subsection shall be actuarially equivalent in value to such annuity, as calculated upon such tables of mortality as may from time to time be prescribed for this purpose by the Secretary of State.

(C) If a former spouse predeceases the participant or remarries before attaining age 60 (or, in the case of a spouse, the spouse does not qualify as a former spouse upon dissolution of the marriage)—

(i) if an annuity reduction or salary allotment under subparagraph (A) is in effect for that spouse or former spouse, the annuity shall be recomputed and paid as if it had not been reduced or the salary allotment terminated, as the case may be, and

(ii) any amount accruing to the Fund under subparagraph (A) shall be refunded, but only to the extent that such amount may have exceeded the actuarial cost of providing benefits under this subsection for the period such benefits were provided, as determined under regulations prescribed by the Secretary of State.

(D) Under regulations prescribed by the Secretary of State, an annuity shall be recomputed (or salary allotment terminated or adjusted), and a refund provided (if appropriate), in a manner comparable to that provided under subparagraph (C), in order to reflect a termination or reduction of future benefits under this subsection for a spouse in the event a former spouse of the participant dies or remarries before attaining age 60 and an increased annuity is provided for that spouse in accordance with this subchapter.

(4) An annuity payable under this subsection to a spouse or former spouse shall commence on the day after the participant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60.

(5) Section 826 shall not apply to any annuity under this subsection, unless authorized under regulations prescribed by the Secretary of State.

(d) ~~【Repealed—1988】~~

SEC. 815. ~~【22 U.S.C. 4055】~~ LUMP-SUM PAYMENTS.—(a)(1) A participant is entitled to be paid a lump-sum credit if the participant—

(A) is separated from the Service for at least 31 consecutive days, or is transferred to a position in which the partici-

pant is not subject to this chapter and remains in such a position for at least 31 consecutive days;

(B) files an application with the Secretary of State for payment of the lump-sum credit;

(C) is not reemployed in a position in which the participant is subject to this chapter at the time the participant files the application;

(D) will not become eligible to receive an annuity under this subchapter within 31 days after filing the application; and

(E) has notified any spouse or former spouse the participant may have of the application for payment in accordance with regulations prescribed by the Secretary of State.

Such regulations may provide for waiver of subparagraph (E) under circumstances described in section 806(b)(1)(D).

(2) Such lump-sum credit shall be paid to the participant and to any former spouse of the participant in accordance with subsection (i).

(b) Whenever an annuitant becomes separated from the Service following a period of recall service without becoming eligible for a supplemental or recomputed annuity under section 823, the compulsory contributions of the annuitant to the Fund for such service, together with any special contributions the annuitant may have made for other service performed after the date of separation from the Service which forms the basis for annuity, shall be returned to the annuitant (and any former spouse of the annuitant who was married to the participant during the period of recall service, in accordance with subsection (i)).

(c) If all annuity rights under this subchapter based on the service of a deceased participant or annuitant terminate before the total annuity paid equals the lump-sum credit to which the participant or annuitant is entitled, the difference shall be paid in accordance with subsection (f).

(d) If a participant or former participant dies and is not survived by an individual eligible for an annuity under this subchapter or by such an individual or individuals all of whose annuity rights terminate before a claim for survivor annuity is filed, the lump-sum credit to which the participant or annuitant is entitled shall be paid in accordance with subsection (f).

(e) If an annuitant who was a former participant dies, any annuity accrued and unpaid shall be paid in accordance with subsection (f).

(f) Payments under subsections (c) through (e) shall be paid in the following order of precedence to individuals surviving the participant and alive on the date entitlement to the payment arises, upon the establishment of a valid claim therefor, and such payment shall be a bar to recovery by any other person:

(1) To the beneficiary or beneficiaries last designated by the participant before or after retirement in a signed and witnessed writing filed with the Secretary of State prior to the death of the participant, for which purpose a designation, change, or cancellation of beneficiary in a will or other document which is not so executed and filed shall have no force or effect.

(2) If there is no such beneficiary, to the surviving wife or husband of the participant.

(3) If none of the above, to the child (without regard to the definition in section 804(2)) or children of the participant (including adopted and natural children but not stepchildren) and descendants of deceased children by representation.

(4) If none of the above, to the parents of the participants or the survivor of them.

(5) If none of the above, to the duly appointed executor or administrator of the estate of the participant.

(6) If none of the above, to such other next of kin of the participant as may be determined in the judgment of the Secretary of State to be legally entitled to such payment, except that no payment shall be made under this paragraph until after the expiration of 30 days after the death of the participant or annuitant.

(g) Annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other person:

(1) To the duly appointed executor or administrator of the estate of the survivor annuitant.

(2) If there is no such executor or administrator, to such person as may be determined by the Secretary of State (after the expiration of 30 days from the date of death of the survivor annuitant) to be entitled under the laws of the domicile of the survivor annuitant at the time of death.

(h) Amounts deducted and withheld from basic salary of a participant under section 805 from the beginning of the first pay period after the participant has completed 35 years of service computed under section 816 (excluding service credit for unused sick leave under section 816(b)), together with interest on the amounts at the rate of 3 percent a year compounded annually from the date of the deduction to the date of retirement or death, shall be applied toward any special contribution due under section 805(d), and any balance not so required shall be refunded in a lump sum to the participant after separation or, in the event of a death in service, to a beneficiary in the order of precedence specified in subsection (f).

(i) Unless otherwise expressly provided by any spousal agreement or court order under section 820(b)(1), the amount of a participant's or former participant's lump-sum credit payable to a former spouse of that participant shall be—

(1) if the former spouse was married to the participant throughout the period of creditable service of the participant, 50 percent of the lump-sum credit to which such participant would be entitled in the absence of this subsection, or

(2) if such former spouse was not married to the participant throughout such creditable service, an amount equal to such former spouse's pro rata share of 50 percent of such lump-sum credit.

The lump-sum credit of the participant shall be reduced by the amount of the lump-sum credit payable to the former spouse. For the purposes of this subsection, the term "creditable service" means service which is creditable under subchapter I or II.

SEC. 816. [22 U.S.C. 4056] CREDITABLE SERVICE.—(a)(1) Except as otherwise specified by law, all periods of civilian and military and naval service, and all other periods through the date of final separation of a participant from the Service that the Secretary of State determines would be creditable toward retirement under the Civil Service Retirement and Disability System (as determined in accordance with section 8332 of title 5, United States Code), shall be creditable for purposes of this subchapter. Conversely, any such service performed after December 31, 1976, that would not be creditable under specified conditions under section 8332 of title 5, United States Code, shall be excluded under this chapter under the same conditions.

(2) The service of an individual who first becomes a participant on or after the date of this Order without any credit under section 816 for civilian service performed prior to October 1, 1982, shall include credit for:

(A) each period of military or naval service performed before January 1, 1957, and

(B) each period of military or naval service performed after December 31, 1956, and before the separation on which the entitlement to annuity under this subchapter is based, only if a deposit (with interest if any is required) is made with respect to that period, as provided in section 805(e).

(3) The service of an individual who first became a participant on or after the date of this Order with credit under section 816 for civilian service performed prior to October 1982, shall include credit for each period of military or naval service performed before the date of separation on which the entitlement to an annuity under this subchapter is based, subject, in the case of military or naval service performed after December 1956, to section 816(j), as deemed to be added by this Order.

(4) The service of an individual who first became a participant before the date of this Order shall include credit for each period of military or naval service performed before the date of the separation on which the entitlement to an annuity under this subchapter is based, subject, in the case of military or naval service performed after December 1976, to section 816(j), as deemed to be added by this Order.

(b) In computing any annuity under this subchapter the total service of a participant who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to an annuity includes (without regard to the 35-year limitation imposed by section 806(a)) the days of unused sick leave to the credit of the participant, except that these days shall not be counted in determining average basic salary or annuity eligibility under this subchapter. A contribution to the Fund shall not be required from a participant for this service credit.

(c)(1) A participant who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of Government employees may, within 60 days after entering on that leave without pay, file with the employing agency an election to receive full retirement credit for each such periods of leave without pay and arrange to pay concurrently into the Fund through the employing agency, amounts equal to the re-

retirement deductions and agency contributions on the Foreign Service salary rate that would be applicable if the participant were in a pay status. If the election and all payments provided by this subsection are not made for the periods of such leave without pay occurring after November 7, 1976, the participant may not receive any credit for such periods of leave without pay occurring after such date.

(2) A participant may make a special contribution for any period or periods of approved leave without pay while serving before November 7, 1976, as a full-time officer or employee of an organization composed primarily of Government employees. Any such contribution shall be based upon the suspended Foreign Service salary rate and shall be computed in accordance with section 805. A participant who makes such contributions shall be allowed full retirement credit for the period or periods of leave without pay. If this contribution is not made, up to 6 months' retirement credit shall be allowed for such periods of leave without pay each calendar year.

(d) A participant who has received a refund of retirement contributions (which has not been repaid) under this or any other retirement system for Government employees covering service which may be creditable may make a special contribution for such service under section 805. Credit may not be allowed for service covered by the refund unless the special contribution is made.

(e) No credit in annuity computation shall be allowed for any period of civilian service for which a participant made retirement contributions to another retirement system for Government employees unless—

(1) the right to any annuity under the other system which is based on such service is waived, and

(2) a special contribution is made under section 805 covering such service.

(f) A participant who during a period of war, or national emergency proclaimed by the President or declared by the Congress, leaves the Service to enter the military service is deemed, for the purpose of this subchapter, as not separated from the Service under section 815. However, the participant is deemed to be separated from the Service after the expiration of 5 years of such military service.

(g)(1) An annuity or survivor annuity based on the service of a participant of Japanese ancestry who would be eligible under section 8332(1) of title, 5, United States Code, for credit for civilian service for periods of internment during World War II shall, upon application to the Secretary of State, be recomputed to give credit for that service. Any such recomputation of an annuity shall apply with respect to months beginning more than 30 days after the date on which application for such recomputation is received by the Secretary of State.

(2) The Secretary of State shall take such action as many be necessary and appropriate to inform individuals entitled to have any service credited or annuity recomputed under this subsection of their entitlement to such credit or recomputation.

(3) The Secretary of State shall, on request, assist any individual referred to in paragraph (1) in obtaining from any agency

or other Government establishment information necessary to verify the entitlement of the individual to have any service credited or any annuity recomputed under this subsection.

(4) Any agency or other Government establishment shall, upon request, furnish to the Secretary of State any information it possesses with respect to the internment or other detention, as described in section 8332(l) of title 5, United States Code, of any participant.

(h) A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member or office of the Congress shall continue to make contributions to the Fund based upon the Foreign Service salary rate that would be in effect if the participant were in a pay status. The participant's employing office in the Congress shall make a matching contribution (from the appropriation or fund which is used for payment of the salary of the participant) to the Treasury of the United States to the credit of the Fund. All periods of service for which full contributions to the Fund are made under this subsection shall be counted as creditable service for purposes of this subchapter and shall not, unless all retirement credit is transferred, be counted as creditable service under any other Government retirement system.

(i)(1) Service of a participant shall be considered creditable service for purposes of applying provisions of this subchapter relating to former spouses if such service would be creditable—

(A) under subsection (c) (1) or (2) but for the fact an election was not made under subsection (c)(1) or a special contribution was not made under subsection (c)(2), and

(B) under subsection (d) but for the fact that a refund of contributions has not been repaid unless the former spouse received under this subchapter a portion of the lump sum (or a spousal agreement or court order provided otherwise).

(2) A former spouse shall not be considered as married to a participant for periods assumed to be creditable service under section 808(a) or section 809(e).

(j)(1) Except as otherwise provided by statute or Executive Order, Section 8332(j) of Title 5, United States Code, relating to redetermination of credit for military and naval service, shall be applied to annuities payable under this subchapter. The Secretary of State shall redetermine service, and may request and obtain information from the Secretary of Health and Human Services, as the Office of Personnel Management is directed or authorized to do in Section 8332(j).

(2) Section 8332(j) of Title 5, United States Code, shall not apply with respect to:

(A) the service of any individual who first became a participant on or after the date of this Order without any credit under section 816 for civilian service performed prior to October 1982; or

(B) any military or naval service performed prior to 1957 by an individual who first became a participant on or after the date of this Order with credit under section 816 for civilian service performed prior to October 1982, or any period of military or naval service performed after 1956 with respect to

which the participant has made a contribution (with interest if any is required) under section 805(e); or

(C) any military or naval service performed prior to 1977 by any individual who first became a participant before the date of this Order or any period of military or naval service performed after 1976 with respect to which the participant had made a contribution (with interest if any is required) under section 805(e).

SEC. 817. [22 U.S.C. 4057] EXTRA CREDIT FOR SERVICE AT UNHEALTHFUL POSTS.—The Secretary of State may from time to time establish a list of places which by reason of climatic or other extreme conditions are to be classed as unhealthful posts. Each year of duty at such posts, inclusive of regular leaves of absence, shall be counted as one and a half years in computing the length of the service of a participant for the purpose of retirement, fractional months being considered as full months in computing such service. No such extra credit for service at such unhealthful posts shall be credited to any participant who is paid a differential under section 5925 or 5928 of title 5, United States Code, for such service. Such extra credit may not be used to determine the eligibility of a person to qualify as a former spouse under this subchapter, or to compute the pro rata share under section 804(10). No extra credit for service at unhealthful posts may be given under this section for any service as part of a tour of duty, or extension thereof, beginning on or after the date of enactment of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991.

SEC. 818. [22 U.S.C. 4058] ESTIMATE OF APPROPRIATIONS NEEDED.—The Secretary of the Treasury shall prepare the estimates of the annual appropriations required to be made to the Fund, and shall make actuarial valuations of the System at intervals of not more than five years. The Secretary of State may expend from money to the credit of the Fund an amount not exceeding \$5,000 per year for the incidental expenses necessary in administering the provisions of this subchapter, including actuarial advice.

SEC. 819. [22 U.S.C. 4059] INVESTMENT OF THE FUND.—The Secretary of the Treasury shall invest from time to time in interest-bearing securities of the United States such portions of the Fund as in the judgment of the Secretary of the Treasury may not be immediately required for the payment of annuities, cash benefits, refunds, and allowances. The income derived from such investments shall constitute a part of the Fund.

SEC. 820. [22 U.S.C. 4060] ASSIGNMENT AND ATTACHMENT OF MONEYS.—(a)(1) An individual entitled to an annuity from the Fund may make allotments or assignments of amounts from such annuity for such purposes as the Secretary of State in his or her sole discretion considers appropriate.

(2) Notwithstanding section 3477 of the Revised Statutes of the United States (31 U.S.C. 203) or any other law, a member of the Service who is entitled to receive benefits under section 609(b)(1) may assign to any person the whole or any part of those benefits. Any such assignment shall be on a form approved by the Secretary of the Treasury and a copy of such assignment form shall be depos-

ited with the Secretary of the Treasury by the member executing the assignment.

(b)(1)(A) In the case of any participant or annuitant who has a former spouse who is covered by a court order or who is a party to a spousal agreement—

(i) any right of the former spouse to any annuity under section 814(a) in connection with any retirement or disability annuity of the participant, and the amount of any such annuity;

(ii) any right of the former spouse to a survivor annuity under section 814 (b) or (c), and the amount of any such annuity; and

(iii) any right of the former spouse to any payment of a lump-sum credit under section 815 (a) or (b); shall be determined in accordance with that spousal agreement or court order, if and to the extent expressly provided for in the terms of that spousal agreement or court order.

(B) This paragraph shall not apply in the case of any spousal agreement or court order which, as determined by the Secretary of State—

(i) would provide for a survivor annuity for a spouse or any former spouse of a participant with respect to which there has not been an annuity reduction (or a salary reduction or payment under section 814(c)(3)); or

(ii) is otherwise inconsistent with the requirements of this subchapter.

(2) Except with respect to obligations between participants and former spouses, payments under this subchapter which would otherwise be made to a participant or annuitant based upon his or her service shall be paid (in whole or in part) by the Secretary of State to another individual to the extent expressly provided for in the terms of any order or any court decree of legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of legal separation.

(3) Paragraphs (1) and (2) shall apply only to payments made under this subchapter for periods beginning after the date of receipt by the Secretary of State of written notice of such decree, order, or agreement, and such additional information and such documentation as the Secretary of State may require.

(4) Any payment under this subsection to an individual bars recovery by any other individual.

(5) The 10-year requirement of section 804(b)(6), or any other provision of this subchapter, shall not be construed to affect the rights any spouse or individual formerly married to a participant or annuitant may have, under any law or rule of law of any State or the District of Columbia, with respect to an annuity of a participant or annuitant under this subchapter.

(c) None of the moneys mentioned in this subchapter shall be assignable either in law or equity, except under subsection (a) or (b) of this section, or subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal law.

SEC. 821. [22 U.S.C. 4061] PAYMENTS FOR FUTURE BENEFITS.—(a) Any statute which authorizes—

(1) new or liberalized benefits payable from the Fund under this subchapter, including annuity increases other than under section 825;

(2) extension of the benefits of the System to new groups of employees; or

(3) increases in salary on which benefits are computed; is deemed to authorize appropriations to the Fund to finance the unfunded liability created by that statute, in 30 equal annual installments with interest computed at the rate used in the then most recent valuation of the System and with the first payment thereof due as of the end of the fiscal year in which each new or liberalized benefit, extension of benefits, or increase in salary is effective.

(b) There is authorized to be appropriated to the Fund for each fiscal year an amount equal to the amount of the Foreign Service normal cost for that year which is not met by contributions to the Fund under section 805(a).

SEC. 822. [22 U.S.C. 4062] UNFUNDED LIABILITY OBLIGATIONS.—(a) At the end of each fiscal year, the Secretary of State shall notify the Secretary of the Treasury of the amount equivalent to—

(1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and

(2) that portion of disbursement for annuities for that year which the Secretary of State estimates is attributable to credit allowed for military and naval service, less an amount determined by the Secretary of State to be appropriate to reflect the value of the deposits made to the credit of the Fund under section 805(e).

(b) Before closing the accounts for each fiscal year, the Secretary of the Treasury shall credit such amounts to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated.

(c) Requests for appropriations to the Fund under section 821(b) shall include reports to the Congress on the sums credited to the Fund under this section.

SEC. 823. [22 U.S.C. 4063] ANNUITY ADJUSTMENT FOR RECALL SERVICE.—(a) Any annuitant recalled to duty in the Service under section 308(a) shall, while so 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 in accordance with section 805. On the day following termination of the recall service, the former annuity shall be resumed, adjusted by any cost-of-living increases under section 825 that became effective during the recall period.

(b) If the recall service lasts less than one year, the contributions of the annuitant to the Fund during recall service shall be refunded in accordance with section 815. If the recall service lasts more than one year, the annuitant may, in lieu of such refund, elect a supplemental annuity computed under section 806 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. If the recall service continues for at least 5 years,

the annuitant may elect to have his or her annuity determined anew under section 806 in lieu of any other benefits under this section. Any annuitant who is recalled under section 308 may upon written application count as recall service any prior service that is creditable under section 816 that was performed after the separation upon which his or her annuity is based.

(c) If an annuitant becomes subject to subchapter II of this chapter by reason of recall service—

(1) subsections (a) and (b) shall not apply to such annuitant; and

(2) section 824 shall apply to the recall service as if such service were reemployment.

SEC. 824. [22 U.S.C. 4064] REEMPLOYMENT.—(a)(1)(A) Except in the case of an annuitant who makes an election under subsection (b) or in the case of a waiver under subsection (g), if any former participant, who has retired and is receiving an annuity under this subchapter or subchapter II of this chapter, becomes employed in an appointive or elective position in the Government, payment of any annuity under either subchapter to the annuitant shall terminate effective on the date of the employment and the reemployment service shall be covered service under the rules of the system under which the appointment is made.

