

propriations) 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.

(b) Facilitation of employment of spouses of members; establishment of family liaison office

(1) The Secretary may facilitate the employment of spouses of members of the Service by—

(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

(C) otherwise assisting them in obtaining employment.

(2) The Secretary shall establish a family liaison office to carry out this subsection and such other functions as the Secretary may determine.

(Pub. L. 96-465, title I, § 706, Oct. 17, 1980, 94 Stat. 2101.)

AUTHORITY OF SECRETARY OF STATE

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of this title and section 161(d) of Pub. L. 103-236, set out as a note under section 2651a of this title.

§ 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) of this section.

(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) of this section shall be composed of the Director of the institution, who shall serve as chairperson, and four other members appointed by the Secretary of State.

(Pub. L. 96-465, title I, § 707, as added Pub. L. 101-246, title I, § 144(a), Feb. 16, 1990, 104 Stat. 36; amended Pub. L. 103-236, title I, § 126(3), Apr. 30, 1994, 108 Stat. 394.)

AMENDMENTS

1994—Subsecs. (a), (c). Pub. L. 103-236 substituted “institution” for “Foreign Service Institute” and “Institute” in subsec. (a) and “institution” for “Foreign Service Institute” in subsec. (c).

SUBCHAPTER VIII—FOREIGN SERVICE RETIREMENT AND DISABILITY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3951, 4084, 4153, 4156, 4159 of this title.

PART I—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 4044, 4054, 4055, 4071b, 4071c, 4071d, 4071j of this title; title 5 section 8402.

§ 4041. Administration

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 part referred to as the “System”), originally established pursuant to section 18 of the Act of May 24, 1924 (43 Stat. 144).

(Pub. L. 96-465, title I, § 801, Oct. 17, 1980, 94 Stat. 2102; Pub. L. 99-335, title IV, § 402(a)(2), June 6, 1986, 100 Stat. 609.)

REFERENCES IN TEXT

Section 18 of the Act of May 24, 1924 (43 Stat. 144), referred to in text, which was classified to section 21 of this title, was repealed by act Aug. 13, 1946, ch. 957, title XI, § 1131(44), 60 Stat. 1038.

AMENDMENTS

1986—Pub. L. 99-335 substituted “part” for “subchapter”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Subchapter effective Feb. 15, 1981, except regarding the rights of former spouses to any annuity under section 4054(a) of this title or except to the extent provided in section 4159 of this title, regarding rights of former spouses to receive survivor annuities under this subchapter, see section 2403(a) and (e) of Pub. L. 96-465, set out as a note under section 3901 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of State, see section 1 of Ex. Ord. No. 12293, Feb. 23, 1981, 46 F.R. 13969, set out as a note under section 3901 of this title.

TERMINATION OF RETIREMENT BENEFITS FOR FOREIGN NATIONAL EMPLOYEES ENGAGING IN HOSTILE INTELLIGENCE ACTIVITIES

Pub. L. 100-204, title I, § 158, Dec. 22, 1987, 101 Stat. 1355, provided that:

“(a) **TERMINATION.**—The Secretary of State shall exercise the authorities available to him to ensure that the United States does not provide, directly or indirectly, any retirement benefits of any kind to any present or former foreign national employee of a United States diplomatic or consular post against whom the Secretary has convincing evidence that such employee has engaged in intelligence activities directed against the United States. To the extent practicable, the Secretary shall provide due process in implementing this section.

“(b) **WAIVER.**—The Secretary of State may waive the applicability of subsection (a) on a case-by-case basis with respect to an employee if he determines that it is

vital to the national security of the United States to do so and he reports such waiver to the appropriate committees of the Congress.”

TEMPORARY RETIREMENT CONTRIBUTIONS AND
PROCEDURES FOR CERTAIN PARTICIPANTS

For temporary provisions providing modified contributions and procedures for members of the Service participating in the Foreign Service Retirement and Disability System who are also required to pay employment taxes relating to benefits under title II of the Social Security Act, 42 U.S.C. 401 et seq., until they are covered by a new Government retirement system or Jan. 1, 1986, whichever is earlier, see title II of Pub. L. 98-168, set out as a note under section 8331 of Title 5, Government Organization and Employees.

§ 4042. Maintenance of Fund

The Secretary of the Treasury shall maintain the special fund known as the Foreign Service Retirement and Disability Fund (hereinafter in this part referred to as the “Fund”), originally created by section 18 of the Act of May 24, 1924 (43 Stat. 144).

(Pub. L. 96-465, title I, § 802, Oct. 17, 1980, 94 Stat. 2102; Pub. L. 99-335, title IV, § 402(a)(2), June 6, 1986, 100 Stat. 609.)

REFERENCES IN TEXT

Section 18 of the Act of May 24, 1924 (43 Stat. 144), referred to in text, which was classified to section 21 of this title, was repealed by act Aug. 13, 1946, ch. 957, title XI, § 1131(44), 60 Stat. 1038.

AMENDMENTS

1986—Pub. L. 99-335 substituted “part” for “subchapter”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4071a of this title.

§ 4043. Participants

(a) Career appointees or candidates; chiefs of mission

Except as provided in subsection (d) of this section, the following members of the Service (hereinafter in this part 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 3946 of this title—

(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 4045 of this title.

(b) Executive branch appointees

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) Binational Center Grantees

In addition to the individuals who are participants in the System under subsection (a) of this section, 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 4045(d) or (f) of this title.

(d) Exclusion

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

(Pub. L. 96-465, title I, § 803, Oct. 17, 1980, 94 Stat. 2102; Pub. L. 99-335, title IV, §§ 402(a)(2), 414, June 6, 1986, 100 Stat. 609, 614.)

REFERENCES IN TEXT

The Foreign Service Act of 1946, referred to in subsec. (c), is act Aug. 13, 1946, ch. 957, titles I to X, 60 Stat. 999, as amended, which was classified principally to chapter 14 (§ 801 et seq.) of this title, and was repealed by Pub. L. 96-465, title II, 2205(1), Oct. 17, 1980, 94 Stat. 2159.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-335, §§ 402(a)(2), 414(1), substituted “Except as provided in subsection (d) of this section, the” for “The” and “part” for “subchapter” in provisions preceding par. (1).

Subsec. (d). Pub. L. 99-335, § 414(2), added subsec. (d).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4071b, 4159 of this title.

§ 4044. Definitions

As used in this part, 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 chapter 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 1301(3) of title 25;

(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 4056 of this title;

(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 percent 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 Administra-

tion, 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 part I or II of this subchapter) of that participant is of (B) the total number of years of such creditable service (creditable under part I or II of this subchapter);

(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 divorced and the aggregate time married is at least 9 months; and

(14) “unfunded liability” means the estimated excess of the present value of all benefits payable from the Fund under this part 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 4061 of this title, plus
- (C) the Fund balance as of the date the unfunded liability is determined.

(Pub. L. 96-465, title I, § 804, Oct. 17, 1980, 94 Stat. 2102; Pub. L. 99-335, title IV, §§ 402(a)(2), (3), 403,

404(a), June 6, 1986, 100 Stat. 609, 610; Pub. L. 100-238, title II, §211, Jan. 8, 1988, 101 Stat. 1773.)

REFERENCES IN TEXT

This chapter, referred to in par. (1), was in the original “this Act”, meaning Pub. L. 96-465, Oct. 17, 1980, 94 Stat. 2071, as amended, known as the Foreign Service Act of 1980, which is classified principally to this chapter (§3901 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3901 of this title and Tables.

AMENDMENTS

1988—Par. (13). Pub. L. 100-238, §211(1), which directed the amendment of par. (13) by striking out “, in the case of death in service or marriage after retirement,” was executed by striking out “, in the case of a death in service or marriage after retirement,” after “annuitant who”, as the probable intent of Congress.

Pub. L. 100-238, §211(2), (3), substituted “9 months” for “one year” and inserted before semicolon at end “, 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 divorced and the aggregate time married is at least 9 months”.

1986—Pub. L. 99-335, §402(a)(2), substituted “part” for “subchapter” in provision preceding par. (1).

Par. (3). Pub. L. 99-335, §403, substituted “, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court as defined in section 1301(3) of title 25” for “or of the District of Columbia”.

Par. (10). Pub. L. 99-335, §404(a), inserted “(creditable under part I or II of this subchapter)” after “creditable service” in two places.

Par. (14). Pub. L. 99-335, §402(a)(3), inserted “under this part” after “payable from the Fund” in provision preceding subpar. (A).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4046, 4055, 4057, 4060, 4071a, 4159 of this title.

§ 4045. Contributions to Fund

(a) Rates and sources; deposits in Fund

(1) Except as provided in subsection (h) of this section, 7 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. An equal amount shall be contributed by the Department from the appropriations or fund used for payment of the salary of the participant. The Department shall deposit in the Fund the amounts deducted and withheld from basic salary and the amounts contributed by the Department.

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

(A) the Department 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 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. 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 Department from the appropriations or fund used for payment of the salary of the participant. The Department shall deposit in the Fund the amount deducted and withheld from basic salary and amounts contributed by the Department.

(B) The Department 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(d) 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. 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 Department from the appropriations or fund used for payment of the salary of the participant. The Department shall deposit in the Fund the amounts deducted and withheld from basic salary and amounts contributed by the Department.

(b) Consent to deduction; discharge and acquittance of claims and demands

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 chapter, notwithstanding any law, rule, or regulation affecting the salary of the individual.

(c) Transfer of contributions from other Government retirement fund

(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.

(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) of this section.

(d) Contribution for civilian service; creditability of interim service

(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:

	Percent of basic salary
Time of service:	
July 1, 1924, through October 15, 1960, inclusive	5
October 16, 1960, through December 31, 1969, inclusive	6½
On and after January 1, 1970	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, 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 4056 of this title.

(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. ¹Interest 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 4071b(c) of this title shall, with respect to any covered service (as defined by section 203(a)(3) of such Act) performed by such in-

dividual 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) 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 this section or section 4071e of this title and the amount that should have been contributed pursuant to either section 8334 or 8422 of title 5.

(e) Contribution for military or naval service

(1) Each participant who has performed military or naval service before the date of separation on which the entitlement to any annuity under this part 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, 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) October 17, 1983, 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.

(f) Exemption for certain military or naval service

Contributions shall only be required to obtain credit for periods of military or naval service to the extent provided under subsection (e) of this section and section 4056(a) of this title, except that credit shall be allowed in the absence of contributions to individuals of Japanese ancestry under section 4056 of this title for periods of internment during World War II.

(g) Time of payment; offset against initial annuity accruals

A participant or survivor may make a special contribution at any time before receipt of annu-

¹ See Amendment of Section note below.

ity and may authorize payment by offset against initial annuity accruals.

(h) Computation of contributions for participants with certain creditable civilian service

Effective with respect to pay periods beginning after December 31, 1986, in administering this section with respect to a participant described in section 4071b(c) of this title whose service is employment for the purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.] and chapter 21 of title 26, contributions to the Fund and interest thereon shall be computed as if section 8334(k) of title 5 were applicable.

(Pub. L. 96-465, title I, § 805, Oct. 17, 1980, 94 Stat. 2104; Ex. Ord. No. 12446, § 4(a), Oct. 17, 1983, 48 F.R. 48444; Pub. L. 99-335, title IV, §§ 402(a)(2), 405, June 6, 1986, 100 Stat. 609, 610; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-238, title II, § 212, Jan. 8, 1988, 101 Stat. 1773; Pub. L. 102-499, § 4(a), (b), Oct. 24, 1992, 106 Stat. 3265.)

AMENDMENT OF SECTION

Section 1(a) and (c) of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, set out as a note under section 4067 of this title, provided that the second sentence of subsec. (d)(3) of this section, applicable (i) to contributions for civilian service performed on or after the first day of Nov. 1983, (ii) to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of Nov. 1983, and (iii) to excess contributions under section 4055(h) of this title and voluntary contributions under section 4065(a) of this title from the first day of Nov. 1983, is deemed to be amended to provide that interest shall be compounded at the annual rate of 3 percent per annum through December 31, 1984, and thereafter at a rate equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 4059 of this title, as determined by the Secretary of the Treasury.

REFERENCES IN TEXT

Sections 206(b)(3) and 203(a)(3) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, referred to in subsec. (d)(4), are set out as a note under section 8331 of Title 5, Government Organization and Employees.

The Social Security Act, referred to in subsec. (h), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-499, § 4(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (d)(5). Pub. L. 102-499, § 4(b), added par. (5).

1988—Subsec. (d)(1). Pub. L. 100-238, in concluding provisions, substituted “Fund. Special contributions for purposes of subparagraph (A) shall equal” for “Fund equal to” and inserted “Special contributions for refunds under subparagraph (B) shall equal the amount of the refund received by the participant.”

1986—Subsec. (a). Pub. L. 99-335, § 405(a)(1), inserted “Except as provided in subsection (h) of this section,” before “7 percent”.

Subsec. (d)(4). Pub. L. 99-335, § 405(b), added par. (4).

Subsec. (e)(1). Pub. L. 99-335, § 402(a)(2), substituted “part” for “subchapter”.

Subsec. (h). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Pub. L. 99-335, § 405(a)(2), added subsec. (h).

1983—Subsecs. (e) to (g). Ex. Ord. No. 12446 added subsecs. (e) and (f), struck out former subsec. (e), and redesignated former subsec. (f) as (g). Prior to amendment, subsec. (e) read as follows: “Contributions shall not be required for any period of military and naval service or for any period for which credit is allowed to individuals of Japanese ancestry under section 4056 of this title for periods of internment during World War II.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Ex. Ord. No. 12446 effective Oct. 17, 1983, see section 4(e) of Ex. Ord. No. 12446, set out under section 4067 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4043, 4046, 4051, 4055, 4056, 4061, 4062, 4063, 4071c of this title.