(B) If the annuity of an individual is terminated under subparagraph (A) and that individual becomes covered under the same retirement system from which that annuity is terminated, that individual shall be entitled to a redetermination of rights under that system upon termination of the employment.

(C) If the annuity is terminated and the individual becomes covered under another contributory retirement system for Government employees pursuant to paragraph (A), the individual shall be entitled to benefits under the rules of that system. In addition, the individual shall be entitled to a resumption of any annuity terminated by reason of the employment.

(b)(1) A participant who is entitled to an annuity under this subchapter or subchapter II of this chapter and becomes employed in an appointive or elective position in the Government on a part-time, intermittent, or temporary basis may elect to continue to receive either or both annuities as provided in this subsection.

(2) The total annuity payable under this chapter to an annuitant making an election under paragraph (1) shall be reduced during the part-time, intermittent, or temporary employment referred to in paragraph (1) as necessary to meet the requirements of paragraph (3).

(3)(A) The sum of—

(i) the total annuity payable under this chapter to an annuitant making an election under paragraph (1), and

(ii) the annual rate of pay payable to the annuitant during the part-time, intermittent, or temporary employment referred to in paragraph (1),

may not exceed, in any calendar year, the amount described in subparagraph (B).

(B) The amount referred to in subparagraph (A) is the greater of—

(i) the highest annual rate of basic pay which is payable during such year for full-time employment in the position in which the annuitant is employed, or

(ii) the basic pay the annuitant was entitled to receive under this Act on the date of retirement from the Service.

(C) For purposes of this section, the term “annuity” means the annuity earned by the reemployed member based on his or her service irrespective of whether or not the amount payable is reduced by the amount of an annuity payable under section 814 or 820(b).

(4) Upon termination of the part-time, intermittent, or temporary employment referred to in paragraph (1), payment of the full annuity of an annuitant who has made an election under paragraph (1) of this subsection shall resume.

(c) The amount of annuity which has been terminated or reduced under this section by reason of the reemployment of the annuitant and is resumed under this section shall be the amount of the annuity which would have been payable if the annuitant had not accepted the reemployment. The amount of an annuity resulting from a redetermination of rights pursuant to subsection (a) shall not be less than the amount of an annuity resumed under the previous sentence.

(d) The annuity rights of any participant who is reemployed in the Government shall be determined under this section instead of section 8468 of title 5, United States Code.

(e) When any such retired participant is reemployed, the employer shall send a notice of such reemployment to the Secretary of State, together with all pertinent information relating to such employment, and shall pay directly to such participant the salary of the position in which he or she is serving.

(f) In the event of any overpayment under this section, such overpayment shall be recovered by withholding the amount involved from the salary payable to such reemployed participant or from any other moneys, including annuity payments, payable under this chapter.

(g)(1) The Secretary of State may waive the application of subsections (a) through (d) on a case-by-case basis for an annuitant reemployed on a temporary basis, or grant authority to the head of an Executive agency to waive the application of subsections (a) through (d) on a case-by-case basis for an annuitant reemployed on a temporary basis—

(A) if, and for so long as, such waiver is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances;

(B) if the annuitant is employed in a position for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

(C)(i)¹⁸ to provide assistance to consular posts with a substantial backlog of visa applications; or

(ii)¹⁸ to provide assistance to meet the demand resulting from the passport and travel document requirements set forth in section 7209(b) of the Intelligence Reform and

¹⁸Margins so in law.

Terrorism Prevention Act of 2004 (Public Law 108-458; 8 U.S.C. 1185 note), including assistance related to the investigation of fraud in connection with an application for a passport.

(2) The Secretary should prescribe procedures for the exercise of any authority under paragraph (1)(B), including criteria for any exercise of authority and procedures for a delegation of authority.

(h) A reemployed annuitant as to whom a waiver under subsection (g) is in effect shall not be considered a participant for purposes of subchapter I or subchapter II, or an employee for purposes of chapter 83 or 84 of title 5, United States Code.

SEC. 825. [22 U.S.C. 4065] VOLUNTARY CONTRIBUTIONS.—(a) The voluntary contribution account shall be the sum of unrefunded amounts voluntarily contributed prior to the effective date of this Act by any participant or former participant under any prior law authorizing such contributions to the Fund, plus interest compounded at the rate of 3 percent per year to the date of separation from the Service or (in case of participant or former participant separated with entitlement to a deferred annuity) to the date the voluntary contribution account is claimed, the commencing date fixed for the deferred annuity, or the date of death, whichever is earlier. Effective on the date the participant becomes eligible for an annuity or a deferred annuity and at the election of the participant, his or her account shall be—

- (1) returned in a lump sum;
- (2) used to purchase an additional life annuity;
- (3) used to purchase an additional life annuity for the participant and to provide for a cash payment on his or her death to a beneficiary whose name shall be notified in writing to the Secretary of State by the participant; or
- (4) used to purchase an additional life annuity for the participant and a life annuity commencing on his or her death payable to a beneficiary whose name shall be notified in writing to the Secretary of State by the participant, with a guaranteed return to the beneficiary or his or her legal representative of an amount equal to the cash payment referred to in paragraph (3).

(b) The benefits provided by subsection (a) (2), (3), or (4) shall be actuarially equivalent in value to the payment provided for by subsection (a)(1) and shall be calculated upon such tables of mortality as may be from time to time prescribed for this purpose by the Secretary of the Treasury.

(c) A voluntary contribution account shall be paid in a lump sum following receipt of an application therefor from a present or former participant if application is filed prior to payment of any additional annuity. If not sooner paid, the account shall be paid at such time as the participant separates from the Service for any reason without entitlement to an annuity or a deferred annuity or at such time as a former participant dies or withdraws compulsory contributions to the Fund. In case of death, the account shall be paid in the order of precedence specified in section 815(f).

SEC. 826. [22 U.S.C. 4066] COST-OF-LIVING ADJUSTMENTS OF ANNUITIES.—(a) A cost-of-living annuity increase shall become effective under this section on the effective date of each such increase

under section 8340(b) of title 5, United States Code. Each such increase shall be applied to each annuity payable from the Fund under this subchapter which has a commencing date not later than the effective date of the increase.

(b) Each annuity increase under this section shall be identical to the corresponding percentage increase under section 8340(b) of title 5, United States Code.

(c) Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase except as follows:

(1) The first increase (if any) made under this section to an annuity which is payable from the Fund to a participant or to the surviving spouse or former spouse of a deceased participant who died in service or a deceased annuitant whose annuity was not increased under this section, shall be equal to the product (adjusted to the nearest $\frac{1}{10}$ of 1 percent) of—

(A) $\frac{1}{12}$ of the applicable percent change computed under subsection (b) of this Section, multiplied by

(B) the number of months (counting any portion of a month as a month)—

(i) for which the annuity was payable from the Fund before the effective date of the increase, or

(ii) in the case of a surviving spouse or former spouse of a deceased annuitant whose annuity has not been so increased, since the annuity was first payable to the deceased annuitant.

(2) Effective from its commencing date, an annuity under this subchapter payable from the Fund to the survivor of an annuitant, except a child entitled to an annuity under section 806(c) or 809 (c) or (d), shall be increased by the total percentage increase the annuitant was receiving under this section at death.

(3) For purposes of computing or recomputing an annuity to a child under section 806 (c) or (d) or 809 (c) or (d), the items \$900, \$1,080, \$2,700, and \$3,240 appearing in section 806(c) shall be increased by the total percentage increases by which correspondence amounts are being increased under section 8340 of title 5, United States Code, on the date the annuity of the child becomes effective.

(d) No increase in annuity provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(e) The monthly installment of annuity after adjustment under this section shall be rounded to the next lowest dollar, except such installment shall after adjustment reflect an increase of at least \$1.

(f) Effective from its commencing date, there shall be an increase of 10 percent in the annuity of each surviving spouse whose entitlement to annuity resulted from the death of an annuitant who, prior to October 1, 1976, elected a reduced annuity in order to provide a spouse's survivor annuity.

(g)(1) An annuity shall not be increased by reason of any adjustment under this section to an amount which exceeds the greater of—

(A) the maximum pay rate payable for class FS-1 under section 403, 30 days before the effective date of the adjustment under this section; or

(B) the final pay (or average pay, if higher) of the former participant with respect to whom the annuity is paid, increased by the overall annual average percentage adjustments (compounded) in rates of pay of the Foreign Service Schedule under such section 403 during the period—

(i) beginning on the date the annuity commenced (or, in the case of a survivor of the retired participant, the date the participant's annuity commenced), and

(ii) ending on the effective date of the adjustment under this section.

(2) For the purposes of paragraph (1) of this subsection, "pay" means the rate of salary or basic pay as payable under any provision of law, including any provisions of law limiting the expenditure of appropriated funds.

SEC. 827. [22 U.S.C. 4067] COMPATIBILITY BETWEEN CIVIL SERVICE AND FOREIGN SERVICE RETIREMENT SYSTEMS.—(a) In order to maintain existing conformity between the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code, and the Foreign Service Retirement and Disability System, whenever a law of general applicability is enacted which—

(1) affects the treatment of current or former participants, annuitants, or survivors under the Civil Service Retirement and Disability System; and

(2) affects treatment which, immediately prior to the enactment of such law, was substantially identical to the treatment accorded to participants, former participants, annuitants, or survivors under the Foreign Service Retirement and Disability System;

such law shall be extended in accordance with subsection (b) to the Foreign Service Retirement and Disability System so that it applies in like manner with respect to participants, former participants, annuitants, or survivors under that System.

(b) The President shall by Executive order prescribe regulations to implement this section and may make such extension retroactive to a date no earlier than the effective date of the provision of law applicable to the Civil Service Retirement and Disability System. Any provision of an Executive order issued under this section shall modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith—

(1) all provisions of law enacted prior to the effective date of that provision of the Executive order, and

(2) any prior provision of an Executive order issued under this section.

(c) The President shall maintain, under the same conditions and in the same manner as provided in subsections (a) and (b) existing conformity between the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, and the Foreign Service Pension System provided in subchapter II of this chapter.

SEC. 828. [22 U.S.C. 4068] REMARRIAGE.—Notwithstanding any other provision of this subchapter, any benefit payable under this subchapter to a surviving spouse, former spouse, or surviving former spouse that would otherwise terminate or be lost if the individual remarried before 60 years of age, shall not terminate or be lost if the remarriage occurred on or after November 8, 1984, and the individual was 55 years of age or over on the date of the remarriage.

SEC. 829. [22 U.S.C. 4069] THRIFT SAVINGS FUND PARTICIPATION.—Participants in this System shall be deemed to be employees for the purposes of section 8351 of Title 5. Any reference in such section 8351 or in subchapter III of chapter 84 of such Title 5 to retirement or separation under subchapter III of chapter 83 or chapter 84 of such Title 5 shall be deemed to be references to retirement or separation under part I or II of this subchapter with similar benefits or entitlements with respect to participants under such part I or II of this subchapter, respectively.

SEC. 830. [22 U.S.C. 4069-1] QUALIFIED FORMER WIVES AND HUSBANDS.—(a) Notwithstanding section 4(h) of the Civil Service Retirement Spouse Equity Act of 1984, section 827 of this Act shall apply with respect to section 8339(j), section 8341(e), and section 8341(h) of title 5, United States Code, and section 4 (except for subsection (b)) of the Civil Service Retirement Spouse Equity Act of 1984 to the extent that those sections apply to a qualified former wife or husband. For the purposes of this section any reference in the Civil Service Retirement Spouse Equity Act of 1984 to the effective date of that Act shall be deemed to be a reference to the effective date of this section.

(b)(1) Payments pursuant to this section which would otherwise be made to a participant or former participant based upon his service shall be paid (in whole or in part) by the Secretary of State to another person if and to the extent expressly provided for in the terms of any court order or spousal agreement. Any payment under this paragraph to a person bars recovery by any other person.

(2) Paragraph (1) shall only apply to payments made by the Secretary of State under this chapter after the date of receipt by the Secretary of State of written notice of such court order or spousal agreement and such additional information and documentation as the Secretary of State may prescribe.

(c) For the purposes of this section, the term “qualified former wife or husband” means a former wife or husband of an individual if—

(1) such individual performed at least 18 months of civilian service creditable under this chapter; and

(2) the former wife or husband was married to such individual for at least 9 months but not more than 10 years.

(d) Regulations issued pursuant to section 827 to implement this section shall be submitted to the Committee on Post Office and Civil Service and the Committee on Foreign Affairs of the House of Representatives and the Committee on Governmental Affairs and the Committee on Foreign Relations of the Senate. such regulations shall not take effect until 60 days after the date on which such regulations are submitted to the Congress.

SEC. 830.¹⁹ [22 U.S.C. 4069a] RETIREMENT BENEFITS FOR CERTAIN FORMER SPOUSES.—(a) Any individual who was a former spouse of a participant or former participant on February 14, 1981, shall be entitled, to the extent or in such amounts as are provided in advance in appropriations Acts, and except to the extent such former spouse is disqualified under subsection (b), to benefits—

(1) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the benefits of the participant; or

(2) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 50 percent of such benefits.

(b) A former spouse shall not be entitled to benefits under this section if—

(1) the former spouse remarries before age 55; or

(2) the former spouse was not married to the participant at least 10 years during service of the participant which is creditable under this chapter with at least 5 years occurring while the participant was a member of the Foreign Service.

(c)(1) The entitlement of a former spouse to benefits under this section—

(A) shall commence on the later of—

(i) the day the participant upon whose service the benefits are based becomes entitled to benefits under this chapter; or

(ii) the first day of the month in which the divorce or annulment involved becomes final; and

(B) shall terminate on the earlier of—

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

(ii) the date the benefits of the participant terminates.

(2) Notwithstanding paragraph (1), in the case of any former spouse of a disability annuitant—

(A) the benefits of the former spouse shall commence on the date the participant would qualify on the basis of his or her creditable service for benefits under this chapter (other than a disability annuity) or the date the disability annuity begins, whichever is later, and

(B) the amount of benefits of the former spouse shall be calculated on the basis of benefits for which the participant would otherwise so qualify.

(3) Benefits under this section shall be treated the same as an annuity under section 814(a)(7) for purposes of section 806(h) or any comparable provision of law.

(4)(A) Benefits under this section shall not be payable unless appropriate written application is provided to the Secretary, complete with any supporting documentation which the Secretary may by regulation require, within 30 months after the effective date of this section. The Secretary may waive the 30-month application requirement under this subparagraph in any case in which the Secretary determines that the circumstances so warrant.

¹⁹Sec. 188 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100-204; 101 Stat. 1369) added sec. 830. Sec. 204 of Public Law 100-238 (101 Stat. 1770) enacted similar language as sec. 831, codified at 22 U.S.C. 4069a-1.

(B) Upon approval of an application provided under subparagraph (A), the appropriate benefits shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to such benefits under this section, but in no event shall benefits be payable under this section with respect to any period before the effective date of this section.

(d) For the purposes of this section, the term “benefits” means—

(1) with respect to a participant or former participant subject to this subchapter, the annuity of the participant or former participant; and

(2) with respect to a participant or former participant subject to subchapter II, the benefits of the participant or former participant under that subchapter.

(e) Nothing in this section shall be construed to impair, reduce, or otherwise affect the annuity or the entitlement to an annuity of a participant or former participant under this chapter.

(f) Any individual who on February 14, 1981, was an otherwise qualified former spouse pursuant to this section, but who was married to a former Foreign Service employee of the United States Information Agency or of the Agency for International Development, shall be entitled to benefits under this section if—

(1) the former employee retired from the Civil Service Retirement and Disability System on a date before his employing agency could legally participate in the Foreign Service Retirement and Disability System; and

(2) the marriage included at least five years during which the employee was assigned overseas.

SEC. 831. [22 U.S.C. 4069a-1] RETIREMENT BENEFITS FOR CERTAIN FORMER SPOUSES.

(a) Any individual who was a former spouse of a participant or former participant on February 14, 1981, shall be entitled, to the extent of available appropriations, and except to the extent such former spouse is disqualified under subsection (b), to benefits—

(1) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the benefits of the participant; or

(2) if not married to the participant throughout such creditable service, equal to that former spouse’s pro rata share of 50 percent of such benefits.

(b) A former spouse shall not be entitled to benefits under this section if—

(1) the former spouse remarries before age 55; or

(2) the former spouse was not married to the participant at least 10 years during service of the participant which is creditable under this chapter with at least 5 years occurring while the participant was a member of the Foreign Service.

(c)(1) The entitlement of a former spouse to benefits under this section—

(A) shall commence on the later of—

(i) the day the participant upon whose service the benefits are based becomes entitled to benefits under this chapter; or

- (ii) the first day of the month in which the divorce or annulment involved becomes final; and
 - (B) shall terminate on the earlier of—
 - (i) the last day of the month before the former spouse dies or remarries before 55 years of age; or
 - (ii) the date of the benefits of the participant terminates.
 - (2) Notwithstanding paragraph (1), in the case of any former spouse of a disability annuitant—
 - (A) the benefits of the former spouse shall commence on the date the participant would qualify on the basis of his or her creditable service for benefits under this chapter (other than a disability annuity) or the date the disability annuity begins, whichever is later, and
 - (B) the amount of benefits of the former spouse shall be calculated on the basis of benefits for which the participant would otherwise so qualify.
 - (3) Benefits under this section shall be treated the same as an annuity under section 814(a)(7) for purposes of section 806(h) or any comparable provision of law.
 - (4)(A) Benefits under this section shall not be payable unless appropriate written application is provided to the Secretary, complete with any supporting documentation which the Secretary may by regulation require, within 30 months after the effective date of this section. The Secretary may waive the 30-month application requirement under this subparagraph in any case in which the Secretary determines that the circumstances so warrant.
 - (B) Upon approval of an application provided under subparagraph (A), the appropriate benefits shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to such benefits under this section, but in no event shall benefits be payable under this section with respect to any period before the effective date of this section.
 - (d) For the purpose of this section, the term “benefits” means—
 - (1) with respect to a participant or former participant subject to this subchapter, the annuity of the participant or former participant; and
 - (2) with respect to a participant or former participant subject to subchapter II, the benefits of the participant or former participant under that subchapter.
 - (e) Nothing in this section shall be construed to impair, reduce, or otherwise affect the annuity or the entitlement to an annuity of a participant or former participant under this chapter.
- SEC. 831.²⁰ [22 U.S.C. 4069b] SURVIVOR BENEFITS FOR CERTAIN FORMER SPOUSES.—(a) Any individual who was a former spouse of a participant or former participant on February 14, 1981, shall be entitled, to the extent or in such amounts as are provided in advance in appropriations Acts, and except to the extent such former spouse is disqualified under subsection (b), to a survivor annuity equal to 55 percent of the greater of—

²⁰Sec. 188 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100-204; 101 Stat. 1369), added sec. 831. Identical language was enacted as sec. 832 by sec. 204 of Public Law 100-238 (101 Stat. 1771), and codified at 22 U.S.C. 4069b-1.

(1) the full amount of the participant's or former participant's annuity, as computed under this chapter; or

(2) the full amount of what such annuity as so computed would be if the participant or former participant had not withdrawn a lump-sum portion of contributions made with respect to such annuity.

(b) If an election has been made with respect to such former spouse under section 2109 or 806(f), then the survivor annuity under subsection (a) of such former spouse shall be equal to the full amount of the participant's or former participant's annuity referred to in subsection (a) less the amount of such election.

(c) A former spouse shall not be entitled to a survivor annuity under this section if—

(1) the former spouse remarries before age 55; or

(2) the former spouse was not married to the participant at least 10 years during service of the participant which is creditable under this chapter with at least 5 years occurring while the participant was a member of the Foreign Service.