§ 4046. Computation of annuities

(a)¹ Measurements; reduction for special contributions; Foreign Service investigator/instructors

(1) The annuity of a participant shall be equal to 2 percent of his or her average 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 4056 and 4057 of this title, 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 3942(b) of this title, 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 4045(d) of this title 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, the an-

¹ See Amendment of Section note below.

nunity 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, 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(d) 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 4071i of this title, 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; for the period following election the annuity shall be computed in accordance with section 8415(d) 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) For purposes of paragraphs (2), (3), and (4) of this subsection, the term “basic pay” includes pay as provided in accordance with section 3972 of this title or section 5545(c)(2) of title 5.

(b) Married participants

(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 4054(b) of this title, 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 4054(b) of this title if the spouse later qualifies as a former spouse under section 4044(6) of this title), or to reduce such survivor annuity under this section (or section 4054(b) of this title) 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 4054(b) of this title 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 4060(b)(1) of this title to waive a survivor annuity under section 4054(b) of this title 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 4054(b) of this title), 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 4054(a)(5) of this title.

(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) of this section, 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 4054(b) of this title may not exceed 55 percent of the portion (if any) of the base for survivor benefits which remains available under section 4054(b)(4)(B) of this title.

(C) An annuity payable from the Fund under this part 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 ter-

minated if any lump sum paid upon termination of the annuity is returned to the Fund.

(c) Surviving children

(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 4066(c)(3) of this title, and

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

(d) Recomputation for remaining children

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) Payment period for child

The annuity payable to a child under subsection (c) or (d) of this section 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) Unmarried participants

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) of this section 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) of this section 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) Marriage after retirement

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 4044(13) of this title). Receipt by the Secretary of State of notice of an election under this subsection voids prospectively any election previously made under subsection (f) of this section. 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) of this section. The annuity reduction or recomputation shall be effective the first day of the month beginning one year after the date of marriage.

(h) Election of benefits

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 under this part 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) Reversion to retired status

(1) Any married annuitant who reverts to retired status with entitlement to a supplemental annuity under section 4063 of this title 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 4063 of this title 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 part.

(j) Recomputation upon dissolution of marriage; election after remarriage

An annuity which is reduced under this section or any similar prior provision of law to pro-

vide 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 4054(b) or (c) of this title. 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 4054(b)(5) of this title), 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) of this section.

(k) Informing of rights by Secretary

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) of this section; 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 4054 of this title.

(l) Repealed. Pub. L. 100-238, title II, § 217(c)(1), Jan. 8, 1988, 101 Stat. 1775

(m) Offset of Social Security benefits

The retirement, disability, or survivor annuity payable to any person based on the service of an individual subject to section 4045(h) of this title beginning with the first day of the month for which such person first becomes—

(1) eligible for an annuity under this part 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 [42 U.S.C. 401 et seq.], based on the service of such individual under this part,

shall be computed as if section 8349 of title 5 were applicable.

(n) 18-month period to elect survivor annuity

(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) of this section) 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 subsection (b) of this section 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) of this section) 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 part 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 4045(d)(3) of this title 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) of this section.

(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.

(Pub. L. 96-465, title I, § 806, Oct. 17, 1980, 94 Stat. 2106; Pub. L. 99-335, title IV, §§ 402(a)(2), (3), 406, 407, June 6, 1986, 100 Stat. 609-611; Pub. L. 99-556, title IV, § 402, Oct. 27, 1986, 100 Stat. 3136; Pub. L. 100-238, title II, §§ 213, 214(a), 217(c)(1), Jan. 8, 1988, 101 Stat. 1774, 1775; Pub. L. 101-513, title V, § 587(a), Nov. 5, 1990, 104 Stat. 2055; Pub. L. 102-499, § 4(d), Oct. 24, 1992, 106 Stat. 3266.)

AMENDMENT OF SECTION

Section 1(b) and (c) of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, set out as a note under section 4067 of this title, provided that

subsection (a) of this section, applicable (i) to contributions for civilian service performed on or after the first day of Nov. 1983, (ii) to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of Nov. 1983, and (iii) to excess contributions under section 4055(h) of this title and voluntary contributions under section 4065(a) of this title from the first day of Nov. 1983, is deemed to be amended to exclude from the computation of creditable civilian service under section 4056(a) of this title any period of civilian service for which retirement deductions or contributions have not been made under section 4045(d) of this title unless—

(1) the participant makes a contribution for such period as provided in such section 4045(d) of this title; or

(2) no contribution is required for such service as provided under section 4045(f) of this title as deemed to be amended by this Order, or under any other statute.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (m)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1992—Subsec. (a)(6). Pub. L. 102-499 substituted “section 5545(c)(2)” for “section 5545(a)(2)”.

1990—Subsec. (a). Pub. L. 101-513 designated existing provisions as par. (1) and added pars. (2) to (6).

1988—Subsec. (b)(1)(C). Pub. L. 100-238, §213(a), substituted “24-month” for “12-month”.

Subsec. (c)(1), (2). Pub. L. 100-238, §214(a)(1), inserted “or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant” after “survived by a spouse”.

Subsec. (d). Pub. L. 100-238, §214(a)(2), amended first sentence generally. Prior to amendment, first sentence read as follows: “If a surviving spouse dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such spouse or child had not survived the participant.”

Subsec. (i)(2). Pub. L. 100-238, §213(b), substituted “this part” for “section 4054(b) of this title”.

Subsec. (l). Pub. L. 100-238, §217(c)(1), struck out subsec. (l) which set minimum rates for annuities paid under this part.

1986—Subsecs. (b)(3)(C), (h). Pub. L. 99-335, §402(a)(3), inserted “under this part” after “payable from the Fund”.

Subsec. (l)(1), (2). Pub. L. 99-335, §402(a)(2), substituted “part” for “subchapter”.

Subsec. (m). Pub. L. 99-556, §402, amended subsec. (m) generally. Prior to amendment, subsec. (m) read as follows: “The annuity or survivor annuity payable to any individual subject to section 4045(h) of this title beginning with the first month for which such individual both—

“(1) attains the minimum age for old-age benefits under title II of the Social Security Act, and

“(2) first becomes entitled, or would upon proper application become entitled, for disability or survivor benefits under title II of the Social Security Act based on the service of any individual under this part, shall be computed as if section 8349 of title 5 were applicable.”

Pub. L. 99-335, §406, added subsec. (m).

Subsec. (n). Pub. L. 99-335, §407, added subsec. (n).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 408 of title IV of Pub. L. 99-556 provided that: “This title and the amendments made by this title [enacting section 4069 of this title and amending this section and sections 4064, 4071c, 4071d, and 4071j of this title] shall take effect on January 1, 1987. The amendment made by section 403 [amending section 4064 of this title] shall apply to any individual in a reemployed status on or after January 1, 1987.”

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

Section 417 of Pub. L. 99-335 provided that:

“(a) REGULATIONS.—Notwithstanding section 702 of this Act [5 U.S.C. 8401 note], the authority of the Secretary of State to issue regulations under subchapter II of title 8 [probably means subchapter II of chapter 8 of title I] of the Foreign Service Act of 1980 [part II of this subchapter] shall take effect on the date of enactment of this Act [June 6, 1986].

“(b) 18-MONTH PERIOD TO ELECT SURVIVOR ANNUITY.—(1) Notwithstanding section 702 of this Act, the amendment made by section 407 [enacting subsec. (n) of this section] shall take effect 3 months after the date of enactment of this Act.

“(2)(A) Subject to subparagraph (B), the amendment made by section 407 shall apply with respect to participants and former participants who retire before, on, or after such amendment first takes effect.

“(B) For the purpose of applying the provisions of paragraph (1) of section 806(n) of the Foreign Service Act of 1980 (as added by section 407) to former participants who retire before the date on which the amendment first takes effect—

“(i) the period referred to in subparagraph (A) or (B) of such paragraph (as the case may be) shall be considered to begin on the date on which such amendment first becomes effective; and

“(ii) the amount referred to in paragraph (2) of such section 806(n) shall be computed without regard to the provisions of subparagraph (B)(ii) of such paragraph (relating to interest).

“(3) For purposes of this subsection, the term ‘participant’ has the meaning given that term in section 803 of the Foreign Service Act of 1980 (22 U.S.C. 4043).”

ELECTION TO PROVIDE SURVIVOR ANNUITY FOR CERTAIN SPOUSES ACQUIRED BEFORE EFFECTIVE DATE OF FOREIGN SERVICE ACT OF 1980

Section 203 of title II of Pub. L. 100-238 provided that: “(a) ELECTION.—A former participant who married his or her current spouse before the effective date of the Foreign Service Act of 1980 [see Effective Date note set out under section 3901 of this title] and who married such spouse after retirement under the Foreign Service Retirement and Disability System and who was unable to provide a survivor annuity for such spouse because—

“(1) the participant was married at the time of retirement and elected not to provide a survivor annuity for that spouse at the time of retirement, or

“(2) subject to subsection (e), the participant failed to notify the Secretary of State of the participant’s post-retirement marriage within one year after the marriage,

may make the election described in subsection (b).

“(b) ELECTION DESCRIBED.—

“(1) The election referred to in subsection (a) is an election in writing—

“(A) to provide for a survivor annuity for such spouse under section 806(g) of the Foreign Service Act of 1980 (22 U.S.C. 4046(g));

“(B) to have his or her annuity reduced under section 806(b)(2) of such Act; and

“(C) to deposit in the Foreign Service Retirement and Disability Fund an amount determined by the Secretary of State, as nearly as may be administratively feasible, to reflect the amount by which such participant’s annuity would have been reduced had the election been continuously in effect since the annuity commenced, plus interest computed under paragraph (2).

“(2) For the purposes of paragraph (1), the annual rate of interest shall be 6 percent for each year during which the annuity would have been reduced if the election had been in effect on and after the date the annuity commenced.

“(c) OFFSET.—If the participant does not make the deposit referred to in subsection (b)(1)(C), the Secretary of State shall collect such amount by offset against such participant’s annuity, up to a maximum of 25 percent of the net annuity otherwise payable to such participant. Such participant is deemed to consent to such offset.

“(d) NOTICE.—The Secretary of State shall provide for notice to the general public of the right to make an election under this section.

“(e) PROOF OF ATTEMPTED ELECTION.—In any case in which subsection (a)(2) applies, the retired employee or Member shall provide the Secretary of State with such documentation as the Secretary of State shall decide is appropriate, to show that such participant attempted to elect a reduced annuity with survivor benefit for his or her current spouse and that such election was rejected by the Secretary of State because it was untimely filed.

“(f) DEPOSIT.—A deposit required by this subsection may be made by the surviving spouse of the participant.

“(g) LIMITATION.—The election authorized in subsection (a) may only be made within one year after the date of enactment of this title [Jan. 8, 1988] in accordance with procedures prescribed by the Secretary of State.

“(h) DEFINITIONS.—For the purposes of this section, the terms ‘participant’ and ‘surviving spouse’ have the same meaning given such terms in subchapter I of chapter 8 of the Foreign Service Act of 1980 [this part].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4009, 4010, 4047, 4048, 4049, 4050, 4051, 4052, 4053, 4054, 4055, 4056, 4063, 4066, 4069a, 4069a–1, 4069b, 4069b–1, 4159 of this title.

§ 4047. Payment of annuity

(a) Commencement of annuity

(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 4009(a) of this title or a participant who is retired under section 4053 of this title or is otherwise involuntarily separated from the Service, except by removal for cause on charges of misconduct or delinquency,

(B) a participant retiring under section 4048 of this title 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) Survivor’s annuity; application; proof of eligibility; payment to estate

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) Waiver

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 waived may not be made for the period during which the waiver was in effect.

(d) Recovery of overpayment

Recovery of overpayments under this part 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) Alternate forms of annuities

(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 part (other than under section 4048 of this title), elect annuity benefits under this section instead of any other benefits under this part (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 part, as computed under section 4046(a) of this title.

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

(A) is married, shall be ineligible to make an election under this section unless a waiver is

made under section 4046(b)(1)(B) of this title; 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 part (based on the service of the participant) unless a waiver has been made under section 4046(b)(1)(C) of this title.

(5) A participant who is married at the time of retiring under this part 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 4046(n) of this title, subject to the deposit requirement thereunder.

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

(Pub. L. 96-465, title I, § 807, Oct. 17, 1980, 94 Stat. 2109; Ex. Ord. No. 12446, § 3(a), Oct. 17, 1983, 48 F.R. 48443; Pub. L. 99-335, title IV, §§ 402(a)(2), 408, June 6, 1986, 100 Stat. 609, 612; Pub. L. 103-66, title XI, § 11002(b), Aug. 10, 1993, 107 Stat. 409.)

AMENDMENTS

1993—Subsec. (e)(1). Pub. L. 103-66 substituted “any participant who has a life-threatening affliction or other critical medical condition” for “a participant”.

1986—Subsec. (d). Pub. L. 99-335, § 402(a)(2), substituted “part” for “subchapter”.

Subsec. (e). Pub. L. 99-335, § 408, added subsec. (e).

1983—Subsec. (a). Ex. Ord. No. 12446 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Except as otherwise provided, the annuity of a former participant who has met the eligibility requirements for an annuity shall commence on the day after separation from the Service or on the day after pay ceases. The annuity of a former participant who is entitled to a deferred annuity under this chapter shall become effective on the day he or she attains age 60.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 effective Oct. 1, 1994, and applicable with respect to any annuity commencing on or after that date, see section 11002(d) of Pub. L. 103-66, set out as a note under section 8343a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Ex. Ord. No. 12446 effective 30 days after Oct. 17, 1983, see section 3(b) of Ex. Ord. No. 12446, set out under section 4067 of this title.

§ 4048. Retirement for disability or incapacity

(a) Causes; service credit

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 4046 of this title. 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) or Department of Veterans Affairs pension or compensation in lieu of such retired or retainer pay, the annuity of that participant shall be computed under this part 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 or the Department of Veterans Affairs pension or compensation in lieu of such retired pay or retainer pay, is less than the annuity that would be payable under this part in the absence of the previous sentence, an amount equal to the difference shall be added to the annuity computed under this part.

(b) Physical examination; reinstatement or reappointment upon recovery; fees and expenses; duration and suspension of annuity

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 conduct 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 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) Benefits upon discontinuance of annuity

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 4050 of this title 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 4055 of this title, except that he or she may elect voluntary retirement if eligible under section 4051 of this title.

(d) Election of benefits; concurrent benefits allowed

No participant shall be entitled to receive an annuity under this part and compensation for injury or disability to himself or herself under subchapter I of chapter 81 of title 5, 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. This subsection shall not bar the right of any claimant to the greater benefit conferred by either this part or subchapter I of such chapter 8¹ for any part of the same period of time. Neither this subsection nor any provision of subchapter I of such chapter 8¹ shall be construed to deny the right of any participant to receive an annuity under this part and to receive concurrently any payment under subchapter I of such chapter 8¹ by reason of the death of any other individual.

(e) Lump sum disability payments

Notwithstanding any other law, the right of any individual entitled to an annuity under this part shall not be affected because such person has received an award of compensation in a lump sum under section 8135 of title 5, 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 determined 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 part, 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) Time of filing application; waiver

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.

(Pub. L. 96-465, title I, §808, Oct. 17, 1980, 94 Stat. 2110; Ex. Ord. No. 12289, §2, Feb. 14, 1981, 46 F.R. 12693; Pub. L. 99-335, title IV, §402(a)(2), (b), June 6, 1986, 100 Stat. 609; Pub. L. 100-238, title II, §215(a), Jan. 8, 1988, 101 Stat. 1774; Pub. L. 102-54, §13(h)(2), June 13, 1991, 105 Stat. 275.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102-54 substituted "Department of Veterans Affairs" for "Veterans' Administration" in two places in second par.

1988—Subsecs. (a), (b). Pub. L. 100-238 substituted "60" for "65".

1986—Subsec. (a). Pub. L. 99-335, §402(a)(2), substituted "part" for "subchapter" in three places.

Subsec. (d). Pub. L. 99-335, §402(b)(1), substituted "subchapter I of such chapter 8" for "such subchapter" in three places and "part" for "chapter" in three places.

Subsec. (e). Pub. L. 99-335, §402(b)(2), substituted "part" for "chapter" in two places.

1981—Subsec. (a). Ex. Ord. No. 12289 added second par. relating to computation of annuity for participant retiring under this section and receiving retired or retrainor pay.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Ex. Ord. No. 12289 effective Feb. 15, 1981, see section 3 of Ex. Ord. No. 12289, set out under section 4067 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4047, 4056, 4071h of this title; title 26 section 104.

§ 4049. Death in service

(a) Lump-sum credit

If a participant dies and no claim for annuity is payable under this part, the lump-sum credit shall be paid in accordance with section 4055 of this title.

(b) Surviving spouse

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 4054(b) of this title, such sur-

¹ So in original. Probably should be chapter "81".

living 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 4046(a) of this title and any surviving former spouse shall be entitled to an annuity under section 4054(b) of this title as if the participant died after being entitled to an annuity under this part. 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) Surviving spouse or former spouse, and children

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 4046 of this title.

(d) Surviving children

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 4046 of this title.

(e) Service credit; presumption of qualification

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) of this section shall be computed in accordance with section 4046 of this title 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) of this section, it shall be assumed that the deceased participant was qualified for retirement on the date of death.

(f) Recall service

If an annuitant entitled to a reduced annuity dies in service after being recalled under section 3948 of this title 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 4063 of this title. 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 4046(i) of this title 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 subchapter, to have the rights of the annuitant redetermined and to receive a survivor annuity computed under subsection (b) of this section on the basis of the total service of the annuitant.

(g) Limitation on surviving spouse's annuity

Notwithstanding subsection (b) of this section, if the participant or former participant had a former spouse qualifying for an annuity under section 4054(b) of this title, the annuity of the spouse under this section shall be subject to the limitation of section 4046(b)(3)(B) of this title.

(h) Commencement, termination, and resumption of annuities

Annuities that become payable under this section shall commence, terminate, and be resumed in accordance with subsection (b)(4), (e), or (h) of section 4046 of this title, as appropriate.

(Pub. L. 96-465, title I, § 809, Oct. 17, 1980, 94 Stat. 2111; Pub. L. 99-335, title IV, § 402(a)(2), (c), June 6, 1986, 100 Stat. 609; Pub. L. 100-238, title II, §§ 214(b), 215(b), Jan. 8, 1988, 101 Stat. 1774.)

AMENDMENTS

1988—Subsecs. (c), (d). Pub. L. 100-238, § 214(b), inserted “or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant,” after “spouse”.

Subsec. (e). Pub. L. 100-238, § 215(b), substituted “60” for “65”.

1986—Subsec. (a). Pub. L. 99-335, § 402(c), substituted “part” for “chapter”.

Subsec. (b). Pub. L. 99-335, § 402(a)(2), substituted “part” for “subchapter”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4009, 4056, 4066 of this title.

§ 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 4055 of this title, or to leave his or her contributions in the Fund and receive an annuity, computed under section 4046 of this title, commencing at age 60.

(Pub. L. 96-465, title I, §810, Oct. 17, 1980, 94 Stat. 2112.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4048 of this title.

§ 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 4046 of this title. 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, if the participant had been covered under the Civil Service Retirement System rather than subject to this subchapter while a member of the Service, may receive an annuity under section 8336 or 8338, notwithstanding section 8333(b) of title 5, if all contributions transferred to the Fund under section 4045(c)(1) of this title, 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 subchapter, 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.

(Pub. L. 96-465, title I, §811, Oct. 17, 1980, 94 Stat. 2112; Pub. L. 100-238, title II, §216, Jan. 8, 1988, 101 Stat. 1774.)

AMENDMENTS

1988—Pub. L. 100-238 inserted last two sentences relating to withholding consent to retirement and to certain participants who voluntarily separate from the Service before completing 5 years in the System.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4009, 4048, 4071d of this title.

§ 4052. Mandatory retirement

(a)(1) Except as provided in subsection (b) of this section, 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 4046 of this title.

(2) Notwithstanding paragraph (1), 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) of title 5, as applicable, had the employee remained in civil service, shall be separated from the Service on the last day of the month in which that Foreign Service criminal investigator/inspector 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) of this section 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) of this section may be retained on active service for a period not to exceed 5 years.

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

(Pub. L. 96-465, title I, §812, Oct. 17, 1980, 94 Stat. 2113; Pub. L. 101-513, title V, §587(b), Nov. 5, 1990, 104 Stat. 2056; Pub. L. 102-499, §4(c), Oct. 24, 1992, 106 Stat. 3265.)

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102-499 substituted “57” for “55”.

1990—Subsec. (a). Pub. L. 101-513 designated existing provisions as par. (1) and added par. (2).

CROSS REFERENCES

Officer retired under this section not barred from employment in a civil service position, see section 3323 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4071d of this title; title 5 section 3323.

§ 4053. Reassignment and retirement of former Presidential appointees

(a) Reassignment or retirement of participants not eligible for retirement

A participant, who completes an assignment under section 3942(b) of this title 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 4046 or 4071d of this title, as appropriate.

(b) Retirement of participants eligible for retirement

A participant who completes an assignment under section 3942(b) of this title 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 4046 of this title or section 4071d of this title, as appropriate.

(c) Retirement of reemployed participants

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

(Pub. L. 96-465, title I, § 813, Oct. 17, 1980, 94 Stat. 2113; Pub. L. 102-138, title I, § 149, Oct. 28, 1991, 105 Stat. 670; Pub. L. 103-236, title I, § 174, Apr. 30, 1994, 108 Stat. 413.)

AMENDMENTS

1994—Pub. L. 103-236 added subsecs. (a) to (c) and struck out former subsecs. (a) to (c) which read as follows:

“(a) Except as provided under subsection (b) of this section, a participant, who completes an assignment under section 3942(b) of this title in a position to which he or she was appointed by the President, shall be offered reassignment within 90 days after the termination of such assignment and any period of authorized leave.

“(b) Subsection (a) of this section shall not apply with respect to a participant, if the Secretary of State determines that reassignment of the participant is not in the interest of the United States and the Foreign Service.

“(c) A participant who is not reassigned under subsection (a) of this section shall be retired from the Service and receive retirement benefits in accordance with section 4046 or 4071d of this title, as appropriate.”

1991—Pub. L. 102-138 inserted “Reassignment and” in section catchline and amended text generally. Prior to amendment, text read as follows: “If a participant completes an assignment under section 3942(b) of this title in a position to which he or she was appointed by the President and has not been reassigned within 3 months after the termination of such assignment (plus any period of authorized leave), the participant shall be retired from the Service and receive retirement benefits in accordance with section 4046 of this title.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4047, 4071d of this title.

§ 4054. Former spouses

(a) Living Service members

(1) Unless otherwise expressly provided by any spousal agreement or court order under section 4060(b)(1) of this title, 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 subchapter 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 part I or II of this subchapter.

(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) 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 part or 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 4060(b)(1) of this title 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 part, and in calculating any reduction in the annuity of the participant to provide survivor benefits under subsection (b) of this section or section 4046(b)(3) of this title.

(B) If any annuitant whose annuity is reduced under subparagraph (A) is recalled to service under section 3948 of this title, 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 4064 of this title, 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 that 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 part (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) of this section for purposes of section 4046(h) of this title or any comparable provision of law.

(b) Deceased Service members

(1) Subject to any election under section 4046(b)(1)(C) of this title and unless otherwise expressly provided by any spousal agreement or court order under section 4060(b)(1) of this title, 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 4046(a) of this title; 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 part I or II of this subchapter.

(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 part 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 4046(b)(3) of this title) 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 4046(a) of this title.

(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 4046(b)(3) of this title) 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 4060(b)(1) of this title 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 an-

nuity 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 4046(b)(3) of this title for any spouse of the participant.

(c) Additional survivor annuity

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

(A) such participant may elect, or

(B) a spousal agreement or court order under section 4060(b)(1) of this title 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 4046 of this title, shall exceed 55 percent of the full amount of the participant's annuity, as computed under section 4046(a) of this title.

(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 part.

(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 4066 of this title shall not apply to any annuity under this subsection, unless authorized under regulations prescribed by the Secretary of State.

(Pub. L. 96-465, title I, § 814, Oct. 17, 1980, 94 Stat. 2113; Pub. L. 97-241, title I, § 125(2), Aug. 24, 1982, 96 Stat. 282; Pub. L. 99-335, title IV, §§ 402(a)(2), (3), 404(b), June 6, 1986, 100 Stat. 609, 610; Pub. L. 100-238, title II, § 217(a), (b), (c)(2), Jan. 8, 1988, 101 Stat. 1775.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100-238, § 217(a), which directed the amendment of par. (1) by inserting “if such former spouse was married to the participant for at least 10 years during service of the participant which is creditable under this subchapter with at least 5 of such years occurring while the participant was a member of the Foreign Service and” after “annuity”, was executed by inserting the new language after “annuity” in introductory provisions, as the probable intent of Congress.

Subsec. (a)(4). Pub. L. 100-238, § 217(b), substituted “24” for “12”.

Subsec. (d). Pub. L. 100-238, § 217(c)(2), struck out subsec. (d) which read as follows: “Section 4046(l) of this title shall not apply—

“(1) to any annuity payable under subsection (a) or (b) of this section to any former spouse if the amount of that annuity varies by reason of a spousal agreement or court order under section 4060(b)(1) of this title, or an election under section 4046(b)(1)(B) of this title, from the amount which would be calculated under subsection (a)(1) or (b)(1) of this section, as the case may be, in the absence of such spousal agreement, court order, or election; and

“(2) to any annuity payable under subsection (c) of this section.”

1986—Subsec. (a)(1). Pub. L. 99-335, § 404(b)(1), inserted provision defining “creditable service” as service creditable under part I or II of this subchapter.

Subsec. (a)(3), (5)(A), (6)(A). Pub. L. 99-335, § 402(a)(2), substituted “part” for “subchapter”.

Subsec. (b)(1). Pub. L. 99-335, § 404(b)(2), inserted provision defining “creditable service” as service creditable under part I or II of this subchapter.

Subsec. (b)(3). Pub. L. 99-335, § 402(a)(3), inserted “under this part” after “payable from the Fund”.

Subsec. (c)(3)(D). Pub. L. 99-335, § 402(a)(2), substituted “part” for “subchapter”.

1982—Subsec. (a)(3). Pub. L. 97-241 substituted “or the first” for “on the first” in provision preceding subpar. (A).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 261 of title II of Pub. L. 100-238 provided that: “(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title [enacting sections 4069-1 to 4069c-1 of this title, amending this section and sections 4044 to 4046, 4048, 4049, 4051,

4055, 4066, 4071a, 4071c, and 4084 of this title, and enacting provisions set out as a note under section 4046 of this title] shall take effect 90 days after the date of enactment of this title [Jan. 8, 1988].