(d)(1) The entitlement of a former spouse to a survivor annuity under this section—

(A) shall commence—

(i) in the case of a former spouse of a participant or former participant who is deceased as of the effective date of this section, beginning on such date; and

(ii) in the case of any other former spouse, beginning on the later of—

(I) the date that the participant or former participant to whom the former spouse was married dies; or

(II) the effective date of this section; and

(B) shall terminate on the last day of the month before the former spouse's death or remarriage before attaining the age 55.

(2)(A) A survivor annuity under this section shall not be payable unless appropriate written application is provided to the Secretary, complete with any supporting documentation which the Secretary may by regulation require, within 30 months after the effective date of this section. The Secretary may waive the 30-month application requirement under this subparagraph in any case in which the Secretary determines that the circumstances so warrant.

(B) Upon approval of an application provided under subparagraph (A), the appropriate survivor annuity shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to such annuity under this section, but in no event shall a survivor annuity be payable under this section with respect to any period before the effective date of this section.

(e) The Secretary shall—

(1) as soon as possible, but not later than 60 days after the effective date of this section, issue such regulations as may be necessary to carry out this section; and

(2) to the extent practicable, and as soon as possible, inform each individual who was a former spouse of a participant or former participant on February 14, 1981, of any rights which such individual may have under this section.

(f) Nothing in this section shall be construed to impair, reduce, or otherwise affect the annuity or the entitlement to an annuity of a participant or former participant under this chapter.

(g) Any individual who on February 14, 1981, was an otherwise qualified former spouse pursuant to this section, but who was married to a former Foreign Service employee of the United States Information Agency or of the Agency for International Development, shall be entitled to benefits under this section if—

(1) the former employee retired from the Civil Service Retirement and Disability System on a date before his employing agency could legally participate in the Foreign Service Retirement and Disability System; and

(2) the marriage included at least five years during which the employee was assigned overseas.

SEC. 832. [22 U.S.C. 4069b-1] SURVIVOR BENEFITS FOR CERTAIN FORMER SPOUSES.

(a) Any individual who was a former spouse of a participant or former participant on February 14, 1981, shall be entitled, to the extent of available appropriations, and except to the extent such former spouse is disqualified under subsection (b), to a survivor annuity equal to 55 percent of the greater of—

(1) the full amount of the participant's or former participant's annuity, as computed under this chapter; or

(2) the full amount of what such annuity as so computed would be if the participant or former participant had not withdrawn a lump-sum portion of contributions made with respect to such annuity.

(b) If an election has been made with respect to such former spouse under section 2109 or 806(f), then the survivor annuity under subsection (a) of such former spouse shall be equal to the full amount of the participant's or former participant's annuity referred to in subsection (a) less the amount of such election.

(c) A former spouse shall not be entitled to a survivor annuity under this section if—

(1) the former spouse remarries before age 55; or

(2) the former spouse was not married to the participant at least 10 years during service of the participant which is creditable under this chapter with at least 5 years occurring while the participant was a member of the Foreign Service.

(d)(1) The entitlement of a former spouse to a survivor annuity under this section—

(A) shall commence—

(i) in the case of a former spouse of a participant or former participant who is deceased as of the effective date of this section, beginning on such date; and

(ii) in the case of any other former spouse, beginning on the later of—

(I) the date that the participant or former participant to whom the former spouse was married dies; or

(II) the effective date of this section; and

(B) shall terminate on the last day of the month before the former spouse's death or remarriage before attaining the age 55.

(2)(A) A survivor annuity under this section shall not be payable unless appropriate written application is provided to the Secretary, complete with any supporting documentation which the Secretary may by regulation require, within 30 months after the effective date of this section. The Secretary may waive the 30-month application requirement under this subparagraph in any case in which the Secretary determines that the circumstances so warrant.

(B) Upon approval of an application provided under subparagraph (A), the appropriate survivor annuity shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to such annuity under this section, but in no event shall a survivor annuity be payable under this section with respect to any period before the effective date of this section.

(e) The Secretary shall—

(1) as soon as possible, but not later than 60 days after the effective date of this section, issue such regulations as may be necessary to carry out this section; and

(2) to the extent practicable, and as soon as possible, inform each individual who was a former spouse of a participant or former participant on February 14, 1981, of any rights which such individual may have under this section.

(f) Nothing in this section shall be construed to impair, reduce, or otherwise affect the annuity or the entitlement to an annuity of a participant or former participant under this chapter.

SEC. 832.²¹ [22 U.S.C. 4069c] HEALTH BENEFITS FOR CERTAIN FORMER SPOUSES.—(a) Except as provided in subsection (c)(1), any individual—

(1) formerly married to an employee or former employee of the Foreign Service, whose marriage was dissolved by divorce or annulment before May 7, 1985;

(2) who, at any time during the 18-month period before the divorce or annulment became final, was covered under a health benefits plan as a member of the family of such employee or former employee; and

(3) who was married to such employee for not less than 10 years during periods of government service by such employee, is eligible for coverage under a health benefits plan in accordance with the provisions of this section.

(b)(1) Any individual eligible for coverage under subsection (a) may enroll in a health benefits plan for self alone or for self and family if, before the expiration of the 6-month period beginning on the effective date of this section, and in accordance with such procedures as the Director of the Office of Personnel Management shall by regulation prescribe, such individual—

(A) files an election for such enrollment; and

(B) arranges to pay currently into the Employees Health Benefits Fund under section 8909 of title 5, United States Code, an amount equal to the sum of the employee and agency contributions payable in the case of an employee enrolled

²¹Sec. 188 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100-204; 101 Stat. 1369) added sec. 832.

under chapter 89 of such title in the same health benefits plan and with the same level of benefits.

(2) The Secretary shall, as soon as possible, take all steps practicable—

(A) to determine the identity and current address of each former spouse eligible for coverage under subsection (a); and

(B) to notify each such former spouse of that individual's rights under this section.

(3) The Secretary shall waive the 6-month limitation set forth in paragraph (1) in any case in which the Secretary determines that the circumstances so warrant.

(c)(1) Any former spouse who remarries before age 55 is not eligible to make an election under subsection (b)(1).

(2) Any former spouse enrolled in a health benefits plan pursuant to an election under subsection (b)(1) may continue the enrollment under the conditions of eligibility which the Director of the Office of Personnel Management shall by regulation prescribe, except that any former spouse who remarries before age 55 shall not be eligible for continued enrollment under this section after the end of the 31-day period beginning on the date of remarriage.

(d) No individual may be covered by a health benefits plan under this section during any period in which such individual is enrolled in a health benefits plan under any other authority, nor may any individual be covered under more than one enrollment under this section.

(e) For purposes of this section the term "health benefits plan" means an approved health benefits plan under chapter 89 of title 5, United States Code.

(f) Any individual who on February 14, 1981, was an otherwise qualified former spouse pursuant to this section, but who was married to a former Foreign Service employee of the United States Information Agency or of the Agency for International Development, shall be entitled to benefits under this section if—

(1) the former employee retired from the Civil Service Retirement and Disability System on a date before his employing agency could legally participate in the Foreign Service Retirement and Disability System; and

(2) the marriage included at least five years during which the employee was assigned overseas.

SEC. 833. [22 U.S.C. 4069c-1] HEALTH BENEFITS FOR CERTAIN FORMER SPOUSES.

(a) Except as provided in subsection (c)(1), any individual—

(1) formerly married to an employee or former employee of the Foreign Service, whose marriage was dissolved by divorce or annulment before May 7, 1985;

(2) who, at any time during the 18-month period before the divorce or annulment became final, was covered under a health benefits plan as a member of the family of such employee or former employee; and

(3) who was married to such employee for not less than 10 years during periods of government service by such employee, is eligible for coverage under a health benefits plan in accordance with the provisions of this section.

(b)(1) Any individual eligible for coverage under subsection (a) may enroll in a health benefits plan for self alone or for self and family if, before the expiration of the 6-month period beginning on the effective date of this section, and in accordance with such procedures as the Director of the Office of Personnel Management shall by regulation prescribe, such individual—

(A) files an election for such enrollment; and

(B) arranges to pay currently into the Employees Health Benefits Fund under section 8909 of title 5, United States Code, an amount equal to the sum of the employee and agency contributions payable in the case of an employee enrolled under chapter 89 of such title in the same health benefits plan and with the same level of benefits.

(2) The Secretary shall, as soon as possible, take all steps practicable—

(A) to determine the identity and current address of each former spouse eligible for coverage under subsection (a); and

(B) to notify each such former spouse of that individual's rights under this section.

(3) The Secretary shall waive the 6-month limitation set forth in paragraph (1) in any case in which the Secretary determines that the circumstances so warrant.

(c)(1) Any former spouse who remarries before age 55 is not eligible to make an election under subsection (b)(1).

(2) Any former spouse enrolled in a health benefits plan pursuant to an election under subsection (b)(1) may continue the enrollment under the conditions of eligibility which the Director of the Office of Personnel Management shall by regulation prescribe, except that any former spouse who remarries before age 55 shall not be eligible for continued enrollment under this section after the end of the 31-day period beginning on the date of remarriage.

(d) No individual may be covered by a health benefits plan under this section during any period in which such individual is enrolled in a health benefits plan under any other authority, nor may any individual be covered under more than one enrollment under this section.

(e) For purposes of this section the term “health benefits plan” means an approved health benefits plan under chapter 89 of title 5, United States Code.

SUBCHAPTER II—FOREIGN SERVICE PENSION SYSTEM

SEC. 851. [22 U.S.C. 4071] ESTABLISHMENT.—(a) There is hereby established a Foreign Service Pension System.

(b) Except as otherwise specifically provided in this subchapter or any other provision of law, the provisions of chapter 84 of title 5, United States Code, shall apply to all participants in the Foreign Service Pension System and such participants shall be treated in all respects similar to persons whose participation in the Federal Employees' Retirement System provided in that chapter is required.

SEC. 852. [22 U.S.C. 4071a] DEFINITIONS.—As used in this subchapter, unless otherwise specified—

(1) the term “court order” has the same meaning given in section 804(4);

(2) the term “Fund” means the Foreign Service Retirement and Disability Fund maintained by the Secretary of the Treasury pursuant to section 802;

(3) the term “lump-sum credit” means the unrefunded amount consisting of—

(A) retirement deductions made from the basis pay of a participant under section 856 of this chapter (or under section 204 of the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983);

(B) amounts deposited by a participant under section 854 to obtain credit under this System for prior civilian or military service; and

(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average obligations purchased by the Secretary of the Treasury during such fiscal year under section 819, as determined by the Secretary of the Treasury (compounded annually); but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for a fractional part of a month in the total service;

(4) the term “normal cost” means the entry-age normal cost of the provisions of the System which relate to the Fund, computed by the Secretary of State in accordance with generally accepted actuarial practice and standards (using dynamic assumptions) and expressed as a level percentage of aggregate basic pay;

(5) the term “participant” means a person who participates in the Foreign Service Pension System;

(6) the term “pro rata share” in the case of any former spouse of any participant or former participant means the percentage which is equal to the percentage that (A) the number of years during which the former spouse was married to the participant during the service of the participant which is creditable under this chapter is of (B) the total number of years of such service, disregarding extra credit under section 817;

(7) the term “revised annuity participant” means any individual who—

(A) on December 31, 2012—

(i) is not a participant;

(ii) is not performing service which is creditable service under section 854; and

(iii) has less than 5 years creditable service under section 854; and

(B) after December 31, 2012, and before January 1, 2014, becomes a participant performing service which is creditable service under section 854;

(8) the term “further revised annuity participant” means any individual who—

(A) on December 31, 2013—

(i) is not a participant;

- (ii) is not performing service which is creditable service under section 854; and
- (iii) has less than 5 years creditable service under section 854; and
- (B) after December 31, 2013, becomes a participant performing service which is creditable service under section 854;
- (9) the term “supplemental liability” means the estimated excess of—
 - (A) the actuarial present value of all future benefits payable from the Fund under this subchapter based on the service of participants or former participants, over
 - (B) the sum of—
 - (i) the actuarial present value of (I) deductions to be withheld from the future basic pay of participants pursuant to section 856 and (II) contributions for past civilian and military service;
 - (ii) the actuarial present value of future contributions to be made pursuant to section 857;
 - (iii) the Fund balance as of the date the supplemental liability is determined, to the extent that such balance is attributable—
 - (I) to the System, or
 - (II) to the contributions made under the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 (5 U.S.C. 8331 note); and
 - (iv) any other appropriate amount, as determined by the Secretary of State in accordance with generally accepted actuarial practices and principles;
- (10) the term “System” means the Foreign Service Pension System; and
- (11) the term “special agent” has the same meaning given in section 804(15).

SEC. 853. [22 U.S.C. 4071b] PARTICIPANTS.—(a) Except for persons excluded by subsection (b), (c), or (d), all members of the Foreign Service, any of whose service after December 31, 1983, is employment for the purpose of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986, who would, but for this section, be participants in the Foreign Service Retirement and Disability System pursuant to section 803 shall instead be participants in the Foreign Service Pension System.

(b) Members of the Service who were participants in the Foreign Service Retirement and Disability System on or before December 31, 1983, and who have not had a break in service in excess of one year since that date, are not made participants in the System by this section, without regard to whether they are subject to title II of the Social Security Act.

(c) Individuals who become members of the Service after having completed at least 5 years of civilian service creditable under subchapter I, subchapter III of chapter 83 of title 5, United States Code (the Civil Service Retirement System), or title II of the Central Intelligence Agency Retirement Act (50 U.S.C. 2011 et seq.) (determined without regard to any deposit or redeposit requirement

under any such subchapter or title, any requirement that the individual become subject to such subchapter or title after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such subchapter or title) are not participants in the System, except to the extent provided for under title III of the Federal Employees' Retirement System Act of 1986 pursuant to an election under such title to become subject to this subchapter (under regulations issued by the Secretary of State pursuant to section 860).

(d) The Secretary may exclude from the operation of this subchapter any member of the Foreign Service, or group of members, whose employment is temporary or intermittent, except a member whose employment is part-time career appointment or career candidate appointment under section 306.

SEC. 854. [22 U.S.C. 4071c] CREDITABLE SERVICE.—(a) For purposes of this subchapter, creditable service of a participant includes—

- (1) service as a participant after December 31, 1986;
- (2) service with respect to which deductions and withholdings under section 204(a)(2) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 have been made; and
- (3) except as provided in subsection (b), any civilian service performed before January 1, 1989 (other than service under paragraph (1) or (2)), which, but for the amendment made by section 414 of the Federal Employees' Retirement System Act of 1986, would be creditable under subchapter I (determined without regard to any deposit or redeposit requirement under such subchapter, subchapter III of chapter 83 of title 5, United States Code (the Civil Service Retirement System), or title II of the Central Intelligence Agency Retirement Act (50 U.S.C. 2011 et seq.) any requirement that the individual become subject to such subchapter or title after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such subchapter or title).

(b)(1) A participant who has received a refund of retirement deductions under subchapter I with respect to any service described in subsection (a)(3) may not be allowed credit for such service under this subchapter unless such participant deposits into the Fund an amount equal to 1.3 percent of basic pay for such service, with interest.

(2) A participant may not be allowed credit under this subchapter for any service described in subsection (a)(3) for which retirement deductions under subchapter I have not been made, unless such participant deposits into the Fund an amount equal to 1.3 percent of basic pay for such service, with interest.

(3) Interest under paragraph (1) or (2) shall be computed in accordance with section 805(d) and regulations issued by the Secretary of State.

(c)(1) Credit shall be given under this System to a participant for a period of prior satisfactory service as—

(A) a volunteer or volunteer leader under the Peace Corps Act (22 U.S.C. 2501 et seq.),

(B) a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, or

(C) a full-time volunteer for a period of service of at least 1 year's duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.), if the participant makes a payment to the Fund equal to 3 percent of pay received for the volunteer service; except, the amount to be paid for volunteer service beginning on January 1, 1999, through December 31, 2000, shall be as follows:

3.25 January 1, 1999, to December 31, 1999.

3.4 January 1, 2000, to December 31, 2000.

(2) The amount of such payments shall be determined in accordance with regulations of the Secretary of State consistent with regulations for making corresponding determinations under chapter 83, title 5, United States Code, together with interest determined under regulations issued by the Secretary of State.

(d) Credit shall be given under this System to a participant for a period of prior service under the Federal Employees' Retirement System (described in chapter 84 of title 5, United States Code) or under title III of the Central Intelligence Agency Retirement Act (50 U.S.C. 2151 et seq.) if the participant waives credit under the other retirement system and makes a payment to the Fund equal to the amount which was deducted and withheld from the individual's basic pay under the other retirement system during the prior creditable service under the other retirement system together with interest on such amount computed in accordance with regulations issued by the Secretary of State.

(e) A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member or office of the Congress shall continue to make contributions to the Fund based upon the Foreign Service salary rate that would be in effect if the participant were in a pay status. The participant's employing Member or office in the Congress shall make a contribution (from the appropriation or fund which is used for payment of the salary of the participant) determined under section 857(a) to the Treasury of the United States to the credit of the Fund. All periods of service for which full contributions to the Fund are made under this subsection shall be counted as creditable service for purposes of this subchapter and shall not, unless all retirement credit is transferred, be counted as creditable service under any other Government retirement system.

SEC. 855. [22 U.S.C. 4071d] ENTITLEMENT TO ANNUITY.—(a)(1) Any participant may be retired under the conditions specified in section 811 and shall be retired under the conditions specified in sections 812 and 813 and receive benefits under this subchapter.

(2) For the purposes of this subsection—

(A) the term “participant”, as used in the sections referred to in paragraph (1), means a participant in the Foreign Service Pension System; and

(B) the term “System”, as used in those sections, means the Foreign Service Pension System.

(3) For purposes of any annuity computation under this subsection, the average pay (as used in section 8414 of title 5, United States Code) of any member of the Service whose official duty station is outside the continental United States shall be considered to be the salary that would have been paid to the member had the member's official duty station been Washington, D.C., including locality-based comparability payments under section 5304 of title 5, United States Code, that would have been payable to the member if the member's official duty station had been Washington, D.C.

(b)(1) Any participant who retires voluntarily or mandatorily under section 607, 608, 611, 811, 812, or 813 under conditions authorizing an immediate annuity for participants in the Foreign Service Retirement and Disability System or for participants in the Foreign Service Pension System, and who has completed at least 5 years as a member of the Foreign Service, shall be entitled to an immediate annuity computed under paragraph (2).

(2) An annuity under paragraph (1) shall be computed—

(A) in accordance with section 8415(e)(1) of title 5, United States Code, for all service while a participant in this System and for prior service creditable under this subchapter not otherwise counted as—

(i) a member of the Service,

(ii) an employee of the Central Intelligence Agency entitled to retirement credit under title II of the Central Intelligence Agency Retirement Act (50 U.S.C. 2011 et seq.) or under section 302(a) or 303(b) of that Act (50 U.S.C. 2152(a), 2153(b)) or

(iii) a participant as a Member of Congress, a congressional employee, law enforcement officer, firefighter, or air traffic controller in the Civil Service Retirement System under subchapter III of chapter 83, title 5, United States Code, or in the Federal Employees' Retirement System under chapter 84 of title 5, United States Code; and

(B) at the rate stated in section 8415(a) of title 5, United States Code, for all other service creditable under this System including service in excess of 20 years otherwise creditable under paragraph (A).

(3) any participant who is involuntarily retired or separated under section 607, 608, 610, or 611 and who would if a participant under subchapter I, become eligible for a refund of contributions or a deferred annuity under subchapter I, shall, in lieu thereof, receive benefits for an involuntary separation under this subchapter.