“(b) EXCEPTIONS.—

“(1) The amendments made by section 202 [enacting section 4069-1 of this title] shall apply to any individual who, on or after the date of enactment of this title [Jan. 8, 1988], is married to a participant or former participant.

“(2) The amendment made by section 217(a) [amending this section] shall not apply with respect to the former spouse of a participant or former participant who is subject to subchapter I of chapter 8 of the Foreign Service Act of 1980 [this part] if, on the date of enactment of this title [Jan. 8, 1988], that former spouse—

“(A) was the spouse of that participant or former participant; or

“(B) is entitled to an annuity under section 814 of the Foreign Service Act of 1980 [this section] pursuant to the divorce or annulment of the marriage to that participant or former participant.

“(c) DEFINITIONS.—For the purpose of this section, the terms ‘participant’ and ‘former participant’ have the same meaning as such terms in chapter 8 of the Foreign Service Act of 1980 [this subchapter].”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4046, 4049, 4060, 4064, 4069a, 4069a-1, 4071j, 4159 of this title.

§ 4055. Lump-sum payments

(a) Requirements for payment

(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 participant is not subject to this subchapter 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 subchapter at the time the participant files the application;

(D) will not become eligible to receive an annuity under this part 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 4046(b)(1)(D) of this title.

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

(b) Recall service; return of contributions

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 4063 of this title, 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) of this section).

(c) Difference between annuity and lump-sum credit

If all annuity rights under this part 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) of this section.

(d) Lack of eligible survivors

If a participant or former participant dies and is not survived by an individual eligible for an annuity under this part 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) of this section.

(e) Death of annuitant who was former participant

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

(f) Order of precedence for payments

Payments under subsections (c) through (e) of this section 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 4044(2) of this title) 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 participant 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) Death of survivor annuitant

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) Amount of credit

¹ Amounts deducted and withheld from basic salary of a participant under section 4045 of this title from the beginning of the first pay period after the participant has completed 35 years of service computed under section 4056 of this title (excluding service credit for unused sick leave under section 4056(b) of this title), 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 4045(d) of this title), 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) of this section.

(i) Former spouses

Unless otherwise expressly provided by any spousal agreement or court order under section 4060(b)(1) of this title, 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 part I or II of this subchapter.

(Pub. L. 96-465, title I, §815, Oct. 17, 1980, 94 Stat. 2116; Pub. L. 99-335, title IV, §§402(a)(2), 404(c), 413, June 6, 1986, 100 Stat. 609, 610, 614; Pub. L. 100-238, title II, §218, Jan. 8, 1988, 101 Stat. 1775.)

AMENDMENT OF SECTION

Section 1(a) and (c) of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, set out as a note

¹ See Amendment of Section note below.

under section 4067 of this title, provided that the first sentence of subsection (h) of this section, applicable (i) to contributions for civilian service performed on or after the first day of Nov. 1983, (ii) to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of Nov. 1983, and (iii) to excess contributions under section 4055(h) of this title and voluntary contributions under section 4065(a) of this title from the first day of Nov. 1983, is deemed to be amended to provide that interest shall be compounded at the annual rate of 3 percent per annum through December 31, 1984, and thereafter at a rate equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 4059 of this title, as determined by the Secretary of the Treasury.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-238 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Whenever a participant becomes separated from the Service without becoming eligible for an annuity or a deferred annuity under this subchapter, a lump-sum credit shall be paid to the participant (and to any former spouse of the participant, in accordance with subsection (i) of this section). A participant who becomes subject to part II of this subchapter shall be entitled to payment of the lump-sum credit if, and to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees’ Retirement System Act of 1986.”

1986—Subsec. (a). Pub. L. 99-335, § 413, inserted provision relating to payment of a lump-sum credit for a participant who becomes subject to part II of this subchapter.

Subsecs. (c), (d). Pub. L. 99-335, § 402(a)(2), substituted “part” for “subchapter”.

Subsec. (i). Pub. L. 99-335, § 404(c), inserted provision defining “creditable service” as service creditable under part I or II of this subchapter.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4009, 4010, 4048, 4049, 4050, 4056, 4060, 4063, 4065, 4071j of this title.

§ 4056. Creditable service

(a) Applicability of civil service provisions

(1) ¹Except 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), shall be creditable for purposes of this

part. Conversely, any such service performed after December 31, 1976, that would not be creditable under specified conditions under section 8332 of title 5, shall be excluded under this part under the same conditions.

(2) The service of an individual who first becomes a participant on or after October 17, 1983, without any credit under this section 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 part is based, only if a deposit (with interest if any is required) is made with respect to that period, as provided in section 4045(e) of this title.

(3) The service of an individual who first became a participant on or after October 17, 1983, with credit under this section for civilian service performed prior to October 1982, 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 part is based, subject, in the case of military or naval service performed after December 1956, to subsection (j) of this section.

(4) The service of an individual who first became a participant before October 17, 1983, 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 part is based, subject, in the case of military or naval service performed after December 1976, to subsection (j) of this section.

(b) Unused sick leave credit

In computing any annuity under this part, the total service of a participant who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes (without regard to the 35-year limitation imposed by section 4046(a) of this title) 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 part. A contribution to the Fund shall not be required from a participant for this service credit.

(c) Service with other Government agency when on approved leave without pay; arrangement for payment of retirement deductions and agency contributions; special contribution

(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 such periods of leave without pay and arrange to pay concurrently into the Fund through the employing agency, amounts equal to the 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

¹ See Amendment of Section note below.

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 of 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 4045 of this title. 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) Special contribution in repayment of refund of retirement contributions

²A 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 4045 of this title. Credit may not be allowed for service covered by the refund unless the special contribution is made.

(e) Civilian service under other Government retirement system

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 4045 of this title covering such service.

(f) Service in military during period of war or national emergency

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 part, as not separated from the Service unless the participant applies for and receives a lump-sum payment under section 4055 of this title. However, the participant is deemed to be separated from the Service after the expiration of 5 years of such military service.

(g) Recomputation of annuity for participants of Japanese ancestry interned during World War II

(1) An annuity or survivor annuity based on the service of a participant of Japanese ancestry who would be eligible under section 8332(l) of title 5, 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 may 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, of any participant.

(h) Service as employees of Member or office of Congress while on approved leave without pay

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 part and shall not, unless all retirement credit is transferred, be counted as creditable service under any other Government retirement system.

(i) Former spouses

(1) Service of a participant shall be considered creditable service for purposes of applying provisions of this part relating to former spouses if such service would be creditable—

(A) under subsection (c)(1) or (2) of this section but for the fact an election was not made under subsection (c)(1) of this section or a special contribution was not made under subsection (c)(2) of this section, and

(B) under subsection (d) of this section but for the fact that a refund of contributions has not been repaid unless the former spouse received under this part 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 4048(a) of this title or section 4049(e) of this title.

(j) Redetermination of credit for military and naval service

(1) Except as otherwise provided by statute or Executive Order, section 8332(j) of title 5, relating to redetermination of credit for military and naval service, shall be applied to annuities pay-

² See Amendment of Section note below.

able under this part. 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 shall not apply with respect to:

(A) the service of any individual who first became a participant on or after October 17, 1983, without any credit under this section 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 October 17, 1983, with credit under this section 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 4045(e) of this title; or

(C) any military or naval service performed prior to 1977 by any individual who first became a participant before October 17, 1983, or any period of military or naval service performed after 1976 with respect to which the participant has made a contribution (with interest if any is required) under section 4045(e) of this title.

(Pub. L. 96-465, title I, §816, Oct. 17, 1980, 94 Stat. 2118; Ex. Ord. No. 12446, §4(b), (c), Oct. 17, 1983, 48 F.R. 48444, 48445; Pub. L. 99-335, title IV, §402(a)(2), June 6, 1986, 100 Stat. 609; Pub. L. 101-246, title I, §145(a), Feb. 16, 1990, 104 Stat. 36.)

AMENDMENT OF SECTION

Section 5 of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48445, set out as a note under section 4067 of this title, provided that:

“(a) Section 816(a) of the Act (22 U.S.C. 4056(a)) is deemed to be further amended so that the provisions of section 8332(j) of Title 5 of the United States Code, relating to credit for military service, shall not apply with respect to any individual who is entitled to an annuity under such Act [this chapter] on or before the date of approval of this Order [Oct. 17, 1983], or who is entitled to an annuity based on a separation from service occurring on or before such date.

“(b) Subject to subsection (c), in any case in which an individual described in subsection (a) is also entitled to old-age or survivors insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing application therefor), the amount of the annuity to which such individual is entitled under chapter 8 of the Act [this subchapter] (after taking into account subsection (a)) which is payable for any month shall be reduced by an amount determined by multiplying the amount of such old-age or survivors insurance benefit for the determination month by a fraction—

“(1) the numerator of which is the total of the wages (within the meaning of section 209 of the Social Security Act [42 U.S.C. 409]) for service referred to in section 210(1) of such Act [42 U.S.C. 410] (relating to service in the uniformed services) and deemed additional wages (within the meaning of section 229 of such Act [42 U.S.C. 429]) of such

individual credited for years after 1956 and before the calendar year in which the determination month occurs, up to the contribution and benefit base determined under section 230 of the Social Security Act [42 U.S.C. 430] (or other applicable maximum annual amount referred to in section 215(e)(1) of such Act [42 U.S.C. 415(e)(1)]) for each such year, and

“(2) the denominator of which is the total of all wages deemed additional wages described in paragraph (1) of this subsection plus all other wages (within the meaning of section 209 of the Social Security Act [42 U.S.C. 409]) and all self-employment income (within the meaning of section 211(b) of such Act [42 U.S.C. 411(b)]) of such individual credited for years after 1936 and before the calendar year in which the determination month occurs, up to the contribution and benefit base (or such other amount referred to in such section 215(e)(1) of such Act [42 U.S.C. 415(e)(1)]) for each such year.

“(c) Subsection (b) shall not reduce the annuity of any individual below the amount of the annuity which would be payable under chapter 8 of the Act [this subchapter] to the individual for the determination month if section 8332(j) of Title 5 of the United States Code applied to the individual for such month.

“(d) For purposes of this section, the term ‘determination month’ means—

“(1) the first month the individual described in subsection (a) is entitled to old-age or survivors insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing application therefor); or

“(2) the first day of the month following the month in which this Order is issued [Oct. 1983] in the case of any individual so entitled to such benefits for such month.

“(e) The preceding provisions of this section shall take effect with respect to any annuity payment payable under chapter 8 of the Act [this subchapter] for calendar months beginning after the date of this Order [Oct. 17, 1983].

“(f) The Secretary of Health and Human Services shall furnish such information to the Secretary of State as may be necessary to carry out the preceding provisions of this section.”

Section 1(b) and (c) of Ex. Ord. No. 12446 provided that subsection (d) of this section, applicable (i) to contributions for civilian service performed on or after the first day of Nov. 1983, (ii) to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of Nov. 1983, and (iii) to excess contributions under section 4055(h) of this title and voluntary contributions under section 4065(a) of this title from the first day of Nov. 1983, is deemed to be amended to exclude from the computation of creditable civilian service under subsec. (a) of this section any period of civilian service for which retirement deductions or contributions have not been made under section 4045(d) of this title unless—

(1) the participant makes a contribution for such period as provided in such section 4045(d) of this title; or

(2) no contribution is required for such service as provided under section 4045(f) of this title as

deemed to be amended by this Order, or under any other statute.

AMENDMENTS

1990—Subsec. (i)(2). Pub. L. 101-246 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “A former spouse shall not be considered as married to a participant—

“(A) for periods assumed to be creditable service under section 4048(a) of this title or section 4049(e) of this title, or

“(B) for any extra period of creditable service provided under section 4057 of this title for service of a participant at an unhealthful post unless the former spouse resided with the participant at that post during that period.”

1986—Subsecs. (a), (b), (f), (h), (i)(1), (j)(1). Pub. L. 99-335 substituted “part” for “subchapter” wherever appearing.

1983—Subsec. (a). Ex. Ord. No. 12446, §4(b), designated existing provisions as par. (1) and added pars. (2) to (4).

Subsec. (j). Ex. Ord. No. 12446, §4(c), added subsec. (j).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 4 of Ex. Ord. No. 12446 effective Oct. 17, 1983, see section 4(e) of Ex. Ord. No. 12446, set out under section 4067 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2504, 4044, 4045, 4046, 4055, 4063 of this title.

§ 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 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 part, or to compute the pro rata share under section 4044(10) of this title. 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 February 16, 1990.

(Pub. L. 96-465, title I, §817, Oct. 17, 1980, 94 Stat. 2120; Pub. L. 101-246, title I, §145(b), Feb. 16, 1990, 104 Stat. 37.)

AMENDMENTS

1990—Pub. L. 101-246 inserted provisions at end that extra credit not be used to determine eligibility to qualify as former spouse under this part or to compute the pro rata share under section 4044(10) of this title and that no extra credit for service at unhealthful posts be given under this section for any service as part of a tour of duty, or extension thereof, beginning on or after Feb. 16, 1990.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4046, 4071a of this title.

§ 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 part, including actuarial advice.

(Pub. L. 96-465, title I, §818, Oct. 17, 1980, 94 Stat. 2120; Pub. L. 99-335, title IV, §402(a)(2), June 6, 1986, 100 Stat. 609.)

AMENDMENTS

1986—Pub. L. 99-335 substituted “part” for “subchapter”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

§ 4059. Investment of 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.

(Pub. L. 96-465, title I, §819, Oct. 17, 1980, 94 Stat. 2120.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4071a of this title.

§ 4060. Assignment and attachment of moneys

(a) Annuities and severance pay benefits

(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 3727 of title 31 or any other law, a member of the Service who is entitled to receive benefits under section 4009(b)(1) of this title 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 deposited with the Secretary of the Treasury by the member executing the assignment.

(b) Participants or annuitants having former spouses

(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 4054(a) of this title in con-

nection 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 4054(b) or (c) of this title, 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 4055(a) or (b) of this title;

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 4054(c)(3) of this title); or

(ii) is otherwise inconsistent with the requirements of this part.

(2) Except with respect to obligations between participants and former spouses, payments under this part 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 part 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 4044(b)(6) of this title, or any other provision of this part, 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 part.

(c) Applicability of other provisions of law or remedies

None of the moneys mentioned in this part 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.

(Pub. L. 96-465, title I, § 820, Oct. 17, 1980, 94 Stat. 2120; Pub. L. 99-335, title IV, § 402(a)(2), June 6, 1986, 100 Stat. 609.)

CODIFICATION

In subsec. (a)(2), “section 3727 of title 31” substituted for “section 3477 of the Revised Statutes of the United

States (31 U.S.C. 203)” on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1986—Subsecs. (b)(1)(B)(ii), (2), (3), (5), (c). Pub. L. 99-335 substituted “this part” for “this subchapter” wherever appearing.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4046, 4054, 4055, 4064, 4159 of this title.

§ 4061. Payments for future benefits

(a) Statutes deemed to authorize appropriations to Fund to finance unfunded liability

Any statute which authorizes—

(1) new or liberalized benefits payable from the Fund under this part, including annuity increases other than under section 4065 of this title;

(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) Authorization of appropriations to Fund

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 4045(a) of this title.

(Pub. L. 96-465, title I, § 821, Oct. 17, 1980, 94 Stat. 2121; Pub. L. 99-335, title IV, § 402(a)(3), June 6, 1986, 100 Stat. 609.)

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99-335 inserted “under this part” after “payable from the Fund”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4044, 4062 of this title.

§ 4062. Unfunded liability obligations

(a) Notice of interest and military service credit

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 4045(e) of this title.

(b) Credit to Fund

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) Reports to Congress

Requests for appropriations to the Fund under section 4061(b) of this title shall include reports to the Congress on the sums credited to the Fund under this section.

(Pub. L. 96-465, title I, § 822, Oct. 17, 1980, 94 Stat. 2121; Ex. Ord. No. 12446, § 4(d), Oct. 17, 1983, 48 F.R. 48445.)

AMENDMENTS

1983—Subsec. (a)(2). Ex. Ord. No. 12446 inserted “, 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 4045(e) of this title”.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Ex. Ord. No. 12446 effective Oct. 17, 1983, see section 4(e) of Ex. Ord. No. 12446, set out under section 4067 of this title.

§ 4063. Annuity adjustment for recall service

(a) Full salary in lieu of annuity; contributions to Fund; resumption of annuity with cost-of-living adjustment

Any annuitant recalled to duty in the Service under section 3948(a) of this title 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 4045 of this title. On the day following termination of the recall service, the former annuity shall be resumed, adjusted by any cost-of-living increases under section 4065 of this title that became effective during the recall period.

(b) Refund of contributions to Fund; election for supplemental annuity or determination of annuity anew; prior service counted as recall service

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 4055 of this title. If the recall service lasts more than one year, the annuitant may, in lieu of such refund, elect a supplemental annuity computed under section 4046 of this title 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 sec-

tion 4046 of this title in lieu of any other benefits under this section. Any annuitant who is recalled under section 3948 of this title may upon written application count as recall service any prior service that is creditable under section 4056 of this title that was performed after the separation upon which his or her annuity is based.

(c) Annuitant subject to Foreign Service Pension System

If an annuitant becomes subject to part II of this subchapter by reason of recall service—

(1) subsections (a) and (b) of this section shall not apply to such annuitant; and

(2) section 4064 of this title shall apply to the recall service as if such service were reemployment.

(Pub. L. 96-465, title I, § 823, Oct. 17, 1980, 94 Stat. 2122; Pub. L. 99-335, title IV, § 409, June 6, 1986, 100 Stat. 612.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-335 added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4046, 4049, 4055 of this title.

§ 4064. Reemployment

(a) Termination of annuity; coverage under same retirement system or another contributory retirement system; rights and benefits

¹(1)(A) Except in the case of an annuitant who makes an election under subsection (b) of this section, if any former participant, who has retired and is receiving an annuity under this part or part II of this subchapter, becomes employed in an appointive or elective position in the Government, payment of any annuity under either part 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.

¹ So in original. No par. (2) has been enacted.

(b) Part-time, intermittent, or temporary employment; election to continue receiving annuity; reduction in amount of annuity; resumption of full annuity

(1) A participant who is entitled to an annuity under this part or part II of this subchapter 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 subchapter 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 subchapter 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 chapter 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 4054 or 4060(b) of this title.

(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) Amount of annuity on resumption; amount resulting from redetermination of rights

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) of this section shall not be less than the amount of an annuity resumed under the previous sentence.

(d) Annuity rights to be determined under this section

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.

(e) Notice; direct payment of salary

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) Recovery of overpayment

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 subchapter.

(Pub. L. 96-465, title I, §824, Oct. 17, 1980, 94 Stat. 2122; Pub. L. 99-335, title IV, §§402(a)(2), 410, June 6, 1986, 100 Stat. 609, 613; Pub. L. 99-556, title IV, §403, Oct. 27, 1986, 100 Stat. 3136.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-335, §410, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Notwithstanding any other law, any member of the Service who has retired and is receiving an annuity under this part, and who is reemployed in the Government service in any part-time or full-time appointive position, shall be entitled to receive the salary of the position in which he or she is serving plus so much of the annuity payable under this part which when combined with such salary does not exceed during any calendar year the basic salary the member was entitled to receive under this chapter on the date of retirement from the Service. Any such reemployed member of the Service who receives salary during any calendar year in excess of the maximum amount which he or she may be entitled to receive under this subsection shall be entitled to such salary in lieu of benefits under this part.”

Pub. L. 99-335, §402(a)(2), substituted “this part” for “this subchapter” in three places.

Subsec. (b). Pub. L. 99-335, §410, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “When any such retired member of the Service 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 member the salary of the position in which he or she is serving.”

Subsec. (b)(3). Pub. L. 99-556, §403, amended par. (3) generally. Prior to amendment, par. (3) read as follows: “The sum of—

“(A) the total annuity payable under this subchapter to an annuitant making an election under paragraph (1), and

“(B) 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 highest annual rate of pay which is payable during such year for full-time employment in the position in which the annuitant is employed.”

Subsec. (c). Pub. L. 99-335, §410, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “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 member of the Service or from any other moneys, including annuity payments, payable under this part.”

Pub. L. 99-335, §402(a)(2), substituted “this part” for “this subchapter”.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-556 effective Jan. 1, 1987, and applicable to any individual in a reemployed status on or after that date, see section 408 of Pub. L. 99-556, set out as a note under section 4046 of this title.

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effect-

tive Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2512, 4054, 4063 of this title.

§ 4065. Voluntary contribution account

(a) Composition; election and return

¹The voluntary contribution account shall be the sum of unrefunded amounts voluntarily contributed prior to February 15, 1981, 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) Computation of benefits

The benefits provided by subsection (a) (2), (3), or (4) of this section shall be actuarially equivalent in value to the payment provided for by subsection (a)(1) of this section 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) Lump-sum payment; time; order of precedence

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 4055(f) of this title.

(Pub. L. 96-465, title I, § 825, Oct. 17, 1980, 94 Stat. 2122.)

¹ See Amendment of Section note below.

AMENDMENT OF SECTION

Section 1(a) and (c) of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, set out as a note under section 4067 of this title, provided that the first sentence of subsection (a) of this section, applicable (i) to contributions for civilian service performed on or after the first day of Nov. 1983, (ii) to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of Nov. 1983, and (iii) to excess contributions under section 4055(h) of this title and voluntary contributions under section 4065(a) of this title from the first day of Nov. 1983, is deemed to be amended to provide that interest shall be compounded at the annual rate of 3 percent per annum through December 31, 1984, and thereafter at a rate equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 4059 of this title, as determined by the Secretary of the Treasury.

CODIFICATION

In subsec. (a), “February 15, 1981” substituted for “the effective date of this Act” pursuant to section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4061, 4063 of this title.

§ 4066. Cost-of-living adjustment of annuities

(a) Effective date

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. Each such increase shall be applied to each annuity payable from the Fund under this part which has a commencing date not later than the effective date of the increase.

(b) Applicability of increases under other provisions of law

Each annuity increase under this section shall be identical to the corresponding percentage increase under section 8340(b) of title 5.

(c) Eligibility for increases

Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the Fund under this part 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 payable from the Fund under this part to the survivor of an annuitant, except a child entitled to an annuity under section 4046(c) of this title or section 4049(c) or (d) of this title, 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 4046(c) or (d) of this title or section 4049(c) or (d) of this title, the items \$900, \$1,080, \$2,700, and \$3,240 appearing in section 4046(c) of this title shall be increased by the total percentage increases by which corresponding amounts are being increased under section 8340 of title 5 on the date the annuity of the child becomes effective.

(d) Exclusion of additional annuity purchased after retirement by voluntary contribution

No increase in annuity provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(e) Rounding off of amount; minimum increases

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) Rate of increase for surviving spouses of annuitants electing reduced annuity

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) Maximum annuity

(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 3963 of this title, 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 3963 of this title 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 provision of law limiting the expenditure of appropriated funds.

(Pub. L. 96-465, title I, §826, Oct. 17, 1980, 94 Stat. 2123; Ex. Ord. No. 12289, §1, Feb. 14, 1981, 46 F.R. 12693; Ex. Ord. No. 12446, §§2(a), 6(a), Oct. 17, 1983, 48 F.R. 48443, 48446; Pub. L. 99-335, title IV, §402(a)(3), June 6, 1986, 100 Stat. 609; Pub. L. 100-238, title II, §219, Jan. 8, 1988, 101 Stat. 1775.)

AMENDMENTS

1988—Subsec. (c)(1). Pub. L. 100-238 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The first increase (if any) made under this section to an annuity which is payable from the Fund under this part to a participant or to the surviving spouse of a deceased participant who dies in service shall be equal to the product (adjusted to the nearest $\frac{1}{10}$ of 1 percent) of—

"(a) $\frac{1}{4}$ of the applicable percent change determined under subsection (b) of this section, multiplied by

"(b) the number of full months for which the annuity was payable from the Fund under this part before the effective date of the increase (counting any portion of a month as a full month).

In the administration of this paragraph, the number of days of unused sick leave to the credit of a participant or deceased participant on the effective date of the then last preceding general annuity increase under this section shall be deemed to be equal to the number of days of unused sick leave to his or her credit on the day of separation from the Service."

1986—Subsecs. (a), (c). Pub. L. 99-335 inserted "under this part" after "payable from the Fund" wherever appearing.

1983—Subsec. (e). Ex. Ord. No. 12446, §2(a), substituted "rounded to the next lowest" for "fixed at the nearest".

Subsec. (g). Ex. Ord. No. 12446, §6(a), added subsec. (g).

1981—Subsec. (c)(1). Ex. Ord. No. 12289 amended first sentence of par. (1) generally. Prior to amendment, first sentence read as follows: "An annuity (except a deferred annuity) payable from the Fund to a participant who retires and receives an immediate annuity, or to a surviving spouse or former spouse of a deceased participant who dies in service or who dies after being separated with benefits under section 4009(b)(2) of this title, which has a commencing date after the effective date of the then last preceding general annuity increase under this section shall not be less than the annuity which would have been payable if the commencing date of such annuity had been the effective date of such last preceding increase."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 2(a) Ex. Ord. No. 12446 effective with respect to any adjustment or redetermination of any annuity made on or after Oct. 17, 1983, see section 2(b) of Ex. Ord. No. 12446, set out under section 4067 of this title.

Amendment by section 6 of Ex. Ord. No. 12446 applicable to any adjustment occurring on or after Apr. 1, 1983 under this section to any annuity payable from the Foreign Service Retirement and Disability Fund, whether such annuity has a commencing date before,

on, or after Oct. 17, 1983, but shall not cause any annuity to be reduced below the rate that is payable on Oct. 17, 1983, see section 6(b) of Ex. Ord. No. 12446, set out under section 4067 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Ex. Ord. No. 12289 effective Feb. 15, 1981, see section 3 of Ex. Ord. No. 12289, set out under section 4067 of this title.

DELAY IN COST-OF-LIVING ADJUSTMENTS DURING FISCAL YEARS 1994, 1995, AND 1996

Any cost-of-living increase scheduled to take effect during fiscal year 1994, 1995, or 1996 under this section delayed until first day of third calendar month after date such increase would otherwise take effect, see section 11001 of Pub. L. 103-66, set out as a note under section 8340 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4046, 4054 of this title.

§ 4067. Compatibility between retirement systems

(a) Civil Service and Foreign Service Retirement Systems

In order to maintain existing conformity between the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, 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) of this section 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) Regulations to implement prescribed by Executive order

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) Federal Employees' Retirement and Foreign Service Pension Systems

The President shall maintain, under the same conditions and in the same manner as provided

in subsections (a) and (b) of this section existing conformity between the Federal Employees' Retirement System provided in chapter 84 of title 5 and the Foreign Service Pension System provided in part II of this subchapter.