(4) A disability annuity under this subchapter required to be redetermined under section 8452(b) of title 5, United States Code, or computed under section 8452 (c) or (d) of such title 5, shall be recomputed or computed using the formula in subsection (b)(2)(A) of this section rather than section 8415 of such title 5 (as stated in section 8452(b)(2)(A) and 8452 (c) and(d) of such title). Such annuity shall also be computed in accordance with the preceding sentence if, as of the day on which such annuity commences or is restored, the annuitant satisfies the age and service requirements for entitlement to an immediate annuity under section 811 of this Act.

(5) A former participant entitled to a deferred annuity under section 8413(b) of title 5, United States Code, shall not be subject

to section 8415(g)(1) of such title 5 if the former participant has 20 years of service creditable under this subchapter and is at least 50 years of age as of the date on which the annuity is to commence.

(6)(A) The amount of a survivor annuity for a widow or widower of a participant or former participant shall be 50 percent of an annuity computed for the deceased under this subchapter rather than under section 8415 of such title 5 (as stated in sections 8442(a)(1), (b)(1)(B), and (c)(2) of such title).

(B) Any calculation for a widow or widower of a participant or former participant under section 8442(f)(2)(A) shall be based on an “assumed FSRDS annuity” rather than an “assumed CSRS annuity” as stated in such section. For the purpose of this subparagraph, the term “assumed FSRDS annuity” means the amount of the survivor annuity to which the widow or widower would be entitled under subchapter I based on the service of the deceased annuitant determined under section 8442(f)(5) of such title 5.

(c) A participant who is entitled to an immediate annuity under subsection (b) shall be entitled to receive an annuity supplement while the annuitant is under 62 years of age. The annuity supplement shall be based on the total creditable service of the annuitant and shall be computed in accordance with sections 8421(b) and 8421a of title 5, United States Code, as if the participant were a law enforcement officer retired under section 8412(d) of such title.

(d) Any participant who is separated for cause under section 610 shall not be entitled to an annuity under this System when the Secretary determines that the separation was based in whole or in part on disloyalty to the United States.

SEC. 856. [22 U.S.C. 4071e] DEDUCTIONS AND WITHHOLDINGS FROM PAY.—(a)(1) The employing agency shall deduct and withhold from the basic pay of each participant the applicable percentage of basic pay specified in paragraph (2) of this subsection minus the percentage then in effect under section 3101(a) of the Internal Revenue Code of 1986 (26 U.S.C. 3101(a)) (relating to the rate of tax for old age, survivors, and disability insurance).

(2)(A) The applicable percentage for a participant other than a revised annuity participant or a further revised annuity participant shall be as follows:

7.5	Before January 1, 1999.
7.75	January 1, 1999, to December 31, 1999.
7.9	January 1, 2000, to December 31, 2000.
7.55	After January 11, 2003.

(B) The applicable percentage for a revised annuity participant shall be as follows:

9.85	After December 31, 2012 ²²
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(C) The applicable percentage for a further revised annuity participant shall be as follows:

11.15	After December 31, 2013.
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(b) Each participant is deemed to consent and agree to the deductions under subsection (a). Notwithstanding any law or regula-

²² So in law. There is no punctuation (i.e. a period) at the end of subparagraph (B).

tion affecting the pay of a participant, payment less such deductions is a full and complete discharge and acquittance of all claims and demands for regular services during the period covered by the payment, except the right to any benefits under this subchapter based on the service of the participant.

(c) Amounts deducted and withheld under this section shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Comptroller General of the United States may prescribe.

(d) Under such regulations as the Secretary of State may issue, amounts deducted under subsection (a) shall be entered on individual retirement records.

SEC. 857. [22 U.S.C. 4071f] GOVERNMENT CONTRIBUTIONS.—
(a) Each agency employing any participant shall contribute to the Fund the amount computed in a manner similar to that used under section 8423(a) of title 5, United States Code, pursuant to determinations of the normal cost percentage for the Foreign Service Pension System by the Secretary of State.

(b)(1) The Secretary of State shall compute the amount of the supplemental liability of the Fund as of the close of each fiscal year beginning after September 30, 1987. The amount of any such supplemental liability shall be amortized in 30 equal annual installments with interest computed at the rate used in the most recent valuation of the System.

(2) At the end of each fiscal year, the Secretary of State shall notify the Secretary of the Treasury of the amount of the installment computed under this subsection for such year.

(3) Before closing the accounts for a fiscal year, the Secretary of the Treasury shall credit to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the amount under paragraph (2) of this subsection for such year.

(c)(1) Subject to paragraphs (2) and (3), for purposes of any period in any year beginning after December 31, 2013, the normal-cost percentage under this section shall be determined and applied as if section 402(b) of the Bipartisan Budget Act of 2013 had not been enacted.

(2) Any contributions under this section in excess of the amounts which (but for paragraph (1)) would otherwise have been payable shall be applied toward reducing the unfunded liability of the Foreign Service Retirement and Disability System.

(3) After the unfunded liability of the Foreign Service Retirement and Disability System has been eliminated, as determined by the Secretary of State, Government contributions under this section shall be determined and made disregarding this subsection.

SEC. 858. [22 U.S.C. 4071g] COST-OF-LIVING ADJUSTMENTS.—
Cost-of-living adjustments for annuitants under this System shall be granted under procedures in section 8462 of title 5, United States Code, in the same manner as such adjustments are made for annuitants referred to in subsection (c)(3)(B)(ii) of such section.

SEC. 859. [22 U.S.C. 4071h] GENERAL AND ADMINISTRATIVE PROVISIONS.—(a) The Secretary of State shall administer the Foreign Service Pension System except for matters relating to the Thrift Savings Plan provided in subchapter III and VI of chapter

84 of title 5, United States Code. The Secretary of State shall, with respect to the Foreign Service Pension System, perform the functions and exercise the authority vested in the Office of Personnel Management or the Director of such Office by such chapter 84 and may issue regulations for such purposes.

(b) Determinations of the Secretary of State under the Foreign Service Pension System which, if made by the Office of Personnel Management under chapter 84 title 5, United States Code, or the Director of such Office, would be appealable to the Merit Systems Protection Board, except that determinations of disability for participants shall be based upon the standards in section 808 (other than the exclusion for vicious habits, intemperance, or willful misconduct) and subject to review in the same manner as under that section.

(c) At least every 5 years, the Secretary of the Treasury shall prepare periodic valuations of the Foreign Service Pension System and shall advise the Secretary of State of (1) the normal cost of the System, (2) the supplemental liability of the System, and (3) the amounts necessary to finance the costs of the System.

SEC. 860. [22 U.S.C. 4071i] TRANSITION PROVISIONS.—The Secretary of State shall issue regulations providing for the transition from the Foreign Service Retirement and Disability System to the Foreign Service Pension System in a manner comparable to the transition of employees subject to subchapter III of chapter 83 of title 5, United States Code (the Civil Service Retirement System), to the Federal Employees' Retirement System. For this and related purposes, references made to participation in subchapter III of chapter 83 of title 5, United States Code (the Civil Service Retirement System), the Social Security Act, and the Internal Revenue Code of 1986 shall be deemed to refer to participation in the Foreign Service Pension System or the Foreign Service Retirement and Disability System, as appropriate.

SEC. 861. [22 U.S.C. 4071j] FORMER SPOUSES.—(a)(1)(A) Unless otherwise expressly provided by any spousal agreement or court order governing disposition of benefits under this subchapter, a former spouse of a participant or former participant is entitled, during the period described in subchapter (B), to a share (determined under paragraph (2)) of all benefits otherwise payable to such participant under this subchapter if such former spouse was married to the participant for at least 10 years during service of the participant which is creditable under this chapter with at least 5 of such years occurring while the participant was a member of the Foreign Service.

(B) The period referred to in subparagraph (A) is the period which begins on the first day of the month following the month in which the divorce or annulment becomes final and ends on the last day of the month before the former spouse dies or remarries before 55 years of age.

(2) The share referred to in paragraph (1) equals—

(A) 50 percent, if such former spouse was married to the participant throughout the actual years of service of the participant which are creditable under this chapter; or

(B) a pro rata share of 50 percent, if such former spouse was not married to the participant throughout such creditable service.

(3) A former spouse shall not be qualified for any benefit under this subsection if, before the commencement of any benefit, the former spouse remarries before becoming 55 years of age.

(4)(A) For purposes of the Internal Revenue Code of 1986, payments to a former spouse under this section shall be treated as income to the former spouse and not to the participant.

(B) Any reduction in payments to a participant or former participant as a result of payments to a former spouse under this subsection shall be disregarded in calculating—

(i) the survivor annuity for any spouse, former spouse, or other survivor under this subchapter, and

(ii) any reduction in the annuity of the participant to provide survivor benefits under this subchapter.

(5) Notwithstanding subsection (a)(1), in the case of any former spouse of a disability annuitant—

(A) the annuity of the former spouse shall commence on the date the participant would qualify, on the basis of his or her creditable service, for an annuity under this chapter (other than a disability annuity) or the date the disability annuity begins, whichever is later, and

(B) the amount of the annuity of the former spouse shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

(6)(A) Except as provided in subparagraph (B), any former spouse who becomes entitled to receive any benefit under this subchapter which would otherwise be payable to a participant or former participant shall be entitled to make any election regarding method of payment to such former spouse that such participant would have otherwise been entitled to elect, and the participant may elect an alternate method for the remaining share of such benefits. Such elections shall not increase the actuarial present value of benefits expected to be paid under this subchapter.

(B) A former spouse may not elect a method of payment under subchapter II, chapter 84 of title 5, United States Code, providing for payment of a survivor annuity to any survivor of the former spouse.

(7) The maximum amount payable to any former spouse pursuant to this subsection shall be the difference, if any, between 50 percent of the total benefits authorized to be paid to a former participant by this subchapter, disregarding any apportionment of these benefits to others, and the aggregate amount payable to all others at any one time.

(b)(1) Unless otherwise expressly provided for by any spousal agreement or court order governing survivorship benefits under this subchapter to a former spouse married to a participant or former participant for the periods specified in subsection (a)(1)(A), such former spouse is entitled to a share, determined under subsection (b)(2), of all survivor benefits that would otherwise be payable under this subchapter to an eligible surviving spouse of the participant.

(2) The share referred to in subsection (b)(1) equals—

(A) 100 percent if such former spouse was married to the participant throughout the entire period of service of the participant which is creditable under this chapter; or

(B) a pro rata share of 100 percent if such former spouse was not married to the participant throughout such creditable service.

(3) A former spouse shall not be qualified for any benefit under this subsection if, before the commencement of any benefit, the former spouse remarries before becoming 55 years of age.

(c) A participant or former participant may not make any election or modification of election under section 8417, 8418, or 8433 of title 5, United States Code, or other section relating to the participant's account in the Thrift Savings Plan or annuity under the basic plan that would diminish the entitlement of a former spouse to any benefit granted to the former spouse by this section or in a current spousal agreement.

(d) If a member becomes a participant under this subchapter after qualifying for benefits under subchapter I and, at the time of transfer, has a former spouse entitled to benefits under subchapter I which are determined under section 814 or 815 (as determined by the Secretary of State) and are similar in amount to a pro rata share division under section 814 or 815 and the service of the member as a participant under this subchapter is not recognized in determining that pro rata share, then subsections (a) and (b) of this section shall not apply to such former spouse. Otherwise, subsections (a) and (b) of this section shall apply.

(e) If a participant dies after completing at least 18 months of service or a former participant dies entitled to a deferred annuity, but before becoming eligible to receive the annuity, and such participant or former participant has left with the Secretary of State a spousal agreement promising a share of a survivor annuity under subchapter IV, chapter 84, title 5, United States Code, to a former spouse, such survivor annuity shall be paid under the terms of this subchapter as if the survivor annuity had been ordered by a court.

SEC. 862. [22 U.S.C. 4071k] SPOUSAL AGREEMENTS.—A spousal agreement is any written agreement (properly authenticated as determined by the Secretary of State) between a participant or former participant and his or her spouse or former spouse on file with the Secretary of State. A spousal agreement shall be consistent with the terms of this Act and applicable regulations and, if executed at the time a participant or former participant is currently married, shall be approved by such current spouse. It may be used to fix the level of benefits payable under this subchapter to a spouse or former spouse.

CHAPTER 9—TRAVEL, LEAVE, AND OTHER BENEFITS

SEC. 901. [22 U.S.C. 4081] TRAVEL AND RELATED EXPENSES.—The Secretary may pay the travel and related expenses of members of the Service and their families, including costs or expenses incurred for—

- (1) proceeding to and returning from assigned posts of duty;
- (2) authorized or required home leave;

(3) family members to accompany, precede, or follow a member of the Service to a place of temporary duty;

(4) representational travel within the country to which the member of the Service is assigned or, when not more than one family member participates, outside such country;

(5) obtaining necessary medical care for an illness, injury, or medical condition while abroad in a locality where there is no suitable person or facility to provide such care (without regard to those laws and regulations limiting or restricting the furnishing or payment of transportation and traveling expenses), as well as expenses for—

(A) an attendant or attendants for a member of the Service or a family member who is too ill to travel unattended or for a family member who is too young to travel alone, and

(B) a family member incapable of caring for himself or herself if he or she remained at the post at which the member of the Service is serving;

(6) rest and recuperation travel of members of the Service who are United States citizens, and members of their families, while serving at locations abroad specifically designated by the Secretary for purposes of this paragraph, to—

(A) other locations abroad having different social, climatic, or other environmental conditions than those at the post at which the member of the Service is serving, or

(B) locations in the United States or its territories, including American Samoa, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands;

except that, unless the Secretary otherwise specifies in extraordinary circumstances, travel expenses under this paragraph shall be limited to the cost for a member of the Service, and for each member of the family of the member, of 1 round trip during any continuous 2-year tour unbroken by home leave²³ and of 2 round trips during any continuous 3-year tour unbroken by home leave;²³

(7) removal of the family members of a member of the Service, and the furniture and household and personal effects (including automobiles) of the family, from a Foreign Service post where there is imminent danger because of the prevalence of disturbed conditions, and the return of such individuals, furniture, and effects to such post upon the cessation of such conditions, or to such other Foreign Service post as may in the meantime have become the post to which the member of the Service has been reassigned;

(8) trips by a member of the Service, and members of his or her family, for purposes of family visitation in situations where the family of the member is prevented by official order

²³ Paragraph (1) of section 1602(d) of Public Law 109-234 (120 Stat. 442) provides as follows:
(1) TRAVEL EXPENSES FOR REST AND RECUPERATION TRAVEL.—Section 901(6) of the Foreign Service Act (22 U.S.C. 4081(6)) is amended by striking “unbroken by home leave” each place it appears.

The reference to the Act probably should include “of 1980” after “Foreign Service Act”. As a result, the amendment was not executed.

from accompanying the member to, or has been ordered from, the assigned post of the member because of imminent danger due to the prevalence of disturbed conditions, except that—

(A) with respect to any such member whose family is located in the United States, the Secretary may pay the costs and expenses for not to exceed two round trips in a 12-month period; and

(B) with respect to any such member whose family is located abroad, the Secretary may pay such costs and expenses for trips in a 12-month period as do not exceed the cost of 2 round trips (at less than first class) to the District of Columbia;

(9) round-trip travel to or from an employee's post of assignment for purposes of family visitation in emergency situations involving personal hardship, except that payment for travel by family members to an employee's post of assignment may be authorized under this paragraph only where the family of the member is prevented by official order from residing at such post;

(10) preparing and transporting to the designated home in the United States or to a place not more distant, the remains of a member of the Service, or of a family member of a member of the Service, who dies abroad or while in travel status or, if death occurs in the United States, transport of the remains to the designated home in the United States or to a place not more distant;

(11) transporting the furniture and household and personal effects of a member of the Service (and of his or her family) to successive posts of duty and, on separation of a member from the Service, to the place where the member will reside (or if the member has died, to the place where his or her family will reside);

(12) packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of a member of the Service (and of his or her family)—

(A) when the member is absent from his or her post of assignment under orders or is assigned to a Foreign Service post to which such furniture and household and personal effects cannot be taken or at which they cannot be used, or when it is in the public interest or more economical to authorize storage;

(B) in connection with an assignment of the member to a new post, except that costs and expenses may be paid under this subparagraph only for the period beginning on the date of departure from his or her last post or (in the case of a new member) on the date of departure from the place of residence of the member and ending on the earlier of the date which is 3 months after arrival of the member at the new post or the date on which the member establishes residence quarters, except that in extraordinary circumstances the Secretary may extend this period for not more than an additional 90 days; and

(C) in connection with separation of the member from the Service, except that costs or expenses may not be paid under this subparagraph for storing furniture and household and personal effects for more than 3 months, except that in extraordinary circumstances the Secretary may extend this period for not more than an additional 90 days;

(13) transporting, for or on behalf of a member of the Service, a privately owned motor vehicle in any case in which the Secretary determines that water, rail, or air transportation of the motor vehicle is necessary or expedient for all or any part of the distance between points of origin and destination, but transportation may be provided under this paragraph for only one motor vehicle of a member during any 48-month period while the member is continuously serving abroad, except that another motor vehicle may be so transported as a replacement for such motor vehicle if such replacement—

(A) is determined, in advance, by the Secretary to be necessary for reasons beyond the control of the members and in the interest of the Government, or

(B) is incident to a reassignment when the cost of transporting the replacement motor vehicle does not exceed the cost of transporting the motor vehicle that is replaced;

(14) the travel and relocation of members of the Service, and members of their families, assigned to or within the United States (or any territory or possession of the United States or the Commonwealth of Puerto Rico), including assignments under subchapter VI of chapter 33 of title 5, United States Code (notwithstanding section 3375(a) of such title, if an agreement similar to that required by section 3375(b) of such title is executed by the member of the Service); and

(15) in the case of one or more children below age 21 of a member of the Service assigned abroad, 1 round-trip per year—

(A) for each child to visit the member abroad if the child does not regularly reside with the member and the member is not receiving an education allowance or educational travel allowance for the child under section 5924(4) of title 5, United States Code,

(B) for each child to visit the other parent of the child if the other parent resides in a country other than the country to which the member is assigned and the child regularly resides with the member and does not regularly attend school in the country in which the other parent resides, or

(C) for one of the child's parents to visit the child or children abroad if the child or children do not regularly reside with that parent and that parent is not receiving an education allowance or educational travel allowance for the child or children under section 5924(4) of title 5, United States Code,

except that the cost of round-trip travel under this paragraph may not exceed the cost of round-trip travel between the post to which the member is assigned and the residence of the other parent, or

between the post to which the member is assigned and the residence of the child if the child does not reside with a parent.

SEC. 902. [22 U.S.C. 4082] LOAN OF HOUSEHOLD EFFECTS.—The Secretary may, as a means of eliminating transportation costs, provide members of the Service with basic household furnishing and equipment for use on a loan basis in personally owned or leased residences.

SEC. 903. [22 U.S.C. 4083] REQUIRED LEAVE IN THE UNITED STATES.—(a) The Secretary may order a member of the Service (other than a member employed under section 311) who is a citizen of the United States to take a leave of absence under section 6305 of title 5, United States Code (without regard to the introductory clause of subsection (a) of that section), upon completion by that member of 18 months²⁴ of continuous service abroad. The Secretary shall order on such a leave of absence a member of the Service (other than a member employed under section 311) who is a citizen of the United States as soon as possible after completion by that member of 3 years of continuous service abroad.

(b) Leave ordered under this section may be taken in the United States or its territories, including American Samoa, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands. In cases in which a member of the Service has official orders to an unaccompanied post and in which the family members of the member reside apart from the member at authorized locations outside the United States, the member may take the leave ordered under this section where that member's family members reside, notwithstanding section 10305 of title 5, United States Code.