(Pub. L. 96-465, title I, § 827, Oct. 17, 1980, 94 Stat. 2124; Pub. L. 99-335, title IV, § 411, June 6, 1986, 100 Stat. 614.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-335 added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

REFERENCE TO VETERANS' ADMINISTRATION DEEMED REFERENCE TO DEPARTMENT OF VETERANS AFFAIRS

Pub. L. 102-54, § 13(h)(2), June 13, 1991, 105 Stat. 275, provided that: "Any reference to the Veterans' Administration in any regulation prescribed or Executive order issued pursuant to section 827(a) of the Foreign Service Act of 1980 (22 U.S.C. 4067(a)) shall be deemed to be a reference to the Department of Veterans Affairs."

CONSTRUCTION OF SECTION WITH CIVIL SERVICE RETIREMENT SPOUSE EQUITY ACT OF 1984

This section not applicable with respect to either the amendments made by section 2 of Pub. L. 98-615 or the provisions of section 4 of Pub. L. 98-615 relating to equitable treatment under the Civil Service Retirement System for former spouses, except that, notwithstanding section 4(h) of Pub. L. 98-615, this section applicable with respect to sections 8339(j) and 8341(e) and (h) of Title 5, Government Organization and Employees, and section 4 (except subsec. (b)) of Pub. L. 98-615 to the extent that those sections apply to a qualified former wife or husband, see section 4069-1 of this title and section 4(h) of Pub. L. 98-615, set out as an Effective Date of 1984 Amendment note under section 8341 of Title 5.

RECOMMENDATIONS BY SECRETARY OF STATE TO PRESIDENT

For authority for the Secretary of State to make recommendations to the President through the Director of the Office of Management and Budget whenever action is appropriate under this section to maintain existing conformity between the Civil Service Retirement and Disability System and the Foreign Service Retirement and Disability System, see section 3 of Ex. Ord. No. 12293, Feb. 23, 1981, 46 F.R. 13969, set out as a note under section 3901 of this title.

EX. ORD. NO. 12289. CONFORMING THE FOREIGN SERVICE AND CIVIL SERVICE RETIREMENT AND DISABILITY SYSTEMS

Ex. Ord. No. 12289, Feb. 14, 1981, 46 F.R. 12693, as amended by Pub. L. 102-54, § 13(h)(2), June 13, 1991, 105 Stat. 275, provided:

By the authority vested in me as President of the United States of America by Section 827 of the Foreign Service Act of 1980 (22 U.S.C. 4067), and in order to conform further the Foreign Service Retirement and Disability System to the Civil Service Retirement and Disability System, it is hereby ordered as follows:

SECTION 1. (a) Section 826(c) of the Foreign Service Act of 1980 (22 U.S.C. 4066(c)) is deemed to be amended by striking out the first sentence of paragraph (1) thereof, and inserting in lieu thereof the following sentence:

"(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 of a deceased participant who dies in service shall be equal to the product (adjusted to the nearest $\frac{1}{10}$ of 1 percent) of—

“(a) 1/6 of the applicable percent change determined under Subsection (b) of this Section, multiplied by

“(b) the number of full months for which the annuity was payable from the Fund before the effective date of the increase (counting any portion of a month as a full month).”.

SEC. 2. Section 808(a) of the Foreign Service Act of 1980 (22 U.S.C. 4048(a)) is deemed to be amended by adding at the end thereof the following:

“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 Department of Veterans Affairs 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 Department of Veterans Affairs 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 chapter.”.

SEC. 3. The amendments to be deemed made by this Order shall take effect as of February 15, 1981.

EX. ORD. NO. 12446. CONFORMING THE FOREIGN SERVICE AND CIVIL SERVICE RETIREMENT AND DISABILITY SYSTEMS

Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, provided:

By the authority vested in me as President of the United States of America by Section 827 of the Foreign Service Act of 1980 (22 U.S.C. 4067) (hereafter referred to as “the Act” [this chapter]), and in order to conform further the Foreign Service Retirement and Disability System to the Civil Service Retirement and Disability System, it is hereby ordered as follows:

SECTION 1. *Interest Rates, Deposits, Refunds, and Redeposits.* (a) The second sentence of Section 805(d)(3) of the Act (22 U.S.C. 4045(d)(3)), the first sentence of Section 815(h) (22 U.S.C. 4055(h)), and the first sentence of Section 825(a) (22 U.S.C. 4065(a)), are deemed to be amended to provide that interest shall be compounded at the annual rate of 3 percent per annum through December 31, 1984, and thereafter at a rate equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 819 [22 U.S.C. 4059], as determined by the Secretary of the Treasury.

(b) Sections 806(a) and 816(d) of the Act (22 U.S.C. 4046(a) and 4056(d)) are deemed to be amended to exclude from the computation of creditable civilian service under section 816(a) of the Act any period of civilian service for which retirement deductions or contributions have not been made under section 805(d) [22 U.S.C. 4045] of the Act unless—

(1) the participant makes a contribution for such period as provided in such section 805(d); or

(2) no contribution is required for such service as provided under section 805(f) of the Act as deemed to be amended by this Order, or under any other statute.

(c) The amendments deemed to be made by section 1 of this Order shall apply (i) to contributions for civilian service performed on or after the first day of the month following issuance of this Order [Oct. 17, 1983], (ii) to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of the month, and (iii) to excess contributions under section 815(h) [22 U.S.C. 4055(h)] and voluntary contributions under section 825(a) [22 U.S.C. 4065(a)] from the first day of the month following issuance of this Order.

SEC. 2. *Rounding Down of Annuities.* (a) Section 826(e) of the Act (22 U.S.C. 4066(e)) is deemed to be amended by striking out “fixed at the nearest” and inserting in lieu thereof “rounded to the next lowest”.

(b) The amendment deemed to be made by section 2(a) of this Order shall be effective with respect to any adjustment or redetermination of any annuity made on or after the date of this Order [Oct. 17, 1983].

SEC. 3. *Later Commencement Date For Certain Annuities.*

(a) Section 807(a) of the Act (22 U.S.C. 4047(a)) is deemed to be amended to read as follows:

“(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) [22 U.S.C. 4009(a)] or a participant who is retired under section 813 [22 U.S.C. 4053] or is otherwise involuntarily separated from the Service, except by removal for cause on charges of misconduct or delinquency.

“(B) a participant retiring under section 808 [22 U.S.C. 4048] 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 amendment deemed to be made by paragraph 3(a) of this Order shall become effective thirty days after the effective date of this Order [Oct. 17, 1983].

SEC. 4. *Credit For Military Service.* (a) Section 805 of the Act (22 U.S.C. 4045) is deemed to be amended—

(i) by striking out subsection (e) and substituting the following subsection in lieu thereof:

“(e)(1) 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.

“(f) Contributions shall only be required to obtain credit for periods of military or naval service to the extent provided under section 805(e) [22 U.S.C. 4045(e)] and section 816(a) [22 U.S.C. 4056(a)], except that credit shall be allowed in the absence of contributions to individ-

uals of Japanese ancestry under section 816 [22 U.S.C. 4056] for periods of internment during World War II.”; and—

(ii) by redesignating subsection (f) as subsection (g).
 (b) Section 816(a) of the Act (22 U.S.C. 4056(a)) is deemed to be amended by adding “(1)” after “(a)” and by adding the following new paragraphs at the end thereof:

“(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 chapter 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) [22 U.S.C. 4045(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 [22 U.S.C. 4056] for civilian service performed prior to October 1982, 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 chapter is based, subject, in the case of military or naval service performed after December 1956, to section 816(j) [22 U.S.C. 4056(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 chapter is based, subject, in the case of military or naval service performed after December 1976, to section 816(j) [22 U.S.C. 4056(j)], as deemed to be added by this Order”;

(c) Section 816 of the Act (22 U.S.C. 4056) is deemed to be further amended by adding a new subsection (j) at the end thereof to read as follows:

“(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 chapter. 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 [22 U.S.C. 4056] 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 [22 U.S.C. 4056] 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) [22 U.S.C. 4045(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 has made a contribution (with interest if any is required) under section 805(e) [22 U.S.C. 4045(e)].”

(d) Section 822(a) of the Act (22 U.S.C. 4062(a)) is deemed to be amended by striking out the period at the end thereof and inserting in lieu thereof: “, 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).”

(e) The amendments deemed to be made by Section 4 of this Order shall be effective on the date of this Order [Oct. 17, 1983].

SEC. 5. *Recomputation at Age 62 of Credit for Military Service of Current Annuitants.* (a) Section 816(a) of the Act (22 U.S.C. 4056(a)) is deemed to be further amended so that the provisions of section 8332(j) of Title 5 of the United States Code, relating to credit for military service, shall not apply with respect to any individual who is entitled to an annuity under such Act [this chapter] on or before the date of approval of this order [Oct. 17, 1983], or who is entitled to an annuity based on a separation from service occurring on or before such date.

(b) Subject to subsection (c), in any case in which an individual described in subsection (a) is also entitled to old-age or survivors insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing application therefor), the amount of the annuity to which such individual is entitled under chapter 8 of the Act [this subchapter] (after taking into account subsection (a)) which is payable for any month shall be reduced by an amount determined by multiplying the amount of such old-age or survivors insurance benefit for the determination month by a fraction—

(1) the numerator of which is the total of the wages (within the meaning of section 209 of the Social Security Act [42 U.S.C. 409]) for service referred to in section 210(1) of such Act [42 U.S.C. 410] (relating to service in the uniformed services) and deemed additional wages (within the meaning of section 229 of such Act [42 U.S.C. 429]) of such individual credited for years after 1956 and before the calendar year in which the determination month occurs, up to the contribution and benefit base determined under section 230 of the Social Security Act [42 U.S.C. 415(e)(1)] (or other applicable maximum annual amount referred to in section 215(e)(1) of such Act [42 U.S.C. 409]) for each such year, and

(2) the denominator of which is the total of all wages deemed additional wages described in paragraph (1) of this subsection plus all other wages (within the meaning of section 209 of the Social Security Act [42 U.S.C. 409]) and all self-employment income (within the meaning of section 211(b) of such Act [42 U.S.C. 411(b)]) of such individual credited for years after 1936 and before the calendar year in which the determination month occurs, up to the contribution and benefit base (or such other amount referred to in such section 215(e)(1) of such Act [42 U.S.C. 415(e)(1)]) for each such year.

(c) Subsection (b) shall not reduce the annuity of any individual below the amount of the annuity which would be payable under chapter 8 of the Act [this subchapter] to the individual for the determination month if section 8332(j) of Title 5 of the United States Code applied to the individual for such month.

(d) For purposes of this section, the term “determination month” means—

(1) the first month the individual described in subsection (a) is entitled to old-age or survivors insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing application therefor); or

(2) the first day of the month following the month in which this Order is issued [Oct. 17, 1983] in the case of any individual so entitled to such benefits for such month.

(e) The preceding provisions of this section shall take effect with respect to any annuity payment payable under chapter 8 of the Act [this subchapter] for calendar months beginning after the date of this Order [Oct. 17, 1983].

(f) The Secretary of Health and Human Services shall furnish such information to the Secretary of State as may be necessary to carry out the preceding provisions of this section.

SEC. 6. *General Limitation on Cost-of-Living Adjustment for Annuities.* (a) Section 826 of the Act (22 U.S.C. 4066) is deemed to be amended to add at the end thereof the following new subsection:

“(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 provision of law limiting the expenditure of appropriated funds.”.

(b) The amendment made by subsection (a) of this Section shall not cause any annuity to be reduced below the rate that is payable on the date of approval of this Order [Oct. 17, 1983], but shall apply to any adjustment occurring on or after April 1, 1983 under Section 826 of the Act [22 U.S.C. 4066] to any annuity payable from the Foreign Service Retirement and Disability Fund, whether such annuity has a commencing date before, on, or after the date of this Order.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4069-1 of this title.

§ 4068. Remarriage

Notwithstanding any other provision of this part, any benefit payable under this part 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.

(Pub. L. 96-465, title I, §828, as added Pub. L. 99-335, title IV, §412, June 6, 1986, 100 Stat. 614.)

EFFECTIVE DATE

Section effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as a note under section 8401 of Title 5, Government Organization and Employees.

§ 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, respectively.

(Pub. L. 96-465, title I, §829, as added Pub. L. 99-556, title IV, §404(a), Oct. 27, 1986, 100 Stat. 3137.)

EFFECTIVE DATE

Section effective Jan. 1, 1987, see section 408 of Pub. L. 99-556, set out as an Effective Date of 1986 Amendment note under section 4046 of this title.

§ 4069-1. Qualified former wives and husbands

(a) Construction with provisions relating to compatibility between retirement systems; effective dates

Notwithstanding section 4(h) of the Civil Service Retirement Spouse Equity Act of 1984, section 4067 of this title shall apply with respect to section 8339(j), section 8341(e), and section 8341(h) of title 5, 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) Payments to other persons as provided in court order or spousal agreement

(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 subchapter 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) “Qualified former wife or husband” defined

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 subchapter; and

(2) the former wife or husband was married to such individual for at least 9 months but not more than 10 years.

(d) Promulgation of regulations

Regulations issued pursuant to section 4067 of this title 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.

(Pub. L. 96-465, title I, §830, as added Pub. L. 100-238, title II, §202(a), Jan. 8, 1988, 101 Stat. 1768.)

REFERENCES IN TEXT

The Civil Service Retirement Spouse Equity Act of 1984, referred to in subsec. (a), is Pub. L. 98-615, Nov. 8, 1984, 98 Stat. 3195, as amended. Section 4 of that Act is set out as a note under section 8341 of Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 8331 of Title 5 and Tables.

For effective date of this section, referred to in subsection (a), see Effective Date note set out below.