(c) While on a leave of absence ordered under this section, the services of any member of the Service shall be available for such work or duties in the Department or elsewhere as the Secretary may prescribe, but the time of such work or duties shall not be counted as leave.

SEC. 903a. [22 U.S.C. 4083a] REST AND RECUPERATION LEAVE.

(a) DEFINITIONS.—In this section—

(1) the term “agency” means an Executive agency (as that term is defined in section 105 of title 5, United States Code), but does not include the Government Accountability Office;

(2) the term “combat zone” means a geographic area designated by an Executive order of the President as an area in which the Armed Forces are engaging or have engaged in combat, an area designated by law to be treated as a combat zone, or a location the Department of Defense has certified for combat zone tax benefits due to its direct support of military operations;

(3) the term “employee” means an officer or an individual who is—

(A) appointed in the civil service, the Foreign Service, or any appointment authority other than the uniformed

²⁴ Paragraph (2) of section 1602(d) of Public Law 109-234 (120 Stat. 442) provides as follows:

(2) AUTHORITY TO REQUIRE LEAVES OF ABSENCE.—Section 903(a) of the Foreign Service Act (22 U.S.C. 4083) is amended by striking “18 months” and inserting “12 months”.

The reference to the Act probably should include “of 1980” after “Foreign Service Act”. As a result, the amendment was not executed.

services (as that term is defined in section 101 of title 37, United States Code), by one of the following acting in an official capacity:

- (i) The President.
- (ii) A Member or Members of Congress, or Congress.
- (iii) An individual who is an employee under this section.
- (iv) The head of a Government-controlled corporation;

(B) engaged in the performance of a Federal function under authority of law or an Executive act; and

(C) subject to the supervision of an individual described in subparagraph (A) while engaged in the performance of the duties of his or her position;

(4) the term “high risk, high threat post” has the meaning given that term in section 104 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4803); and

(5) the term “leave year” means the period beginning on the first day of the first complete pay period in a calendar year and ending on the day immediately before the first day of the first complete pay period in the following calendar year.

(b) **LEAVE FOR REST AND RECUPERATION.**—The Secretary or other head of an agency may prescribe regulations to grant up to 20 days of paid leave, per leave year, for the purposes of rest and recuperation to an employee of the agency serving in a combat zone, any other high risk, high threat post, or any other location presenting significant security or operational challenges.

(c) **DISCRETIONARY AUTHORITY OF THE SECRETARY OR OTHER AGENCY HEAD.**—Use of the authority under subsection (b) is at the sole and exclusive discretion of the head of the agency concerned.

(d) **RECORDS.**—An agency shall record leave provided under this section separately from leave authorized under any other provision of law.

SEC. 903b. [22 U.S.C. 4083b] OVERSEAS OPERATIONS LEAVE.

(a) **DEFINITIONS.**—In this section—

(1) the term “agency” means an Executive agency (as that term is defined in section 105 of title 5, United States Code), but does not include the Government Accountability Office.

(2) the term “employee” means an officer or an individual who is—

(A) appointed in the civil service, the Foreign Service, or any appointment authority other than the uniformed services (as that term is defined in section 101 of title 37, United States Code), by one of the following acting in an official capacity:

- (i) The President.
- (ii) A Member or Members of Congress, or Congress.
- (iii) An individual who is an employee under this section.
- (iv) The head of a Government-controlled corporation;

(B) engaged in the performance of a Federal function under authority of law or an Executive act; and

(C) subject to the supervision of an individual described in subparagraph (A) while engaged in the performance of the duties of his or her position; and

(3) the term “leave year” means the period beginning with the first day of the first complete pay period in a calendar year and ending with the day immediately before the first day of the first complete pay period in the following calendar year.

(b) LEAVE FOR OVERSEAS OPERATIONS.—The Secretary or other head of an agency may prescribe regulations to grant up to 10 days of paid leave, per leave year, to an employee of the agency serving abroad for the purpose of local holidays.

(c) DISCRETIONARY AUTHORITY OF THE SECRETARY OR OTHER AGENCY HEAD.—Use of the authority under subsection (b) is at the sole and exclusive discretion of the head of the agency concerned.

SEC. 904. [22 U.S.C. 4084] HEALTH CARE.—(a) The Secretary of State shall establish a health care program to promote and maintain the physical and mental health of members of the Service, and (when incident to service abroad) other designated eligible Government employees, and members of the families of such members and employees.

(b) Any such health care program may include (1) medical examinations for applicants for employment, (2) medical examinations and inoculations or vaccinations, and other preventive and remedial care and services as necessary, for members of the Service and employees of the Department who are citizens of the United States and for members of their families, (3) health education and disease prevention programs for all employees, and (4) examinations necessary in order to establish disability or incapacity of participants in the Foreign Service Retirement and Disability System or Foreign Service Pension System or to provide survivor benefits under chapter 8.

(c) The Secretary of State may establish health care facilities and provide for the services of physicians, nurses, or other health care personnel at Foreign Service posts abroad at which, in the opinion of the Secretary of State, a sufficient number of Government employees are assigned to warrant such facilities or services.

(d) If an individual eligible for health care under this section incurs an illness, injury, or medical condition which requires treatment while assigned to a post abroad located overseas pursuant to Government authorization, the Secretary may pay the cost of such treatment.

(e) Health care may be provided under this section to a member of the Service or other designated eligible Government employee after the separation of such member or employee from Government service. Health care may be provided under this section to a member of the family of a member of the Service or of a designated eligible Government employee after the separation from Government service or the death of such member of the Service or employee or after dissolution of the marriage.

(f) The Secretary of State shall review on a continuing basis the health care program provided for in this section. Whenever the Secretary of State determines that all or any part of such program

can be provided for as well and as cheaply in other ways, the Secretary may, for such individuals, locations, and conditions as the Secretary of State deems appropriate, contract for health care pursuant to such arrangements as the Secretary deems appropriate.

(g) Reimbursements paid to the Department of State for funding the costs of medical care abroad for employees and eligible family members shall be credited to the currently available applicable appropriation account. Such reimbursements shall be available for obligation and expenditure during the fiscal year in which they are received or for such longer period of time as may be provided in law.

SEC. 905. [22 U.S.C. 4085] REPRESENTATION EXPENSES.—Notwithstanding section 5536 of title 5, United States Code, the Secretary may provide for official receptions and may pay entertainment and representational expenses (including expenses of family members) to enable the Department and the Service to provide for the proper representation of the United States and its interests. In carrying out this section, the Secretary shall, to the maximum extent practicable, provide for the use of United States products, including American wine.

SEC. 906. [22 U.S.C. 4086] ENTITLEMENT TO VOTE IN A STATE IN A FEDERAL ELECTION.—(a) Except as provided in subsection (b) and in such manner as shall be otherwise authorized by a State or other jurisdiction within the territory of the United States, a member of the Service residing outside the United States shall, in addition to any entitlement to vote in a State in a Federal election under section 3 of the Overseas Citizens Voting Rights Act (42 U.S.C. 1973dd-1), be entitled to vote in a Federal election in the State in which such member was last domiciled immediately before entering the Service if such member—

- (1) makes an election of that State;
- (2) notifies that State of such election and notifies any other States in which he or she is entitled to vote of such election; and
- (3) otherwise meets the requirements of such Act.

(b) The provisions of subsection (a) shall apply only to an individual who becomes a member of the Service on or after the date of enactment of this section and shall not apply to an individual who registers to vote in a State in which he is entitled to vote under section 3 of Overseas Citizens Voting Rights Act.

SEC. 907. [22 U.S.C. 4087] TERMINATION OF RESIDENTIAL OR MOTOR VEHICLE LEASES AND TELEPHONE SERVICE CONTRACTS.—

The terms governing the termination of residential or motor vehicle leases and telephone service contracts described in sections 305 and 305A, respectively, of the Servicemembers Civil Relief Act (50 U.S.C. 3955 and 3956) with respect to servicemembers who receive military orders described in such Act shall apply in the same manner and to the same extent to members of the Foreign Service who are posted in the United States or posted abroad in accordance with this Act.

SEC. 908. [22 U.S.C. 4088] EDUCATION ALLOWANCE.

A Department or United States Agency for International Development employee who is on leave to perform service in the uniformed services (as defined in section 4303(13) of title 38, United States Code) may receive an education allowance if the employee would, if not for such service, be eligible to receive the education allowance.

SEC. 909. [22 U.S.C. 4089] PORTABILITY OF PROFESSIONAL LICENSES.

(a) **IN GENERAL.**—In any case in which a member of the Foreign Service or the spouse of a member of the Foreign Service has a covered United States license and such member of the Foreign Service or spouse relocates his or her residency because of an assignment or detail to a location that is not in the jurisdiction of the licensing authority that issued the covered license, such covered license shall be considered valid at a similar scope of practice and in the discipline applied for in the jurisdiction of such new residency for the duration of such an assignment or detail if such member of the Foreign Service or spouse—

(1) provides a copy of the member's notification of assignment to the licensing authority in the jurisdiction in which the new residency is located;

(2) remains in good standing with—

(A) the licensing authority that issued the covered license; and

(B) every other licensing authority that has issued to the member of the Foreign Service or spouse a license valid at a similar scope of practice and in the discipline applied in the jurisdiction of such licensing authority; and

(3) submits to the authority of the licensing authority in the new jurisdiction for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements.

(b) **INTERSTATE LICENSURE COMPACTS.**—If a member of the Foreign Service or spouse of a member of the Foreign Service is licensed and able to operate in multiple jurisdictions through an interstate licensure compact, with respect to services provided in the jurisdiction of the interstate licensure compact by a licensee covered by such compact, the member of the Foreign Service or spouse of a member of the Foreign Service shall be subject to the requirements of the compact or the applicable provisions of law of the applicable State and not this section.

(c) **COVERED LICENSE DEFINED.**—In this section, the term “covered license” means a professional license or certificate—

(1) that is in good standing with the licensing authority that issued such professional license or certificate;

(2) that the member of the Foreign Service or spouse of a member of the Foreign Service has actively used during the two years immediately preceding the relocation described in subsection (a); and

(3) that is not a license to practice law.

CHAPTER 10—LABOR-MANAGEMENT RELATIONS

SEC. 1001. [22 U.S.C. 4101] LABOR-MANAGEMENT POLICY.—
The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of workers to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlement of disputes between workers and their employers involving conditions of employment;

(2) the public interest demands the highest standards of performance by members of the Service and the continuous development and implementation of modern and progressive work practices to facilitate improved performance and efficiency; and

(3) the unique conditions of Foreign Service employment require a distinct framework for the development and implementation of modern, constructive, and cooperative relationships between management officials and organizations representing members of the Service.

Therefore, labor organizations and collective bargaining in the Service are in the public interest and are consistent with the requirement of an effective and efficient Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

SEC. 1002. [22 U.S.C. 4102] DEFINITIONS.—As used in this chapter, the term—

(1) “Authority” means the Federal Labor Relations Authority, described in section 7104(a) of title 5, United States Code;

(2) “Board” means the Foreign Service Labor Relations Board, established by section 1006(a);

(3) “collective bargaining” means the performance of the mutual obligation of the management representative of the Department and of the exclusive representative of employees to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting employees, and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but this obligation does not compel either party to agree to a proposal or to make a concession;

(4) “collective bargaining agreement” means an agreement entered into as a result of collective bargaining under the provisions of this chapter;

(5) “conditions of employment” means personnel policies, practices, and matters, whether established by regulation or otherwise, affecting working conditions, but does not include policies, practices, and matters—

(A) relating to political activities prohibited abroad or prohibited under subchapter III of chapter 73 of title 5, United States Code;

(B) relating to the designation or classification of any position under section 501;

(C) to the extent such matters are specifically provided for by Federal statute; or

(D) relating to Government-wide or multiagency responsibility of the Secretary affecting the rights, benefits, or obligations of individuals employed in agencies other than those which are authorized to utilize the Foreign Service personnel system;

(6) “confidential employee” means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

(7) “dues” means dues, fees, and assessments;

(8) “employee” means—

(A) a member of the Service who is a citizen of the United States, wherever serving, other than a management official, a confidential employee, a consular agent, a member of the Service who is a United States citizen (other than a family member) employed under section 311, or any individual who participates in a strike in violation of section 7311 of title 5, United States Code; or

(B) a former member of the Service as described in subparagraph (A) whose employment has ceased because of an unfair labor practice under section 1015 and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Board;

(9) “exclusive representative” means any labor organization which is certified as the exclusive representative of employees under section 1011;

(10) “General Counsel” means the General Counsel of the Authority;

(11) “labor organization” means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose dealing with the Department concerning grievances (as defined in section 1101) and conditions of employment, but does not include—

(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or disability;

(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

(C) an organization sponsored by the Department; or

(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(12) “management official” means an individual who—

(A) is a chief of mission or principal officer;

(B) is serving in a position to which appointed by the President, by and with the advice and consent of the Senate, or by the President alone;

(C) occupies a position which in the sole judgment of the Secretary is of comparable importance to the offices mentioned in subparagraph (A) or (B);

(D) is serving as a deputy to any individual described by subparagraph (A), (B), or (C);

(E) is assigned to carry out functions of the Inspector General of the Department of State and the Foreign Service under section 209; or

(F) is engaged in the administration of this chapter or in the formulation of the personnel policies and programs of the Department;

(13) “Panel” means the Foreign Service Impasse Disputes Panel, established by section 1010(a); and

(14) “person” means an individual, a labor organization, or an agency to which this chapter applies.

SEC. 1003. [22 U.S.C. 4103] APPLICATION.—(a) This chapter applies only with respect to the Department of State, the Broadcasting Board of Governors, the Agency for International Development, the Department of Agriculture, and the Department of Commerce.

(b) The President may by Executive order exclude any subdivision of the Department from coverage under this chapter if the President determines that—

(1) the subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(2) the provisions of this chapter cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

(c) The President may by Executive order suspend any provision of this chapter with respect to any post, bureau, office, or activity of the Department, if the President determines in writing that the suspension is necessary in the interest of national security because of an emergency.

SEC. 1004. [22 U.S.C. 4104] EMPLOYEE RIGHTS.—(a) Every employee has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal. Each employee shall be protected in the exercise of such right.

(b) Except as otherwise provided under this chapter, such right includes the right—

(1) to act for a labor organization in the capacity of a representative and, in that capacity, to present the views of the labor organization to the Secretary and other officials of the Government, including the Congress, or other appropriate authorities; and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

SEC. 1005. [22 U.S.C. 4105] MANAGEMENT RIGHTS.—(a) Subject to subsection (b), nothing in this chapter shall affect the authority of any management official of the Department, in accordance with applicable law—

(1) to determine the mission, budget, organization, and internal security practices of the Department, and the number of individuals in the Service or in the Department;

(2) to hire, assign, direct, lay off, and retain individuals in the Service or in the Department, to suspend, remove, or take other disciplinary action against such individuals, and to determine the number of members of the Service to be promoted and to remove the name of or delay the promotion of any member in accordance with regulations prescribed under section 605(b);

(3) to conduct reductions in force, and to prescribe regulations for the separation of employees pursuant to such reductions in force conducted under section 611;

(4) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which the operations of the Department shall be conducted;

(5) to fill positions from any appropriate source;

(6) to determine the need for uniform personnel policies and procedures between or among the agencies to which this chapter applies; and

(7) to take whatever actions may be necessary to carry out the mission of the Department during emergencies.

(b) Nothing in this section shall preclude the Department and the exclusive representative from negotiating—

(1) at the election of the Department, on the numbers, types, and classes of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the Department will observe in exercising any function under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any function under this section by such management officials.

SEC. 1006. [22 U.S.C. 4106] FOREIGN SERVICE LABOR RELATIONS BOARD.—(a) There is established within the Federal Labor Relations Authority the Foreign Service Labor Relations Board. The Board shall be composed of 3 members, 1 of whom shall be the Chairman of the Authority, who shall be the Chairperson of the Board. The remaining 2 members shall be appointed by the Chairperson of the Board from nominees approved in writing by the agencies to which this chapter applies, and the exclusive representative (if any) of employees in each such agency. In the event of inability to obtain agreement on a nominee, the Chairperson shall appoint the remaining 2 members from among individuals the Chairperson considers knowledgeable in labor-management relations and the conduct of foreign affairs.

(b) The Chairperson shall serve on the Board while serving as Chairman of the Authority. Of the 2 original members of the Board other than the Chairperson, one shall be appointed for a 2-year

term and one shall be appointed for a 3-year term. Thereafter, each member of the Board other than the Chairperson shall be appointed for a term of 3 years, except that an individual appointed to fill a vacancy occurring before the end of a term shall be appointed for the unexpired term of the member replaced. The Chairperson may at any time designate an alternate Chairperson from among the members of the Authority.

(c) A vacancy on the Board shall not impair the right of the remaining members to exercise the full powers of the Board.

(d) The members of the Board, other than the Chairperson, may not hold another office or position in the Government except as authorized by law, and shall receive compensation at the daily equivalent of the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day they are performing their duties (including traveltime).

(e) The Chairperson may remove any other Board member, upon written notice, for corruption, neglect of duty, malfeasance, or demonstrated incapacity to perform his or her functions, established at a hearing, except where the right to a hearing is waived in writing.

SEC. 1007. [22 U.S.C. 4107] FUNCTIONS OF THE BOARD.—(a) The Board shall—

(1) supervise or conduct elections and determine whether a labor organization has been selected as the exclusive representative by a majority of employees who cast valid ballots and otherwise administer the provisions of this chapter relating to the according of exclusive recognition to a labor organization;

(2) resolve complaints of alleged unfair labor practices;

(3) resolve issues relating to the obligation to bargain in good faith;

(4) resolve disputes concerning the effect, the interpretation, or a claim of breach of a collective bargaining agreement, in accordance with section 1014; and

(5) take any action considered necessary to administer effectively the provisions of this chapter.

(b) Decisions of the Board under this chapter shall be consistent with decisions rendered by the Authority under chapter 71 of title 5, United States Code, other than in cases in which the Board finds that special circumstances require otherwise. Decisions of the Board under this chapter shall not be construed as precedent by the Authority, or any court or other authority, for any decision under chapter 71 of title 5, United States Code.

(c) In order to carry out its functions under this chapter—

(1) the Board shall by regulation adopt procedures to apply in the administration of this chapter; and

(2) the Board may—

(A) adopt other regulations concerning its functions under this chapter;

(B) conduct appropriate inquiries wherever persons subject to this chapter are located;

(C) hold hearings;

(D) administer oaths, take the testimony or deposition of any individual under oath, and issue subpoenas;

(E) require the Department or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action the Board considers appropriate to carry out this chapter; and

(F) consistent with the provisions of this chapter, exercise the functions the Authority has under chapter 71 of title 5, United States Code, to the same extent and in the same manner as is the case with respect to persons subject to chapter 71 of such title.

SEC. 1008. [22 U.S.C. 4108] FUNCTIONS OF THE GENERAL COUNSEL.—The General Counsel may—

(1) investigate alleged unfair labor practices under this chapter,

(2) file and prosecute complaints under this chapter, and

(3) exercise such other powers of the Board as the Board may prescribe.

SEC. 1009. [22 U.S.C. 4109] JUDICIAL REVIEW AND ENFORCEMENT.—(a) Except as provided in section 1014(d), any person aggrieved by a final order of the Board may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of such order in the United States Court of Appeals for the District of Columbia.

(b) The Board may petition the United States Court of Appeals for the District of Columbia for the enforcement of any order of the Board under this chapter and for any appropriate temporary relief or restraining order.

(c) Subsection (c) of section 7123 of title 5, United States Code, shall apply to judicial review and enforcement of actions by the Board in the same manner that it applies to judicial review and enforcement of actions of the Authority under chapter 71 of title 5, United States Code.

(d) The Board may, upon issuance of a complaint as provided in section 1016 charging that any person has engaged in or is engaging in an unfair labor practice, petition the United States District Court for the District of Columbia, for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the Department to carry out its essential functions or if the Board fails to establish probable cause that an unfair labor practice is being committed.

SEC. 1010. [22 U.S.C. 4110] FOREIGN SERVICE IMPASSE DISPUTES PANEL.—(a) There is established within the Federal Labor Relations Authority the Foreign Service Impasse Disputes Panel, which shall assist in resolving negotiating impasses arising in the course of collective bargaining under this chapter. The Chairperson shall select the Panel from among individuals the Chairperson considers knowledgeable in labor-management relations or the conduct of foreign affairs. The Panel shall be composed of 5 members, as follows:

(1) 2 members of the Service (other than a management official, a confidential employee or a labor organization official);

- (2) one individual employed by the Department of Labor;
- (3) one member of the Federal Service Impasses Panel;
- and
- (4) one public member who does not hold any other office or position in the Government.

The Chairperson of the Board shall set the terms of office for Panel members and determine who shall chair the Panel.

(b) Panel members referred to in subsection (a) (3) and (4) shall receive compensation for each day they are performing their duties (including traveltime) at the daily equivalent of the maximum rate payable for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, except that the member who is also a member of the Federal Service Impasses Panel shall not be entitled to pay under this subsection for any day for which he or she receives pay under section 7119(b)(4) of title 5, United States Code. Members of the Panel shall be entitled to travel expenses as provided under section 5703 of title 5, United States Code.

(c)(1) The Panel or its designee shall promptly investigate any impasse presented to it by a party. The Panel shall consider the impasse and shall either—

(A) recommend to the parties to the negotiation procedures for the resolution of the impasse; or

(B) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

(2) If the parties do not arrive at a settlement after assistance by the Panel under paragraph (1), the Panel may—

(A) hold hearings;

(B) administer oaths, take the testimony or deposition of any individual under oath, and issue subpoenas as provided in section 7132 of title 5, United States Code; and

(C) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

(3) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the collective bargaining agreement unless the parties agree otherwise.

SEC. 1011. [22 U.S.C. 4111] EXCLUSIVE RECOGNITION.—(a) The Department shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in a unit who cast valid ballots in the election.

(b) If a petition is filed with the Board—

(1) by any person alleging—

(A) in the case of a unit for which there is no exclusive representative, that 30 percent of the employees in the unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) in the case of a unit for which there is an exclusive representative, that 30 percent of the employees in the unit alleged that the exclusive representative is no longer

the representative of the majority of the employees in the unit; or

(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Board finds on the record of the hearing that a question of representation exists, the Board shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any unit within which a valid election under this subsection has been held during the preceding 12 calendar months or with respect to which a labor organization has been certified as the exclusive representative during the preceding 24 calendar months.

(c) A labor organization which—

(1) has been designated by at least 10 percent of the employees in the unit; or

(2) is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) and shall be placed on the ballot of any election under subsection (b) with respect to the petition.

(d)(1) The Board shall determine who is eligible to vote in any election under this section and shall establish regulations governing any such election, which shall include regulations allowing employees eligible to vote the opportunity to choose—

(A) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

(B) not to be represented by a labor organization.

(2) In any election in which more than two choices are on the ballot, the regulations of the Board shall provide for preferential voting. If no choice receives a majority of first preferences, the Board shall distribute to the two choices having the most first preferences the preferences as between those two of the other valid ballots cast. The choice receiving a majority of preferences shall be declared the winner. A labor organization which is declared the winner of the election shall be certified by the Board as the exclusive representative.

(e) A labor organization seeking exclusive recognition shall submit to the Board and to the Department a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(f) Exclusive recognition shall not be accorded to a labor organization—

(1) if the Board determines that the labor organization is subject to corrupt influences or influence opposed to democratic principles; or

(2) in the case of a petition filed under subsection (b)(1)(A), if there is not credible evidence that at least 30 percent of the employees wish to be represented for the purpose of collective

bargaining by the labor organization seeking exclusive recognition.

(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Board.

SEC. 1012. [22 U.S.C. 4112] EMPLOYEES REPRESENTED.—The employees of the Department shall constitute a single and separate worldwide bargaining unit, from which there shall be excluded—

(1) employees engaged in personnel work in other than a purely clerical capacity; and

(2) employees engaged in criminal or national security investigations or who audit the work of individuals to insure that their functions are discharged honestly and with integrity.

SEC. 1013. [22 U.S.C. 4113] REPRESENTATION RIGHTS AND DUTIES.—(a) A labor organization which has been accorded exclusive recognition is the exclusive representative of, and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit described in section 1012. An exclusive representative is responsible for representing the interests of all employees in that unit without discrimination and without regard to labor organization membership.

(b)(1) An exclusive representative shall be given the opportunity to be represented at—

(A) any formal discussion between one or more representatives of the Department and one or more employees in the unit (or their representatives), concerning any grievance (as defined in section 1101) or any personnel policy or practice or other general condition of employment; and

(B) any examination of an employee by a Department representative in connection with an investigation if—

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee, and

(ii) the employee requests such representation.

(2) The Department shall annually inform employees of their rights under paragraph (1)(B).

(c) The Department and the exclusive representative, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the Department and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 1010, to assist in any negotiation.

(d) The rights of an exclusive representative under this section shall not preclude an employee from—

(1) being represented by an attorney or other representative of the employee's own choosing, other than the exclusive representative, in any grievance proceeding under chapter 11; or

(2) exercising grievance or appeal rights established by law, rule, or regulation.

(e) The duty of the Department and the exclusive representative to negotiate in good faith shall include the obligation—

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary and to avoid unnecessary delays;

(4) for the Department to furnish to the exclusive representative, or its authorized representative, upon request and to the extent not prohibited by law, data—

(A) which is normally maintained by the Department in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or confidential employees, relating to collective bargaining;

(5) to negotiate jointly with respect to conditions of employment applicable to employees in more than one of the agencies authorized to utilize the Foreign Service personnel system, as determined by the heads of such agencies; and

(6) if agreement is reached, to execute, upon the request of any party to the negotiation, a written document embodying the agreed terms, and to take the steps necessary to implement the agreement.

(f)(1) An agreement between the Department and the exclusive representative shall be subject to approval by the Secretary.

(2) The Secretary shall approve the agreement within 30 days after the date of the agreement unless the Secretary finds in writing that the agreement is contrary to applicable law, rule, or regulation.

(3) Unless the Secretary disapproves the agreement by making a finding under paragraph (2), the agreement shall take effect after 30 days from its execution and shall be binding on the Department and the exclusive representative subject to all applicable laws, orders, and regulations.

(g) The Department shall consult with the exclusive representative with respect to Government-wide or multiagency matters affecting the rights, benefits, or obligations of individuals employed in agencies not authorized to utilize the Foreign Service personnel system. The exclusive representative shall be informed of any change proposed by the Department with respect to such matters, and shall be permitted reasonable time to present its views and recommendations regarding such change. The Department shall consider the views and recommendations of the exclusive representative before taking final action on any such change, and shall provide the exclusive representative a written statement of the reasons for taking the final action.

SEC. 1014. [22 U.S.C. 4114] RESOLUTION OF IMPLEMENTATION DISPUTES.—(a) Any dispute between the Department and the exclusive representative concerning the effect, interpretation, or a claim of breach of a collective bargaining agreement shall be resolved

through procedures negotiated by the Department and the exclusive representative. Any procedures negotiated under this section shall—

- (1) be fair and simple,
 - (2) provide for expeditious processing, and
 - (3) include provision for appeal to the Foreign Service Grievance Board by either party of any dispute not satisfactorily settled.
- (b) Either party to an appeal under subsection (a)(3) may file with the Board an exception to the action of the Foreign Service Grievance Board in resolving the implementation dispute. If, upon review, the Board finds that the action is deficient—
- (1) because it is contrary to any law, rule, or regulation;
- or
- (2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;
- the Board may take such action and make such recommendations concerning the Foreign Service Grievance Board action as it considers necessary, consistent with applicable laws, rules, and regulations.

(c) If no exception to a Foreign Service Grievance Board action is filed under subsection (b) within 30 days after such action is communicated to the parties, such action shall become final and binding and shall be implemented by the parties.

(d) Resolutions of disputes under this section shall not be subject to judicial review.

SEC. 1015. [22 U.S.C. 4115] UNFAIR LABOR PRACTICES.—(a) It shall be an unfair labor practice for the Department—

- (1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;
- (2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;
- (3) to sponsor, control, or otherwise assist any labor organization, other than to furnish upon request customary and routine services and facilities on an impartial basis to labor organizations having equivalent status;
- (4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint or petition, or has given any information, affidavit, or testimony under this chapter;
- (5) to refuse to consult or negotiate in good faith with a labor organization, as required under this chapter;
- (6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this chapter;
- (7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of title 5, United States Code) which is in conflict with an applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or
- (8) to fail or refuse otherwise to comply with any provision of this chapter.

(b) It shall be an unfair labor practice for a labor organization—

- (1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;
- (2) to cause or attempt to cause the Department to discriminate against any employee in the exercise by the employee of any right under this chapter;
- (3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment or reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's functions as an employee;
- (4) to discriminate against an employee with regard to the terms and conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or disability;
- (5) to refuse to consult or negotiate in good faith with the Department, as required under this chapter;
- (6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this chapter;
- (7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or to picket the Department in a labor-management dispute (except that any such picketing in the United States which does not interfere with the Department's operations shall not be an unfair labor practice); or
- (B) to condone any unfair labor practice described in subparagraph (A) by failing to take action to prevent or stop such activity;
- (8) to deny membership to any employee in the unit represented by the labor organization except—
 - (A) for failure to tender dues uniformly required as a condition of acquiring and retaining membership, or
 - (B) in the exercise of disciplinary procedures consistent with the organization's constitution or bylaws and this chapter; or
- (9) to fail or refuse otherwise to comply with any provision of this chapter.
- (c) The expression of any personal view, argument, or opinion, or the making of any statement, which—
 - (1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such an election;
 - (2) corrects the record with respect to any false or misleading statement made by any person; or
 - (3) informs employees of the Government's policy relating to labor-management relations and representation,
 if the expression contains no threat of reprisal or force or promise of benefit and was not made under coercive conditions shall not—
 - (A) constitute an unfair labor practice under this chapter, or
 - (B) constitute grounds for the setting aside of any election conducted under this chapter.
- (d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under

this section. Except for matters wherein, under section 1109(a)(2), an employee has an option of using the grievance procedure under chapter 11 or an appeals procedure, issues which can be raised under section 1014 or chapter 11 may, in the discretion of the aggrieved party, be raised either under section or chapter or else raised as an unfair labor practice under this section, but may not be raised both under this section and under section 1014 or chapter 11.

SEC. 1016. [22 U.S.C. 4116] PREVENTION OF UNFAIR LABOR PRACTICES.—(a) If the Department or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the Department or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

(b) Any complaint under subsection (a) shall contain a notice—

- (1) of the charge;
- (2) that a hearing will be held before the Board (or any member thereof or before an individual employed by the Board and designated for such purpose); and
- (3) of the time and place fixed for the hearing.

(c) The labor organization or Department involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(d)(1) Except as provided in paragraph (2), no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Board.

(2) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in paragraph (1) by reason of—

(A) any failure of the Department or labor organization against which the charge is made to perform a duty owed to the person, or

(B) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(e) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(f) The Board (or any member thereof or any individual employed by the Board and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of title

5, United States Code, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Board, in its discretion, may upon notice receive further evidence or hear argument.

(g) If the Board (or any member thereof or any individual employed by the Board and designated for such purpose) determines after any hearing on a complaint under subsection (f) that the preponderance of the evidence received demonstrates that the Department or labor organization named in the complaint has engaged in or is engaged in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the Department or labor organization an order—

(1) to cease and desist from any such unfair labor practice in which the Department or labor organization is engaged;

(2) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Board and requiring that the agreement, as amended, be given retroactive effect;

(3) requiring reinstatement of an employee with backpay in accordance with section 5596 of title 5, United States Code; or

(4) including any combination of the actions described in paragraphs (1) through (3) or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the Department (as provided in section 5596 of title 5, United States Code) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(h) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the Department or labor organization named in the complaint has engaged in or is engaged in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

SEC. 1017. [22 U.S.C. 4117] STANDARDS OF CONDUCT FOR LABOR ORGANIZATIONS.—(a) The Department shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b), an organization is not required to prove that it is free from such influences if it is subject to a governing requirement adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices, including—

(A) provisions for periodic elections to be conducted subject to recognized safeguards, and

(B) provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the gov-

erning rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) A labor organization may be required to furnish evidence of its freedom from corrupt influences opposed to basic democratic principles if there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from, or is subject to other sanction by, a parent labor organization, or federation of organizations with which it has been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a); or

(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and others employed by the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary of Labor shall prescribe such regulations as are necessary to carry out this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as the Assistant Secretary considers appropriate to carry out the policies of this section.

(e)(1) Notwithstanding any other provision of this chapter—

(A) participation in the management of a labor organization for purposes of collective bargaining or acting as a representative of a labor organization for such purposes is prohibited under this chapter—

(i) on the part of any management official or confidential employee;

(ii) on the part of any individual who has served as a management official or confidential employee during the preceding two years; or

(iii) on the part of any other employee if the participation or activity would result in a conflict of interest or apparent conflict of interest or would otherwise be incompatible with law or with the official functions of such employee; and

(B) service as a management official or confidential employee is prohibited on the part of any individual having participated in the management of a labor organization for purposes of collective bargaining or having acted as a representative of a labor organization during the preceding two years.

(2) For the purposes of paragraph (1)(A)(ii) and paragraph (1)(B), the term “management official” does not include—

- (A) any chief of mission;
- (B) any principal officer or deputy principal officer;
- (C) any administrative or personnel officer abroad; or
- (D) any individual described in section 1002(12) (B), (C), or (D) who is not involved in the administration of this chapter or in the formulation of the personnel policies and programs of the Department.

(f) If the Board finds that any labor organization has willfully and intentionally violated section 1015(b)(7) by omission or commission with regard to any strike, work stoppage, slowdown, the Board shall—

- (1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or
- (2) take any other appropriate disciplinary action.

SEC. 1018. [22 U.S.C. 4118] ADMINISTRATIVE PROVISIONS.—(a) If the Department has received from any individual a written assignment which authorizes the Department to deduct from the salary of that individual amounts for the payment of regular and periodic dues of the exclusive representative, the Department shall honor the assignment. Any such assignment shall be made at no cost to the exclusive representative or the individual. Except as provided in subsection (b), any such assignment may not be revoked for a period of one year from its execution.

(b) An assignment for deduction of dues shall terminate when—

- (1) the labor organization ceases to be the exclusive representative;
- (2) the individual ceases to receive a salary from the Department as a member of the Service; or
- (3) the individual is suspended or expelled from membership in the exclusive representative.

(c) During any period when no labor organization is certified as the exclusive representative of employees in the Department, the Department shall have the duty to negotiate with a labor organization which has filed a petition under section 1011(b)(1)(A) alleging that 10 percent of the employees in the Department have membership in the organization if the Board has determined that the petition is valid. Negotiations under this subsection shall be concerned solely with the deduction of dues of the labor organization from the salary of the individuals who are members of the labor organization and who make a voluntary allotment for that purpose. Any agreement between the Department and a labor organization under this subsection shall terminate upon the certification of an exclusive representative of any employees to whom the agreement applies.

(d) The following provisions shall apply to the use of official time:

(1) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceedings, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this paragraph shall not exceed the number of individuals designated as representing the Department for such purposes.

(2) Any activities performed by any employee relating to the internal business of the labor organization, including the solicitation of membership, elections of labor organization officials, and collection of dues, shall be performed during the time the employee is in a nonduty status.

(3) Except as provided in paragraph (1), the Board shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Board shall be authorized official time for such purpose during the time the employee would otherwise be in a duty status.

(4) Except as provided in paragraphs (1), (2), and (3), any employee representing an exclusive representative, or engaged in any other matter covered by this chapter, shall be granted official time in any amount the Department and the exclusive representative agree to be reasonable, necessary, and in the public interest.

CHAPTER 11—GRIEVANCES

SEC. 1101. [22 U.S.C. 4131] DEFINITION OF GRIEVANCE.—(a)(1) Except as provided in subsection (b), for purposes of this chapter, the term “grievance” means any act, omission, or condition subject to the control of the Secretary which is alleged to deprive a member of the Service who is a citizen of the United States (other than a United States citizen employed under section 311 who is not a family member) of a right or benefit authorized by law or regulation or which is otherwise a source of concern or dissatisfaction to the member, including—

(A) separation of the member allegedly contrary to laws or regulations, or predicated upon alleged inaccuracy, omission, error, or falsely prejudicial character of information in any part of the official personnel record of the member;

(B) other alleged violation, misinterpretation, or misapplication of applicable laws, regulations, or published policy affecting the terms and conditions of the employment or career status of the member;

(C) allegedly wrongful disciplinary action against the member;

(D) dissatisfaction with respect to the working environment of the member;

(E) alleged inaccuracy, omission, error, or falsely prejudicial character of information in the official personnel record of the member which is or could be prejudicial to the member;

(F) action alleged to be in the nature of reprisal or other interference with freedom of action in connection with participation by the member in procedures under this chapter;

(G) alleged denial of an allowance, premium pay, or other financial benefit to which the member claims entitlement under applicable laws or regulations; and

(H) any discrimination prohibited by—

(i) section 717 of the Civil Rights Act of 1964,

(ii) section 6(d) of the Fair Labor Standards Act of 1938,

(iii) section 501 of the Rehabilitation Act of 1973,

(iv) sections 12 and 15 of the Age Discrimination in Employment Act of 1967, or

(v) any rule, regulation, or policy directive prescribed under any provision of law described in clauses (i) through (iv).

(2) The scope of grievances described in paragraph (1) may be modified by written agreement between the Department and the labor organization accorded recognition as the exclusive representative under chapter 10 (hereinafter in this chapter referred to as the “exclusive representative”).

(b) For purposes of this chapter, the term “grievance” does not include—

(1) an individual assignment of a member under chapter 5, other than an assignment alleged to be contrary to law or regulation;

(2) the judgment of a selection board established under section 602, a tenure board established under section 306(b), or any other equivalent body established by laws or regulations which similarly evaluates the performance of members of the Service on a comparative basis;

(3) the expiration of a limited appointment, the termination of a limited appointment under section 612, or the denial of a limited career extension or of a renewal of a limited career extension under section 607(b); or

(4) any complaint or appeal where a specific statutory hearing procedure exists, except as provided in section 1109(a)(2).

Nothing in this subsection shall exclude any act, omission, or condition alleged to violate any law, rule, regulation, or policy directive referred to in subsection (a)(1)(H) from such term.

(c) This chapter applies only with respect to the Department of State, Broadcasting Board of Governors²⁵, the Agency for International Development, the Department of Agriculture, and the Department of Commerce.

SEC. 1102. [22 U.S.C. 4132] GRIEVANCES CONCERNING FORMER MEMBERS.—Within the time limitations of section 1104, a former member of the Service or the surviving spouse (or, if none, another member of the family) of a deceased member or former member of the Service may file a grievance under this chapter only with respect to allegations described in section 1101(a)(1)(G).

²⁵ So in law. Should probably insert “the” before “Broadcasting”.

SEC. 1103. [22 U.S.C. 4133] FREEDOM OF ACTION.—(a) Any individual filing a grievance under this chapter (hereinafter in this chapter referred to as the “grievant”), and any witness, labor organization, or other person involved in a grievance proceeding, shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them.