CODIFICATION

Another section 830 of the Foreign Service Act of 1980 was enacted by Pub. L. 100-204 and is classified to section 4069a of this title.

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives changed to Committee on International Relations of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE

Section applicable to any individual who, on or after Jan. 8, 1988, is married to a participant or former participant, see section 261(b)(1) of Pub. L. 100-238, set out as an Effective Date of 1988 Amendment note under section 4054 of this title.

ABOLITION OF HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

Committee on Post Office and Civil Service of House of Representatives abolished and its jurisdiction given primarily to Committee on Government Reform and Oversight of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 4069a. Retirement benefits for certain former spouses

(a) Eligibility; percentage of benefits

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) of this section, 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) Disqualification

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 subchapter with at least 5 years occurring while the participant was a member of the Foreign Service.

(c) Period of entitlement; construction with other provisions; application approval and payment

(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 subchapter; 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 subchapter (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 4054(a)(7) of this title for purposes of section 4046(h) of this title 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 December 22, 1987. 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 December 22, 1987.

(d) "Benefits" defined

For the purposes of this section, the term "benefits" means—

- (1) with respect to a participant or former participant subject to this part, the annuity of the participant or former participant; and
- (2) with respect to a participant or former participant subject to part II of this subchapter, the benefits of the participant or former participant under that part.

(e) Effect of section on annuity

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 subchapter.

(f) Former spouses of United States Information Agency and Agency for International Development employees

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 Sys-

tem 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.

(Pub. L. 96-465, title I, §830, as added Pub. L. 100-204, title I, §188(a), Dec. 22, 1987, 101 Stat. 1369; amended Pub. L. 101-246, title I, §146(a), Feb. 16, 1990, 104 Stat. 37.)

CODIFICATION

Another section 830 of the Foreign Service Act of 1980 was enacted by Pub. L. 100-238 and is classified to section 4069-1 of this title.

AMENDMENTS

1990—Subsec. (f). Pub. L. 101-246 added subsec. (f).

§ 4069a-1. Retirement benefits for certain former spouses

(a) Eligibility; percentage of benefits

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) of this section, 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) Disqualification

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 subchapter with at least 5 years occurring while the participant was a member of the Foreign Service.

(c) Period of entitlement; construction with other provisions; application approval and payment

(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 subchapter; 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 subchapter (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 4054(a)(7) of this title for purposes of section 4046(h) of this title 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) "Benefits" defined

For the purpose of this section, the term "benefits" means—

(1) with respect to a participant or former participant subject to this part, the annuity of the participant or former participant; and

(2) with respect to a participant or former participant subject to part II of this subchapter, the benefits of the participant or former participant under that part.

(e) Effect of section on annuity

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 subchapter.

(Pub. L. 96-465, title I, §831, as added Pub. L. 100-238, title II, §204(a), Jan. 8, 1988, 101 Stat. 1770.)

REFERENCES IN TEXT

For the effective date of this section, referred to in subsec. (c)(4), see Effective Date note set out below.

CODIFICATION

Another section 831 of the Foreign Service Act of 1980 was enacted by Pub. L. 100-204 and is classified to section 4069b of this title.

EFFECTIVE DATE

Section effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as an Effective Date of 1988 Amendment note under section 4054 of this title.

§ 4069b. Survivor benefits for certain former spouses

(a) Eligibility; amount of annuity

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) of this section, 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 subchapter; 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) Election by former spouse

If an election has been made with respect to such former spouse under section 4159 or 4046(f) of this title, then the survivor annuity under subsection (a) of this section 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) of this section less the amount of such election.

(c) Disqualification

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 subchapter with at least 5 years occurring while the participant was a member of the Foreign Service.

(d) Period of entitlement; application approval and payment

(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 December 22, 1987, beginning on December 22, 1987; 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) December 22, 1987; 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 December 22, 1987. 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 December 22, 1987.

(e) Promulgation of regulations; notification of rights

The Secretary shall—

(1) as soon as possible, but not later than 60 days after December 22, 1987, 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) Effect of section on annuity

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 subchapter.

(g) Former spouses of United States Information Agency and Agency for International Development employees

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 of 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.

(Pub. L. 96-465, title I, §831, as added Pub. L. 100-204, title I, §188(a), Dec. 22, 1987, 101 Stat. 1370; amended Pub. L. 101-246, title I, §146(b), Feb. 16, 1990, 104 Stat. 37.)

CODIFICATION

Another section 831 of the Foreign Service Act of 1980 was enacted by Pub. L. 100-238 and is classified to section 4069a-1 of this title.

AMENDMENTS

1990—Subsec. (g). Pub. L. 101-246 added subsec. (g).

§ 4069b-1. Survivor benefits for certain former spouses

(a) Eligibility; amount of annuity

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) of this section, 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 subchapter; 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) Election by former spouse

If an election has been made with respect to such former spouse under section 4159 or 4046(f) of this title, then the survivor annuity under subsection (a) of this section 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) of this section less the amount of such election.

(c) Disqualification

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 subchapter with at least 5 years occurring while the participant was a member of the Foreign Service.

(d) Period of entitlement; application approval and payment

(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) Promulgation of regulations; notification of rights

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) Effect of section on annuity

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 subchapter.

(Pub. L. 96-465, title I, §832, as added Pub. L. 100-238, title II, §204(a), Jan. 8, 1988, 101 Stat. 1771.)

REFERENCES IN TEXT

For the effective date of this section, referred to in subsecs. (d)(1)(A)(i), (ii)(II), (2) and (e)(1), see Effective Date note set out below.

CODIFICATION

Another section 832 of the Foreign Service Act of 1980 was enacted by Pub. L. 100-204 and is classified to section 4069c of this title.

EFFECTIVE DATE

Section effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as an Effective Date of 1988 Amendment note under section 4054 of this title.

§ 4069c. Health benefits for certain former spouses

(a) Eligibility

Except as provided in subsection (c)(1) of this section, 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) Prerequisites for enrollment; notification of rights

(1) Any individual eligible for coverage under subsection (a) of this section 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 December 22, 1987, 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 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) of this section; 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) Disqualification

(1) Any former spouse who remarries before age 55 is not eligible to make an election under subsection (b)(1) of this section.

(2) Any former spouse enrolled in a health benefits plan pursuant to an election under subsection (b)(1) of this section 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) Prohibition on coverage by more than one plan

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) "Health benefits plan" defined

For purposes of this section the term "health benefits plan" means an approved health benefits plan under chapter 89 of title 5.

(f) Former spouses of United States Information Agency and Agency for International Development employees

Any individual who on February 14, 1981, was an otherwise qualified former spouse pursuant to subsections (a), (b), and (c) of 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.

(Pub. L. 96–465, title I, § 832, as added Pub. L. 100–204, title I, § 188(a), Dec. 22, 1987, 101 Stat. 1371; amended Pub. L. 101–246, title I, § 146(c), Feb. 16, 1990, 104 Stat. 37.)

CODIFICATION

Another section 832 of the Foreign Service Act of 1980 was enacted by Pub. L. 100–238 and is classified to section 4069b–1 of this title.

AMENDMENTS

1990—Subsec. (f). Pub. L. 101–246 added subsec. (f).

§ 4069c–1. Health benefits for certain former spouses

(a) Eligibility

Except as provided in subsection (c)(1) of this section, 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) Prerequisites for enrollment; notification of rights

(1) Any individual eligible for coverage under subsection (a) of this section 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 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) of this section; 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) Disqualification

(1) Any former spouse who remarries before age 55 is not eligible to make an election under subsection (b)(1) of this section.

(2) Any former spouse enrolled in a health benefits plan pursuant to an election under subsection (b)(1) of this section 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) Prohibition on coverage by more than one plan

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) “Health benefits plan” defined

For purposes of this section the term “health benefits plan” means an approved health benefits plan under chapter 89 of title 5.

(Pub. L. 96-465, title I, § 833, as added Pub. L. 100-238, title II, § 204(a), Jan. 8, 1988, 101 Stat. 1772.)

REFERENCES IN TEXT

For the effective date of this section, referred to in subsec. (b)(1), see Effective Date note set out below.

EFFECTIVE DATE

Section effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as an Effective Date of 1988 Amendment note under section 4054 of this title.

PART II—FOREIGN SERVICE PENSION SYSTEM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 4043, 4044, 4054, 4055, 4063, 4064, 4067, 4069, 4069a, 4069a-1 of this title; title 5 sections 8402, 8411; title 26 section 3121; title 42 sections 402, 410.

§ 4071. Establishment; application of Federal Employees’ Retirement System to Foreign Service Pension System participants

(a) There is hereby established a Foreign Service Pension System.

(b) Except as otherwise specifically provided in this part or any other provision of law, the provisions of chapter 84 of title 5 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.

(Pub. L. 96-465, title I, § 851, as added Pub. L. 99-335, title IV, § 415, June 6, 1986, 100 Stat. 615.)

EFFECTIVE DATE

Part effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as a note under section 8401 of Title 5, Government Organization and Employees.

§ 4071a. Definitions

As used in this part, unless otherwise specified—

(1) the term “court order” has the same meaning given in section 4044(4) of this title;

(2) the term “Fund” means the Foreign Service Retirement and Disability Fund maintained by the Secretary of the Treasury pursuant to section 4042 of this title;

(3) the term “lump-sum credit” means the unrefunded amount consisting of—

(A) retirement deductions made from the basic pay of a participant under section 4071e of this title (or under section 204 of the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983);

(B) amounts deposited by a participant under section 4071c of this title 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 yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 4059 of this title, 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 subchapter is of (B) the total number of years of such service, disregarding extra credit under section 4057 of this title;

(7) the term “supplemental liability” means the estimated excess of—

(A) the actuarial present value of all future benefits payable from the Fund under this part 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 4071e of this title and (II) contributions for past civilian and military service;

(ii) the actuarial present value of future contributions to be made pursuant to section 4071f of this title;

(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; and

(8) the term “System” means the Foreign Service Pension System.

(Pub. L. 96-465, title I, § 852, as added Pub. L. 99-335, title IV, § 415, June 6, 1986, 100 Stat. 615; amended Pub. L. 100-238, title II, § 241, Jan. 8, 1988, 101 Stat. 1776.)

REFERENCES IN TEXT

The Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, referred to in pars. (3)(A) and (7)(B)(iii)(II), is title II of Pub. L. 98-168, Nov. 29, 1983, 97 Stat. 1106, as amended, which is set out as a note under section 8331 of Title 5, Government Organization and Employees.

AMENDMENTS

1988—Pars. (3) to (8). Pub. L. 100-238 added par. (3) and redesignated former pars. (3) to (7) as (4) to (8), respectively.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

§ 4071b. Participants**(a) Covered members**

Except for persons excluded by subsection (b), (c), or (d) of this section, 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 [42 U.S.C. 401 et seq.] and chapter 21 of title 26, who would, but for this section, be participants in the Foreign Service Retirement and Disability System pursuant to section 4043 of this title shall instead be participants in the Foreign Service Pension System.

(b) Exclusion of participants in Foreign Service Retirement and Disability System

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 [42 U.S.C. 401 et seq.].

(c) Exclusion of individuals with certain creditable civilian service

Individuals who become members of the Service after having completed at least 5 years of civilian service creditable under part I of this subchapter, subchapter III of chapter 83 of title 5 (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 part, subchapter, or title, any requirement that the individual become subject to such part, 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 part, 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 part (under regulations issued by the Secretary of State pursuant to section 4071i of this title).

(d) Exclusion of temporary or intermittent employees

The Secretary may exclude from the operation of this part 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 3946 of this title.

(Pub. L. 96-465, title I, §853, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 616; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103-178, title II, §204(b)(1), Dec. 3, 1993, 107 Stat. 2033.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a) and (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Central Intelligence Agency Retirement Act, referred to in subsec. (c), is Pub. L. 88-643, as revised generally by Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196. Title II of the Act is classified generally to subchapter II (§2011 et seq.) of chapter 38 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 50 and Tables.

The Federal Employees' Retirement System Act of 1986, referred to in subsec. (c), is Pub. L. 99-335, June 6, 1986, 100 Stat. 514. Title III of the Federal Employees' Retirement System Act of 1986 amended sections 3121 and 6103 of Title 26, Internal Revenue Code, section 1005 of Title 39, Postal Service, and section 410 of Title 42, The Public Health and Welfare, enacted provisions set out as notes under sections 8331, 8401, 8432, and 8472 of Title 5, Government Organization and Employees, and section 6103 of Title 26, and amended provisions set out as a note under section 8331 of Title 5. For complete classification of this Act to the Code, see Short Title note set out under section 8401 of Title 5 and Tables.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103-178 substituted "the Central Intelligence Agency Retirement Act (50 U.S.C. 2011 et seq.)" for "the Central Intelligence Agency Retirement Act of 1964 for Certain Employees".

1986—Subsec. (a). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4045 of this title.

§ 4071c. Creditable service**(a) Service included**

For purposes of this part, 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) of this section, 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 part I of this subchapter (determined without regard to any deposit or redeposit requirement under such part, sub-

chapter III of chapter 83 of title 5 (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 part, 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 part, subchapter, or title).

(b) Refund of retirement deductions; retirement deduction not made; required deposit; computation of interest

(1) A participant who has received a refund of retirement deductions under part I of this subchapter with respect to any service described in subsection (a)(3) of this section may not be allowed credit for such service under this part 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 part for any service described in subsection (a)(3) of this section for which retirement deductions under part I of this subchapter 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 4045(d) of this title and regulations issued by the Secretary of State.