(b)(1) The grievant has the right to a representative of his or her own choosing at every stage of the proceedings under this chapter.

(2) In any case where the grievant is a member of a bargaining unit represented by an exclusive representative, but is not represented in the grievance by that exclusive representative, the exclusive representative shall have the right to appear during the grievance proceedings.

(3) The grievant, and any representative of the grievant who is a member of the Service or employee of the Department, shall be granted reasonable periods of administrative leave to prepare and present the grievance and to attend proceedings under this chapter.

(c) Any witness who is a member of the Service or employee of the Department shall be granted reasonable periods of administrative leave to appear and testify at any proceedings under this chapter.

(d)(1) No record of—

(A) a determination by the Secretary to reject a recommendation of the Foreign Service Grievance Board,

(B) a finding by the Grievance Board against the grievant, or

(C) the fact that a grievance proceeding is pending or has been held,

shall be entered in the personnel records of the grievant (except by order of the Grievance Board as a remedy for the grievance) or those of any other individual connected with the grievance. Nothing in this subsection shall prevent a grievant from placing a rebuttal to accompany a record of disciplinary action in such grievant’s personnel records nor prevent the Department from including a response to such rebuttal, including documenting those cases in which the Board has reviewed and upheld the discipline.

(2) The Department shall maintain records pertaining to grievances under appropriate safeguards to preserve confidentiality.

(3) The Foreign Service Grievance Board may enforce compliance with the requirements of paragraphs (1) and (2).

(e) The Department will use its best endeavors to expedite security clearance procedures whenever necessary to assure a fair and prompt resolution of a grievance.

SEC. 1104. [22 U.S.C. 4134] TIME LIMITATIONS.—(a) A grievance is forever barred under this chapter unless it is filed with the Department not later than two years after the occurrence giving rise to the grievance or, in the case of a grievance with respect to the grievant’s rater or reviewer, one year after the date on which the grievant ceased to be subject to rating or review by that person, but in no case more than three years after the occurrence giving rise to the grievance. There shall be excluded from the computation of any such period any time during which, as determined by the

Foreign Service Grievance Board, the grievant was unaware of the grounds for the grievance and could not have discovered such grounds through reasonable diligence.

(b) If a grievance is not resolved under Department procedures (which have been negotiated with the exclusive representative, if any) within ninety days after it is filed with the Department, the grievant or the exclusive representative (on behalf of a grievant who is a member of the bargaining unit) shall be entitled to file a grievance with the Foreign Service Grievance Board for its consideration and resolution.

(c)(1) In applying subsection (a) with respect to an alleged violation of a law, rule, regulation, or policy directive referred to in section 1101(a)(1)(H), the reference to “2 years” shall be deemed to read “180 days”, subject to paragraph (2).

(2) If the occurrence or occurrences giving rise to the grievance are alleged to have occurred while the grievant was assigned to a post abroad, the 180-day period provided for under paragraph (1) shall not commence until the earlier of—

(A) the date as of which the grievant is no longer assigned to such post; or

(B) the expiration of the 18-month period beginning on the date of the occurrence giving rise to the grievance or the last such occurrence, as the case may be.

SEC. 1105. [22 U.S.C. 4135] FOREIGN SERVICE GRIEVANCE BOARD.—(a) There is established the Foreign Service Grievance Board (hereinafter in this chapter referred to as the “Board”). The Board shall consist of no fewer than 5 members who shall be independent, distinguished citizens of the United States, well known for their integrity, who are not employees of the Department or members of the Service.

(b) The Chairperson and other members of the Board shall be appointed by the Secretary of State, from nominees approved in writing by the agencies to which this chapter applies and the exclusive representative (if any) for each such agency. Each member of the Board shall be appointed for a term of 2 years, subject to renewal with the same written approvals required for initial appointment. In the event of a vacancy on the Board, an appointment for the unexpired term may be made by the Secretary of State in accordance with the procedures specified in this section. In the event of inability to obtain agreement on a nominee, each such agency and exclusive representative shall select 2 nominees and shall, in an order determined by lot, in turn strike a name from a list of such nominees until only one name remains. For purposes of this section, the nominee whose name remains shall be deemed to be approved in writing by each such agency head and exclusive representative.

(c) Members of the Board who are not employees of the Government shall be paid for each day they are performing their duties (including traveltime) at the daily equivalent of the maximum rate payable for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code.

(d) The Secretary of State may, upon written notice, remove a Board member for corruption, neglect of duty, malfeasance, or demonstrated incapacity to perform his or her functions, established at

a hearing (unless the right to a hearing is waived in writing by the Board member).

(e) The 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 travel and travel-related expenses of a grievant, shall be paid out of funds appropriated to the Department for obligation and expenditure by the Board. At the request of the Board, employees of the Department and members of the Service may be assigned as staff employees for the Board. Within the limits 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 individuals so appointed or assigned shall be responsible solely to the Board, and the Board shall prepare the performance evaluation reports for such individuals. The records of the Board shall be maintained by the Board and shall be separate from all other records of the Department of State under appropriate safeguards to preserve confidentiality.

(f)(1) Not later than March 1 of each year, the Chairman of the Foreign Service Grievance Board shall prepare a report summarizing the activities of the Board during the previous calendar year. The report shall include—

- (A) the number of cases filed;
- (B) the types of cases filed;
- (C) the number of cases on which a final decision was reached, as well as data on the outcome of cases, whether affirmed, reversed, settled, withdrawn, or dismissed;
- (D) the number of oral hearings conducted and the length of each such hearing;
- (E) the number of instances in which interim relief was granted by the Board; and
- (F) data on the average time for consideration of a grievance, from the time of filing to a decision of the Board.

(2) The report required under paragraph (1) shall be submitted to the Director General of the Foreign Service and the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

SEC. 1106. [22 U.S.C. 4136] BOARD PROCEDURES.—The Board may adopt regulations concerning its organization and procedures. Such regulations shall include provision for the following:

(1) The Board shall conduct a hearing at the request of a grievant in any case which involves—

- (A) disciplinary action or the retirement of a grievant from the Service under section 607 or 608, or
- (B) issues which, in the judgment of the Board, can best be resolved by a hearing or presentation of oral argument.

(2) The grievant, the representatives of the grievant, the exclusive representative (if the grievant is a member of the bargaining unit represented by the exclusive representative), and the representatives of the Department are entitled to be present at the hearing. The 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.

Testimony at a hearing shall be given under oath, which any Board member or individual designated by the Board shall have authority to administer.

(3) Each party (including an exclusive representative appearing in the proceedings) shall be entitled to examine and cross-examine witnesses at the hearing or by deposition and to serve interrogatories upon another party and have such interrogatories answered by the other party unless the Board finds such interrogatory irrelevant, immaterial, or unduly repetitive. Upon request of the Board, or upon a request of the grievant deemed relevant and material by the Board, an 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 paid by the Department.

(4) During any hearing held by the Board, any oral or documentary evidence may be received, but the Board shall exclude any irrelevant, immaterial, or unduly repetitious evidence, as determined under section 556 of title 5, United States Code.

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

(6) In those grievances in which the Board does not hold a hearing, the Board shall afford to each party the opportunity to review and to supplement, by written submissions, the record of proceedings prior to the decision by the Board. The decision of the Board shall be based exclusively on the record of proceedings.

(7) 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. References in this chapter to the Board shall be considered to be references to a panel or member of the Board where appropriate. All members of the Board shall act as impartial individuals in considering grievances.

(8) If the Board determines that the Department is considering the involuntary separation of the grievant (other than an involuntary separation for cause under section 610(a)), 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 Department shall suspend such action until the date which is one year after such determination or until the Board has ruled upon the grievance, whichever comes first. The Board shall extend the one-year limitation under the preceding sentence and the Department shall continue to suspend such action, if the Board determines that the agency or the Board is responsible for the delay in the resolution of the grievance. The Board may also extend the 1-year limit if it determines that the delay is due to the complexity of the case, the unavailability of witnesses or to cir-

cumstances beyond the control of the agency, the Board or the grievant. Notwithstanding such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude the grievant from official premises or from the performance of specified functions when such exclusion is determined in writing to be essential to the functioning of the post or office to which the grievant is assigned.

(9) The Board may reconsider any decision upon presentation of newly discovered or previously unavailable material evidence.

SEC. 1107. [22 U.S.C. 4137] BOARD DECISIONS.—(a) Upon completion of its proceedings, 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, and shall include findings of fact and a statement of the reasons for the decision of the Board.

(b) If the Board finds that the grievance is meritorious, the Board shall have the authority to direct the Department—

(1) to correct any official personnel record relating to the grievant which the Board finds to be inaccurate or erroneous, to have an omission, or to contain information of a falsely prejudicial character;

(2) to reverse a decision denying the grievant compensation or any other perquisite of employment authorized by laws or regulations when the Board finds that such decision was arbitrary, capricious, or contrary to laws or regulations;

(3) to retain in the Service a member whose separation would be in consequence of the matter by which the member is aggrieved;

(4) to reinstate the grievant, and to grant the grievant back pay in accordance with section 5596(b)(1) of title 5, United States Code;

(5) to pay reasonable attorney fees to the grievant to the same extent and in the same manner as such fees may be required by the Merit Systems Protection Board under section 7701(g) of title 5, United States Code; and

(6) to take such other remedial action as may be appropriate under procedures agreed to by the Department and the exclusive representative (if any).

(c) Except as provided in subsection (d), decisions of the Board under this chapter shall be final, subject only to judicial review as provided in section 1110.

(d)(1) If the Board finds that the grievance is meritorious and that remedial action should be taken that relates directly to promotion, tenure or assignment of the grievant or to other remedial action not otherwise provided for in this section, or if the Board finds that the evidence before it warrants disciplinary action against any employee of the Department or member of the Service, it shall make an appropriate recommendation to the Secretary. The Secretary shall make a written decision on the recommendation of the Board within 30 days after receiving the recommendation. The Secretary shall implement the recommendation of the Board except to the extent that, in a decision made within that 30-day period, the Secretary rejects the recommendation in whole or in part on the basis of a determination that implementation of the rec-

ommendation would be contrary to law or would adversely affect the foreign policy or national security of the United States. If the Secretary rejects the recommendation in whole or in part, the decision shall specify the reasons for such action. Pending the decision of the Secretary, there shall be no ex parte communication concerning the grievance between the Secretary, and any person involved in the proceedings of the Board. The Secretary shall, however, have access to the entire record of the proceedings of the Board.

(2) A recommendation under paragraph (1) shall, for purposes of section 1110 of this Act, be considered a final action upon the expiration of the 30-day period referred to in such paragraph, except to the extent that it is rejected by the Secretary by an appropriate written decision.

(3)(A) If the Secretary makes a written decision under paragraph (1) rejecting a recommendation in whole or in part on the basis of a determination that implementing such recommendation would be contrary to law, the Secretary shall, within the 30-day period referred to in such paragraph—

- (i) submit a copy of such decision to the Board; and
- (ii) request that the Board reconsider its recommendation or, if less than the entirety is rejected, that the Board reconsider the portion rejected.

(B)(i) Within 30 days after receiving a request under subparagraph (A), the Board shall, after reviewing the Secretary's decision, make a recommendation to the Secretary either confirming, modifying, or vacating its original recommendation or, if less than the entirety was rejected, the portion involved.

(ii) Reconsideration under this subparagraph shall be limited to the question of whether implementing the Board's original recommendation, either in whole or in part, as applicable, would be contrary to law.

(C) A recommendation made under subparagraph (B) shall be considered a final action for purposes of section 1110 of this Act, and shall be implemented by the Secretary.

(e)(1) The Board shall maintain records of all grievances awarded in favor of the grievant in which the grievance concerns gross misconduct by a supervisor. Subject to paragraph (2), the Committee on Foreign Relations of the Senate shall be provided with a copy of the grievance decision whenever such a supervisor is nominated for any position requiring the advice and consent of the Senate and the Board shall provide access to the entire record of any proceedings of the Board concerning such a grievance decision to any Member of the Committee on Foreign Relations upon a request by the Chairman or Ranking Minority Member of such committee.

(2)(A) Except as provided in subparagraph (B), all decisions, proceedings, and other records disclosed pursuant to paragraph (1) shall be treated as confidential and may be disclosed only to Committee members and appropriate staff.

(B) Whenever material is provided to the Committee or a Member thereof pursuant to paragraph (1), the Board shall, at the same time, provide a copy of all such material to the supervisor who is the subject of such material.

(C) A supervisor who is the subject of records disclosed to the committee pursuant to this subsection shall have the right to review such record and provide comments to the Committee concerning such record. Such comments shall be treated in a confidential manner.

(f) The Board shall, with respect to any grievance based on an alleged violation of a law, rule, regulation, or policy directive referred to in section 1101(a)(1)(H), apply the substantive law that would be applied by the Equal Employment Opportunity Commission if a charge or claim alleging discrimination under such law, rule, regulation, or policy directive had been filed with the commission.

SEC. 1108. [22 U.S.C. 4138] ACCESS TO RECORDS.—(a) If a grievant is denied access to any agency record prior to or during the consideration of the grievance by the Department, the grievant may raise such denial before the Board in connection with the grievance.

(b) In considering a grievance, the Board shall have access to any agency record as follows:

(1)(A) The Board shall request access to any agency record which the grievant requested to substantiate the grievance if the Board determines that such record may be relevant and material to the grievance.

(B) The Board may request access to any other agency record which the Board determines may be relevant and material to the grievance.

(2) Any agency shall make available to the Board any agency record requested under paragraph (1) unless the head or deputy head of such agency personally certifies in writing to the Board that disclosure of the record to the Board and the grievant would adversely affect the foreign policy or national security of the United States or that such disclosure is prohibited by law. If such a certification is made with respect to any record, the agency shall supply to the Board a summary or extract of such record unless the reasons specified in the preceding sentence preclude such a summary or extract.

(c) If the Board determines that an agency record, or a summary or extract of a record, made available to the Board under subsection (b) is relevant and material to the grievance, the agency concerned shall make such record, summary, or extract, as the case may be, available to the grievant.

(d) In considering a grievance, the Board may take into account the fact that the grievant or the Board was denied access to an agency record which the Board determines is or may be relevant and material to the grievance.

(e) The grievant in any case decided by the Board shall have access to the record of the proceedings and the decision of the Board.

SEC. 1109. [22 U.S.C. 4139] RELATIONSHIP TO OTHER REMEDIES.—(a)(1) A grievant may not file a grievance with the Board 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, other than under sec-

tion 1214 or 1221 of title 5, United States Code, and the matter has been carried to final decision under such provision on its merits or is still under consideration.

(2) If a grievant is not prohibited from filing a grievance under paragraph (1), the grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief under chapter 12 of title 5, United States Code, or a regulation or Executive order other than under this chapter. An election of remedies under this subsection shall be final upon the acceptance of jurisdiction by the Board.

(3) This subsection shall not apply to any grievance with respect to which subsection (b) applies.

(b)(1) With respect to a grievance based on an alleged violation of a law, rule, regulation, or policy directive referred to in section 1101(a)(1)(H), a grievant may either—

(A) file a grievance under this chapter, or

(B) initiate in writing a proceeding under another provision of law, regulation, or Executive order that authorizes relief, but not both.

(2) A grievant shall be considered to have exercised the option under paragraph (1) as soon as the grievant timely either—

(A) files a grievance under this chapter, or

(B) initiates in writing a proceeding under such other provision of law, regulation, or Executive order.

SEC. 1110. [22 U.S.C. 4140] JUDICIAL REVIEW.—(a) Any aggrieved party may obtain judicial review of a final action of the Secretary or the Board on any grievance in the district courts of the United States in accordance with the standards set forth in chapter 7 of title 5, United States Code, if the request for judicial review is filed not later than 180 days after the final action of the Secretary or the Board (or in the case of an aggrieved party who is posted abroad at the time of the final action of the Secretary or the Board, if the request for judicial review is filed not later than 180 days after the aggrieved party's return to the United States). Section 706 of title 5, United States Code, shall apply without limitation or exception. This subsection shall not apply to any grievance with respect to which subsection (b) applies.

(b)(1) For purposes of this subsection, the term “aggrieved party” means a grievant.

(2) With respect to a grievance based on an alleged violation of a law, rule, regulation, or policy directive referred to in section 1101(a)(1)(H), judicial review of whether the act, omission, or condition that is the basis of the grievance violates such law, rule, regulation, or policy directive may be obtained by an aggrieved party only if such party commences a civil action, not later than 90 days after such party receives notice of the final action of the Secretary or the Board, in an appropriate district court of the United States for de novo review.

CHAPTER 12—FOREIGN SERVICE INTERNSHIP PROGRAM

SEC. 1201. [22 U.S.C. 4141] STATEMENT OF POLICY; OBJECTIVES.

(a) **STATEMENT OF POLICY.**—Consistent with the findings of section 101, the Foreign Service of the United States should be representative of the American people. In order to facilitate and encourage the entry into the Foreign Service of individuals who meet the rigorous requirements of the Service, while ensuring a Foreign Service system which reflects the cultural and ethnic diversity of the United States, intensive recruitment efforts are mandated. This is particularly true for Native Americans, African Americans, and Hispanic Americans, where other affirmative action and equal opportunity efforts have not been successful in attracting the ablest applicants for entry into the Foreign Service. The United States remains committed to equal opportunity and to a Foreign Service system operated on the basis of merit principles.

(b) **OBJECTIVES.**—The objective of this chapter is to strengthen and improve the Foreign Service of the United States through the establishment of a Foreign Service Internship Program. The program shall promote the Foreign Service as a viable and rewarding career opportunity for qualified individuals who reflect the cultural and ethnic diversity of the United States through a highly selective internship program for students enrolled in institutions of higher education.

SEC. 1202. [22 U.S.C. 4141a] FOREIGN SERVICE INTERNSHIP PROGRAM.

(a) **ESTABLISHMENT.**—In consultation with the heads of other agencies utilizing the Foreign Service system, the Secretary of State shall establish a Foreign Service internship program to carry out the objectives of this chapter in accordance with the provisions of this chapter.

(b) **FOREIGN SERVICE INTERNSHIP PROGRAM.**—The program shall introduce interns to the practice of diplomacy and the unique rewards of the Foreign Service. The program shall consist of three successive summer internships of not less than eight weeks duration in each year to be completed over the course of not more than four years. Special emphasis shall be given to preparing the intern for the Foreign Service examination process. In each year not less than 10 interns shall enter the program.

(c) **ELIGIBILITY TO PARTICIPATE.**—

(1) Students enrolled full-time in institutions of higher education from groups which are underrepresented in the Foreign Service in terms of the cultural and ethnic diversity of the Foreign Service and for whom equal opportunity and affirmative action recruitment efforts have not been successful in achieving balanced representation in appointments to the Foreign Service shall be eligible to be interns in programs under this chapter.

(2) An intern shall have successfully completed not less than one academic year of study at an institution of higher education to be admitted to the program. In each succeeding year of participation an intern shall have completed an additional year of undergraduate or graduate study and shall maintain an exemplary record of academic achievement.

(3) In selecting interns, the Secretary shall consider only the ablest students of superior ability selected on the basis of demonstrated achievement and exceptional promise whose academic records reflect the requisite standards of performance necessary for the Foreign Service.

(d) SUMMER INTERNSHIPS.—

(1) The primary focus of the first internship shall be the study of international relations, the functions of the Department of State and other agencies which utilize the Foreign Service system, and the nature of the Foreign Service. The internship shall be held in Washington, District of Columbia, at the Department of State. As appropriate, the Secretary shall utilize the personnel and facilities of the Foreign Service Institute.

(2) The second internship shall be, principally, an assignment to a specific bureau of the Department of State. Emphasis shall be on providing insight into the economic and political functional areas.

(3) The third internship shall be an assignment to a United States mission abroad in the political or economic area.

(4) The first and second internships may include a detail to the Congress.

(e) ADMINISTRATION.—The Secretary of State shall determine the academic requirements, other selection criteria, and standards for successful completion of each internship period. The Secretary shall be responsible for the design, implementation, and operation of the program.

(f) MENTORS.—Each intern shall be assigned a career Foreign Service officer as a mentor. The mentor shall act as a counselor and advisor throughout each summer internship and as a personal Foreign Service contact throughout the period of participation in the program. In the assignment of mentors, the Secretary shall give preference to Foreign Service officers who volunteer for such assignment and who may be role models for the interns.

(g) COMPENSATION.—Interns shall be compensated at a rate determined by the Secretary which shall not be less than the compensation of comparable summer interns at the Department of State. As determined by the Secretary, for the purposes of travel, housing, health insurance, and other appropriate benefits, interns shall be considered employees of the Foreign Service during each internship period.

(h) STUDY OF FOREIGN SERVICE EXAMINATION.—The Secretary of State shall study the feasibility of administering the Foreign Service examination in separate segments over several years. Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit a report summarizing the findings of such a study to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

SEC. 1203. [22 U.S.C. 4141b] REPORT TO CONGRESS.

Together with the annual submission required under section 105(d)(2), the Secretary of State shall submit a report to the Congress concerning the implementation of the program established

under this chapter. Such report accompanied by such other information as the Secretary considers appropriate, shall include specific information concerning the completion rates of interns in the program, interns who took the Foreign Service examination, interns who passed the examination, former interns appointed to the Foreign Service, assignments of former interns, and the advancement of former interns through the Foreign Service System.

SEC. 1204. [22 U.S.C. 4141c] AUTHORIZATION OF APPROPRIATIONS.

Of the amounts authorized to be appropriated by section 101(a)(1) of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991, \$100,000 for the fiscal year 1990 and \$150,000 for the fiscal year 1991 shall be available only to carry out this chapter. Sums appropriated for the purposes of this chapter are authorized to remain available until expended.

**TITLE II—TRANSITION, AMENDMENTS TO OTHER LAWS,
AND MISCELLANEOUS PROVISIONS**

CHAPTER 1—TRANSITION

SEC. 2101. [22 U.S.C. 4151] PAY AND BENEFITS PENDING CONVERSION.—Until converted under the provisions of this chapter, any individual who is in the Foreign Service before the effective date of this Act and is serving under an appointment as a Foreign Service officer, Foreign Service information officer, Foreign Service Reserve officer with limited or unlimited tenure, or Foreign Service staff officer or employee, shall be treated for purposes of salary, allowances, and other matters as if such individual had been converted under section 2102 or 2103, as the case may be, on the effective date of this Act, except that any adjustment of salary under this section shall take effect—

(1) in the case of an individual who is in the Foreign Service on the date of enactment of this Act, on the first day of the first pay period which begins on or after October 1, 1980, and

(2) in the case of an individual who is appointed to the Foreign Service after the date of enactment of this Act, on the date such appointment becomes effective.

SEC. 2102. [22 U.S.C. 4152] CONVERSION TO THE FOREIGN SERVICE SCHEDULE.—(a) Not later than 120 days after the effective date of this Act, the Secretary shall, in accordance with section 2106, convert to the appropriate class in the Foreign Service Schedule established under section 403 of this Act those individuals in the Foreign Service who are serving immediately before the effective date of this Act under appointments at or below class 3 of the schedule established under section 412 or 414 of the Foreign Service Act of 1946, or at any class in the schedule established under section 415 of such Act, as—

(1) Foreign Service officers, or

(2) Foreign Service Reserve officers with limited or unlimited tenure, and Foreign Service staff officers or employees, who the Secretary determines are available for worldwide assignment.

(b) Not later than 3 years after the effective date of this Act, Foreign Service Reserve officers and staff officers and employees

who the Secretary determines under subsection (a)(2) are not available for worldwide assignment shall also be converted, in accordance with section 2106, to the appropriate class in the Foreign Service Schedule established under section 403 if—

(1) the Secretary certifies that there is a need for their services in the Foreign Service; and

(2) they agree in writing to accept availability for worldwide assignment as a condition of continued employment.

SEC. 2103. [22 U.S.C. 4153] CONVERSION TO THE SENIOR FOREIGN SERVICE.—(a) Foreign Service officers and Foreign Service Reserve officers with limited or unlimited tenure who, immediately before the effective date of this Act, are serving under appointments at class 2 or a higher class of the schedule established under section 412 or 414 of the Foreign Service Act of 1946 may at any time within 120 days after such date submit to the Secretary a written request for appointment to the Senior Foreign Service.

(b) Except as provided in subsection (d), if a request is submitted under subsection (a) by a Foreign Service Reserve officer with limited tenure, the Secretary shall grant to such officer a limited appointment to the Senior Foreign Service in the appropriate class established under section 402 of this Act.

(c) If a request is submitted under subsection (a) by a Foreign Service officer or, except as provided in subsection (d), a Foreign Service Reserve officer with unlimited tenure, the Secretary shall recommend to the President a career appointment of such officer, by and with the advice and consent of the Senate, to the Senior Foreign Service in the appropriate class established under section 402 of this Act.

(d) If the Secretary determines that a Foreign Service Reserve officer with limited or unlimited tenure who submits a request under subsection (a) is not available for worldwide assignment, an appointment under subsection (b) or a recommendation for appointment under subsection (c) shall be made only if—

(1) the Secretary certifies that there is a need for the services of such officer in the Senior Foreign Service; and

(2) such officer agrees in writing to accept availability for worldwide assignment as a condition of continued employment.

(e) If a Foreign Service officer or a Foreign Service Reserve officer who is eligible to submit a request under subsection (a) submits a written request for appointment to the Senior Foreign Service to the Secretary more than 120 days after the effective date of this Act and before the end of the 3-year period beginning on such effective date, the Secretary (in the case of a Foreign Service Reserve officer with limited tenure) may grant a limited appointment to, or (in the case of a Foreign Service officer or Foreign Service Reserve officer with unlimited tenure) may recommend to the President a career appointment of, the requesting officer to the appropriate class established under section 402 of this Act, subject to the conditions specified in subsection (d) and such other conditions as the Secretary may prescribe consistent with the provisions of chapter 6 of title I of this Act relating to promotion into the Senior Foreign Service.

(f) Any officer of the Foreign Service who is eligible to submit a request under subsection (a) and—

(1) who does not submit a request under subsection (a), or
 (2) who submits such a request more than 120 days after the effective date of this Act and is not appointed to the Senior Foreign Service for any reason other than failure to meet the conditions specified in subsection (d),
 may not remain in the Foreign Service for more than 3 years after the effective date of this Act. During such period, the officer shall be subject to the provisions of title I of this Act applicable to members of the Senior Foreign Service, except that such officer shall not be eligible to compete for performance pay under section 405 and shall not be eligible for a limited career extension as described in section 607(b). Upon separation from the Service, any such officer who is a participant in the Foreign Service Retirement and Disability System shall be entitled to retirement benefits on the same basis as a member retired from the Senior Foreign Service under section 607(c)(1), and section 609(a)(2)(B) shall be deemed to apply to such officer.

SEC. 2104. [22 U.S.C. 4154] CONVERSION FROM THE FOREIGN SERVICE.—(a) In the case of any individual in the Foreign Service who, immediately before the effective date of this Act, is serving under an appointment described in section 2102(a) or 2103(a) and who is not converted under section 2102 or section 2103 because such individual does not meet the conditions specified in section 2102(b) or 2103(d), the Secretary shall, not later than 3 years after the effective date of this Act, provide that—

(1) the position such individual holds shall be subject to chapter 51 and subchapter III of chapter 53 of title 5, United States Code;

(2) such individual shall be appointed to such position without competitive examination; and

(3) such position shall be considered to be in the competitive service so long as the individual continues to hold that position;

except that any such individual who meets the eligibility requirements for the Senior Executive Service and who elects to join that Service shall be converted by the Secretary to the Senior Executive Service in the appropriate rate of basic pay established under section 5382 of title 5, United States Code.

(b) In the case of individuals in the Foreign Service in the United States Information Agency who immediately before the date of enactment of this Act are covered by a collective bargaining agreement between the Agency and the exclusive representative of those individuals, the 3-year period referred to in subsection (a) shall begin on July 1, 1981.

(c) The three-year period referred to in subsection (a) shall be extended for an additional period not to exceed one year from the date of enactment of this section in the case of Department of State security officers who are members of the Service and who were initially ineligible for conversion under that subsection because they were available for worldwide assignment and there was a need for their services in the Service, but as to whom subsequent events require the services of these members (and of those later employed who are similarly situated) only or primarily for domestic functions.

SEC. 2105. [22 U.S.C. 4155] CONVERSION OF CERTAIN POSITIONS IN THE DEPARTMENT OF AGRICULTURE.—(a) Not later than 15 days after the effective date of this Act, the Secretary of Agriculture shall—

(1) designate and classify under section 501 of this Act those positions in the Foreign Agricultural Service under the General Schedule described in section 5332 of title 5, United States Code, which the Secretary of Agriculture determines are to be occupied by career members of the Foreign Service, and

(2) provide written notice to individuals holding those positions of such designation and classification of the personnel category under section 103 which will apply to such individual.

(b) Each employee serving in a position at the time it is designated under subsection (a) shall, not later than 120 days after notice of such designation, elect—

(1) to accept conversion to the Foreign Service, in which case such employee shall be converted in accordance with the provisions of subsection (c); or

(2) to decline conversion to the Foreign Service and have the provisions of subsection (d) apply.

(c)(1) The Secretary of Agriculture shall recommend to the President for appointment to the appropriate class (as determined under paragraph (2)), by and with the advice and consent of the Senate, those employees who elect conversion under subsection (a)(1).

(2) The Secretary of Agriculture shall appoint as Foreign Service personnel those employees who elect to accept conversion and who are not eligible for appointment under paragraph (1).

(d) Any employee who declines conversion under subsection (b)(2) shall for so long as that employee continues to hold the designated position be deemed to be a member of the Foreign Service for purposes of allowances, differentials, and similar benefits (as determined by the Secretary of Agriculture).

SEC. 2106. [22 U.S.C. 4156] PRESERVATION OF STATUS AND BENEFITS.—(a)(1) Every individual who is converted under this chapter shall be converted to the class or grade and pay rate that most closely corresponds to the class or grade and step at which the individual was serving immediately before conversion. No conversion under this chapter shall cause any individual to incur a reduction in his or her class, grade, or basic rate of salary.

(2) An individual converted under section 2104 to a position in the competitive service shall be entitled to have that position, or any other position to which the individual is subsequently assigned (other than at the request of the individual), be considered for all purposes as at the grade which corresponds to the class in which the individual served immediately before conversion so long as the individual continues to hold that position.

(b)(1) Any participant in the Foreign Service Retirement and Disability System who would, but for this paragraph, participate in the Civil Service Retirement and Disability System by virtue of conversion under this chapter shall remain a participant in the Foreign Service Retirement and Disability System for 120 days after participation in the Foreign Service Retirement and Disability System would otherwise cease. During such 120-day period, the in-

dividual may elect in writing to continue to participate in the Foreign Service Retirement and Disability System instead of the Civil Service Retirement and Disability System so long as he or she is employed in an agency which is authorized to utilize the Foreign Service personnel system. If such an election is not made, the individual shall then be covered by the Civil Service Retirement and Disability System and contributions made by the participant to the Foreign Service Retirement and Disability Fund shall be transferred to the Civil Service Retirement and Disability Fund.

(2) Any Foreign Service Reserve officer with limited tenure who has reemployment rights to a personnel category in the Foreign Service in which he or she would be a participant in the Foreign Service Retirement and Disability System and who would, but for this paragraph, continue to participate in the Civil Service Retirement and Disability System by virtue of conversion under section 2104 may elect, during the 120-day period beginning on the date of such conversion, to become a participant in the Foreign Service Retirement and Disability System so long as he or she is employed in an agency which is authorized to utilize the Foreign Service personnel system. If such an election is made, the individual shall be transferred to the Foreign Service Retirement and Disability System and contributions made by that individual to the Civil Service Retirement and Disability Fund shall be transferred to the Foreign Service Retirement and Disability Fund.

(c) Individuals who are converted under this chapter shall be converted to the type of appointment which corresponds most closely in tenure to the type of appointment under which they were serving immediately prior to such conversion, except that this chapter shall not operate to extend the duration of any limited appointment or previously applicable time in class.

(d) Any individual who on the effective date of this Act is serving—

(1) under an appointment in the Foreign Service, or
 (2) in any other office or position continued by this Act,
 may continue to serve under such appointment, subject to the provisions of this Act, and need not be reappointed by virtue of the enactment of this Act.

(e) Any individual in the Foreign Service—

(1) who is serving under a career appointment on the date of enactment of this Act, and

(2) who was not subject to section 633(a)(2) of the Foreign Service Act of 1946 immediately before the effective date of this Act,

may not be retired under section 608 of this Act until 10 years after the effective date of this Act or when such individual first becomes eligible for an immediate annuity under chapter 8 of title I of this Act, whichever occurs first.

SEC. 2107. [22 U.S.C. 4157] REGULATIONS.—Under the direction of the President, the Secretary shall prescribe regulations for the implementation of this chapter.

SEC. 2108. [22 U.S.C. 4158] AUTHORITY OF OTHER AGENCIES.—The heads of agencies other than the Department of State which utilize the Foreign Service personnel system shall perform functions under this chapter in accordance with regulations pre-

scribed by the Secretary of State under section 2107. Such agency heads shall consult with the Secretary of State in the exercise of such functions.

SEC. 2109. [22 U.S.C. 4159] SURVIVOR BENEFITS FOR CERTAIN FORMER SPOUSES.—(a) Any participant or former participant in the Foreign Service Retirement and Disability System who on February 15, 1981, has a former spouse may, by a spousal agreement, elect to receive a reduced annuity and provide a survivor annuity for such former spouse under section 814(b).

(b)(1) If the participant or former participant has not retired under such system on or before February 15, 1981, an election under this section may be made at any time before retirement.

(2) If the participant or former participant has retired under such system on or before February 15, 1981, an election under this section may be made within such period after February 15, 1981, as the Secretary of State may prescribe.

(3) For purposes of applying chapter 8 of title I, any such election shall be treated the same as if it were a spousal agreement under section 820(b)(1).

(c) An election under this section may provide for a survivor benefit based on all or any portion of that part of the annuity of the participant which is not designated or committed as a base for survivor benefits for a spouse or any other former spouse of the participant. The participant and his or her spouse may make an election under section 806(b)(1)(B) prior to the time of retirement for the purpose of allowing an election to be made under this section.

(d) The amount of the reduction in the participant's annuity shall be determined in accordance with section 806(b)(2). Such reduction shall be effective as of—

(1) the commencing date of the participant's annuity, in the case of an election under subsection (b)(1), or

(2) February 15, 1981, in the case of an election under subsection (b)(2).

(e) For purposes of this section, the terms “former spouse”, “participant”, and “spousal agreement” have the meanings given such terms in sections 803 and 804.

CHAPTER 2—PROVISIONS RELATING TO FOREIGN AFFAIRS AGENCIES

SEC. 2201. BASIC AUTHORITIES OF THE DEPARTMENT OF STATE.—

SEC. 2202. PEACE CORPS ACT.—

SEC. 2203. FOREIGN ASSISTANCE ACT.—

SEC. 2204. ARMS CONTROL AND DISARMAMENT ACT.—

SEC. 2205. REPEALED PROVISIONS.—

SEC. 2206. OTHER CONFORMING AMENDMENTS.—

SEC. 2207. [22 U.S.C. 4171] MODEL FOREIGN LANGUAGE COMPETENCE POSTS.—(a) In order to carry out the purposes of section 702 and to help ascertain the relationship between foreign language competence and the effectiveness of representation of the United States abroad, the Secretary of State shall designate as model foreign language competence posts at least two Foreign Service posts in countries where English is not the common language.

Such designation shall be made no later than October 1, 1981, and shall be implemented so that no later than October 1, 1983, each Government employee permanently assigned to those posts shall possess an appropriate level of competence in the language common to the country where the post is located. The Secretary of State shall determine appropriate levels of language competence for employees assigned to those posts by reference to the nature of their functions and the standards employed by the Foreign Service Institute.

(b) The posts designated under subsection (a) shall continue as model foreign language competence posts at least until September 30, 1985. The Secretary of State shall submit no later than January 31, 1986, a report to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate describing the operation of such posts and the costs, advantages and disadvantages associated with meeting the foreign language competence requirements of this section.

(c) The Secretary of State may authorize exceptions to the requirements of this section if he determines that unanticipated exigencies so require.

CHAPTER 3—AMENDMENTS TO TITLE 5, UNITED STATES CODE

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CHAPTER 4—SAVING PROVISIONS, CONGRESSIONAL OVERSIGHT, AND EFFECTIVE DATE

SEC. 2401. [22 U.S.C. 4172] SAVING PROVISIONS.—(a) All determinations, authorizations, regulations, orders, agreements, exclusive recognition of an organization or other actions made, issued, undertaken, entered into or taken under the authority of the Foreign Service Act of 1946 or any other law repealed, modified, or affected by this Act shall continue in full force and effect until modified, revoked, or superseded by appropriate authority. Any grievances, claims, or appeals which were filed or made under any such law and are pending resolution on the effective date of this Act shall continue to be governed by the provisions repealed, modified, or affected by this Act.

(b) This Act shall not affect any increase in annuity or other right to benefits, which was provided by any provision amended or repealed by this Act, with respect to any individual who became entitled to such benefit prior to the effective date of this Act.

(c) References in law to provisions of the Foreign Service Act of 1946 or other law superseded by this Act shall be deemed to include reference to the corresponding provisions of this Act.

SEC. 2402. [22 U.S.C. 4173] CONGRESSIONAL OVERSIGHT OF IMPLEMENTATION.—

(a) [Repealed—1987]

(b) [Repealed—1987]

(c) The Secretary shall consult, in accordance with the procedures set out in section 1013(g), with the exclusive representative (if any) of members of the Foreign Service in each agency specified in section 1003(a) with respect to steps to be taken in implementing this Act and reported under section 601(c)(4). To that end,

each such exclusive representative will have timely access to all relevant information at each stage. Each such report shall include the views of each such exclusive representative on any and all aspects of the report and the information contained in such report.

SEC. 2403. EFFECTIVE DATE.—(a) Except as otherwise provided, this Act shall take effect on February 15, 1981.

(b) Personnel actions may be taken on and after the effective date of this Act on the basis of any then current Foreign Service evaluation cycle as if this Act had been in effect at the beginning of that cycle.

(c) **[Repealed—1985]**

(d)(1) Section 812 of this Act, and the repeal of sections 631 and 632 of the Foreign Service Act of 1946 and section 625(k) of the Foreign Assistance Act of 1961, shall be effective as of the date of enactment of this Act.

(2) For purposes of implementing section 2101, sections 402(a) and 403 shall be effective as of the date of enactment of this Act.

(e)(1) The provisions of chapter 8 of title I regarding the rights of former spouses to any annuity under section 814(a) shall apply in the case of any individual who after the effective date of this Act becomes a former spouse of an individual who separates from the Service after such date.

(2) Except to the extent provided in section 2109, the provisions of such chapter regarding the rights of former spouses to receive survivor annuities under chapter 8 shall apply in the case of any individual who after the effective date of this Act becomes a former spouse of a participant or former participant in the Foreign Service Retirement and Disability System.