(c) Volunteer service; required payment

Credit shall be given under this System to a participant for a period of prior satisfactory service as—

(1) a volunteer or volunteer leader under the Peace Corps Act (22 U.S.C. 2501 et seq.),

(2) a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, or

(3) a full-time volunteer for a period of service of at least one 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 (as determined in accordance with regulations of the Secretary of State consistent with regulations for making corresponding determinations under chapter 83, title 5) together with interest determined under regulations issued by the Secretary of State.

(d) Prior service under other retirement system; waiver of credit and payment into Fund

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) 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) Employees of Members or offices of Congress

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 4071f(a) of this title 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 part and shall not, unless all retirement credit is transferred, be counted as creditable service under any other Government retirement system.

(Pub. L. 96-465, title I, §854, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 616; amended Pub. L. 99-556, title IV, §405, Oct. 27, 1986, 100 Stat. 3137; Pub. L. 100-238, title II, §242, Jan. 8, 1988, 101 Stat. 1776; Pub. L. 103-178, title II, §204(b)(2), Dec. 3, 1993, 107 Stat. 2033.)

REFERENCES IN TEXT

Section 204(a)(2) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, referred to in subsec. (a)(2), is section 204(a)(2) of Pub. L. 98-168, which is set out as a note under section 8331 of Title 5, Government Organization and Employees.

Section 414 of the Federal Employees' Retirement System Act of 1986, referred to in subsec. (a)(3), is section 414 of Pub. L. 99-335, title IV, June 6, 1986, 100 Stat. 614, which amended section 4043 of this title.

The Central Intelligence Agency Retirement Act, referred to in subsecs. (a)(3) and (d), is Pub. L. 88-643, as revised generally by Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196. Titles II and III of the Act are classified generally to subchapters II (§2011 et seq.) and III (§2151 et seq.), respectively, of chapter 38 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 50 and Tables.

The Peace Corps Act, referred to in subsec. (c)(1), is Pub. L. 87-293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

The Economic Opportunity Act of 1964, referred to in subsec. (c)(2), is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended. Part A of title VIII of that Act is part A of title VIII of Pub. L. 88-452 as added by Pub. L. 90-222, title I, §110, Dec. 23, 1967, 81 Stat. 722, which was classified generally to part A (§2992 et seq.) of subchapter VIII of chapter 34 of Title 42, The Public Health and Welfare, prior to its repeal by Pub. L. 93-113, title VI, §603, Oct. 1, 1973, 87 Stat. 417. See sections 4951 et seq., 5042(13)(A), and 5055 of Title 42.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (c)(3), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended. Parts A, B, and C of title I of the Domestic Volunteer Service Act of 1973 are classified to Parts A (§4951 et seq.), B (§4971 et seq.), and C (§4991 et seq.), respectively, of subchapter I of chapter 66 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of Title 42 and Tables.

AMENDMENTS

1993—Subsec. (a)(3). Pub. L. 103-178, §204(b)(1), substituted “the Central Intelligence Agency Retirement

Act (50 U.S.C. 2011 et seq.)” for “the Central Intelligence Agency Retirement Act of 1964 for Certain Employees”.

Subsec. (d). Pub. L. 103-178, § 204(b)(2)(B), substituted “the Central Intelligence Agency Retirement Act (50 U.S.C. 2151 et seq.)” for “the Central Intelligence Agency Retirement Act of 1964 for Certain Employees”.

1988—Subsec. (e). Pub. L. 100-238 struck out “matching” after “shall make a” and inserted “determined under section 4071f(a) of this title” after “participant”.

1986—Subsec. (d). Pub. L. 99-556, § 405(a), which directed that subsec. (d) be amended by substituting “which was deducted and withheld from the individual’s basic pay under the other retirement system” for “which would have been deducted from pay under section 4071c(a) of this title had the individual been a participant”, was executed by making the substitution for “which would have been deducted from pay under section 4071e(a) of this title had the individual been a participant”, as the probable intent of Congress.

Subsec. (e). Pub. L. 99-556, § 405(b), added subsec. (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-556 effective Jan. 1, 1987, see section 408 of Pub. L. 99-556, set out as a note under section 4046 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4071a of this title.

§ 4071d. Entitlement to annuity

(a) Retirement conditions; definitions

(1) Any participant may be retired under the conditions specified in section 4051 of this title and shall be retired under the conditions specified in sections 4052 and 4053 of this title and receive benefits under this part.

(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.

(b) Voluntary or mandatory retirement with authorization for immediate annuity; computation of annuity

(1) Any participant who retires voluntarily or mandatorily under section 4007, 4008, 4051, 4052, or 4053 of this title under conditions authorizing an immediate annuity for participants in the Foreign Service Retirement and Disability 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(d)(1) of title 5 for all service while a participant in this System and for prior service creditable under this part 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, or in the Federal Employees’ Retirement System under chapter 84 of title 5; and

(B) at the rate stated in section 8415(a) of title 5 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 4007, 4008, or 4010 of this title and who would if a participant under part I of this subchapter, become eligible for a refund of contributions or a deferred annuity under part I of this subchapter, shall, in lieu thereof, receive benefits for an involuntary separation under this part.

(4) A disability annuity under this part required to be redetermined under section 8452(b) of title 5, 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 4051 of this title.

(5) A former participant entitled to a deferred annuity under section 8413(b) of title 5 shall not be subject to section 8415(f)(1) of such title 5 if the former participant has 20 years of service creditable under this part 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 part 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 part I of this subchapter based on the service of the deceased annuitant determined under section 8442(f)(5) of such title 5.

(c) Annuity supplement

A participant who is entitled to an immediate annuity under subsection (b) of this section 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 as if the participant were a law enforcement officer retired under section 8412(d) of such title.

(d) Separation for cause based on disloyalty

Any participant who is separated for cause under section 4010 of this title 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.

(Pub. L. 96-465, title I, §855, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 617; amended Pub. L. 99-556, title IV, §406, Oct. 27, 1986, 100 Stat. 3138; Pub. L. 103-178, title II, §204(b)(3), Dec. 3, 1993, 107 Stat. 2033.)

REFERENCES IN TEXT

The Central Intelligence Agency Retirement Act, referred to in subsec. (b)(2)(A)(ii), is Pub. L. 88-643, as revised generally by Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196. Title II of the Act is classified generally to subchapter II (§2011 et seq.) of chapter 38 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 50 and Tables.

AMENDMENTS

1993—Subsec. (b)(2)(A)(ii). Pub. L. 103-178 substituted “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))” for “under title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees or under section 302(a) or 303(b) of that Act”.

1986—Subsec. (b)(1). Pub. L. 99-556, §406(a), substituted “as a member of the Foreign Service” for “of service subject to this subchapter”.

Subsec. (b)(2). Pub. L. 99-556, §406(b), amended par. (2) by substituting subpars. (A) and (B) for former subpars. (A) to (C). Prior to amendment, subpars. (A) to (C) read as follows:

“(A) for all service earned while a participant in this System, at the rate stated in section 8415(d) of title 5; and

“(B) for all service earned while a participant in another retirement system creditable under section 4071c(d) of this title, at the rate which would have been applicable to the individual had that individual remained a participant in the other system; and

“(C) for all volunteer service creditable under section 4071c(c) of this title, at the rate stated in section 8415(a) of title 5.”

Subsec. (b)(3) to (6). Pub. L. 99-556, §406(c), added pars. (3) to (6).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-556 effective Jan. 1, 1987, see section 408 of Pub. L. 99-556, set out as a note under section 4046 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4053 of this title.

§ 4071e. Deductions and withholdings from pay

(a) Basic pay

The employing agency shall deduct and withhold from basic pay of each participant a percentage of basic pay equal to 7½ percent minus the percentage then in effect under section 3101(a) of title 26 (relating to the rate of tax for old age, survivors and disability insurance).

(b) Consent to deductions; discharge of claims

Each participant is deemed to consent and agree to the deductions under subsection (a) of this section. Notwithstanding any law or regulation 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 part based on the service of the participant.

(c) Deposit of amounts

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) Entry on individual retirement records

Under such regulations as the Secretary of State may issue, amounts deducted under subsection (a) of this section shall be entered on individual retirement records.

(Pub. L. 96-465, title I, §856, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 618; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4045, 4071a of this title.

§ 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 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.

(Pub. L. 96-465, title I, §857, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 618.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4071a, 4071c of this title.

§ 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 in the same manner as such adjustments are made for annuitants referred to in subsection (c)(3)(B)(ii) of such section.

(Pub. L. 96-465, title I, §858, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 619.)

DELAY IN COST-OF-LIVING ADJUSTMENTS DURING
FISCAL YEARS 1994, 1995, AND 1996

Any cost-of-living increase scheduled to take effect during fiscal year 1994, 1995, or 1996 under this section delayed until first day of third calendar month after date such increase would otherwise take effect, see section 11001 of Pub. L. 103-66, set out as a note under section 8340 of Title 5, Government Organization and Employees.

§ 4071h. General and administrative provisions**(a) Administration by Secretary of State; issuance of regulations**

The Secretary of State shall administer the Foreign Service Pension System except for matters relating to the Thrift Savings Plan provided in subchapters III and VII of chapter 84 of title 5. 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) Appeal of determinations

Determinations of the Secretary of State under the Foreign Service Pension System which, if made by the Office of Personnel Management under chapter 84 of title 5 or the Director of such Office, would be appealable to the Merit Systems Protection Board shall, instead, be appealable to the Foreign Service Grievance Board, except that determinations of disability for participants shall be based upon the standards in section 4048 of this title (other than the exclusion for vicious habits, intemperance, or willful misconduct) and subject to review in the same manner as under that section.

(c) Periodic valuations by Secretary of the Treasury

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.

(Pub. L. 96-465, title I, §859, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 619.)

§ 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 (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 (the Civil Service Retirement System), the Social Security Act [42 U.S.C. 301 et seq.], and title 26 shall be deemed to refer to participation in the Foreign Service Pension System or the Foreign Service Retirement and Disability System, as appropriate.

(Pub. L. 96-465, title I, §860, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 619; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1986—Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4046, 4071b of this title; title 26 section 3121; title 42 section 410.

§ 4071j. Former spouses**(a) Entitlement to share in benefits; conditions; remarriage; payments as income to former spouse; disability annuitants; election regarding method of payment; maximum amount payable**

(1)(A) Unless otherwise expressly provided by any spousal agreement or court order governing disposition of benefits under this part, a former spouse of a participant or former participant is entitled, during the period described in subparagraph (B), to a share (determined under paragraph (2)) of all benefits otherwise payable to such participant under this part if such former spouse was married to the participant for at least 10 years during service of the participant which is creditable under this subchapter 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 subchapter; 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 title 26, 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 part, and

(ii) any reduction in the annuity of the participant to provide survivor benefits under this part.

(5) Notwithstanding subsection (a)(1) of this section, 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.

(6)(A) Except as provided in subparagraph (B), any former spouse who becomes entitled to receive any benefit under this part 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 part.

(B) A former spouse may not elect a method of payment under subchapter II, chapter 84 of title 5, 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 part, disregarding any apportionment of these benefits to others, and the aggregate amount payable to all others at any one time.

(b) Entitlement to survivor benefits; determination of share; disqualification upon remarriage

(1) Unless otherwise expressly provided for by any spousal agreement or court order governing survivorship benefits under this part to a former spouse married to a participant or former participant for the periods specified in subsection (a)(1)(A) of this section, such former spouse is entitled to a share, determined under subsection (b)(2) of this section, of all survivor benefits that would otherwise be payable under this part to an eligible surviving spouse of the participant.

(2) The share referred to in subsection (b)(1) of this section 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 subchapter; 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) Diminution of entitlement of former spouse prohibited

A participant or former participant may not make any election or modification of election under section 8417, 8418, or 8433 of title 5 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) Transfer of participant from Foreign Service Retirement and Disability System; determination of benefit share

If a member becomes a participant under this part after qualifying for benefits under part I of this subchapter and, at the time of transfer, has a former spouse entitled to benefits under part I of this subchapter which are determined under section 4054 or 4055 of this title (as determined by the Secretary of State) and are similar in amount to a pro rata share division under section 4054 or 4055 of this title and the service of the member as a participant under this part 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) Death of participant entitled to deferred annuity; spousal agreement; payment of survivor annuity

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, to a former spouse, such survivor annuity shall be paid under the terms of this part as if the survivor annuity had been ordered by a court.

(Pub. L. 96-465, title I, §861, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 619; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99-556, title IV, §407, Oct. 27, 1986, 100 Stat. 3139.)

AMENDMENTS

1986—Subsec. (a)(4)(A). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Subsec. (b)(3). Pub. L. 99-556 added par. (3).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-556 effective Jan. 1, 1987, see section 408 of Pub. L. 99-556, set out as a note under section 4046 of this title.

§ 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 chapter 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 part to a spouse or former spouse.

(Pub. L. 96-465, title I, § 862, as added Pub. L. 99-335, title IV, § 415, June 6, 1986, 100 Stat. 621.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 96-465, Oct. 17, 1980, 94 Stat. 2071, as amended, known as the Foreign Service Act of 1980, which is classified principally to this chapter (§ 3901 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3901 of this title and Tables.

SUBCHAPTER IX—TRAVEL, LEAVE, AND OTHER BENEFITS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4153 of this title; title 7 section 1766c; title 26 section 912; title 31 section 325; title 42 section 242i; title 50 section 403e.

§ 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;

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 leave and of 2 round trips during any continuous 3-year tour unbroken by home leave;

(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 for purposes of family visitation in situations where the family of the member is prevented by official order 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) roundtrip 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.¹

(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 mem-

¹ So in original. The period probably should be a semicolon.