

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of the Act of May 24, 1924 (43 Stat. 144), referred to in text, which was classified to section 21 of this title, was repealed by act Aug. 13, 1946, ch. 957, title XI, § 1131(44), 60 Stat. 1038.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

§ 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.

§ 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 Administration, or a predecessor organization, after June 30, 1961,

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

(10) "pro rata share", in the case of any former spouse of any participant or former participant, means a percentage which is equal to the percentage that (A) the number of years during which the former spouse was married to the participant during the creditable service (creditable under 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;

(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; and

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

(A) the duties of whose position—

(i) are primarily—

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

(II) the protection of persons pursuant to section 2709(a)(3) of this title against threats to personal safety; and

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

(B) performing duties described in subparagraph (A) before, on, or after November 13, 1998; or

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

(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; Pub. L. 105-382, § 2(a)(1), Nov. 13, 1998, 112 Stat. 3406.)

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

1998—Par. (15). Pub. L. 105-382 added par. (15).

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 1998 AMENDMENT

Pub. L. 105-382, § 4, Nov. 13, 1998, 112 Stat. 3409, as amended by Pub. L. 106-554, § 1(a)(4) [div. B, title I, § 145(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-250, provided that:

“(a) IN GENERAL.—Except as provided in subsection (b), this Act [amending this section and sections 4045, 4046, 4052, 4071a, and 4071d of this title and enacting provisions set out as a note under section 3901 of this title] and the amendments made by this Act—

“(1) shall take effect on the date of the enactment of this Act [Nov. 13, 1998]; and

“(2) shall apply with respect to—

“(A) any individual first appointed on or after that date as a special agent who will have any portion of such individual’s annuity computed in conformance with section 806(a)(6) of the Foreign Service Act [of 1980] [22 U.S.C. 4046(a)(6)]; and

“(B) any individual making an election under subsection (b), subject to the provisions of such subsection.

“(b) ELECTION FOR CURRENT PARTICIPANTS.—

“(1) ELIGIBILITY.—An election under this subsection may be made by any currently employed participant or participant who was serving as of January 1, 1997 under chapter 8 of the Foreign Service Act of 1980 [22 U.S.C. 4041 et seq.] who is serving or has served as a special agent, or by a survivor of a special agent who was eligible to make an election under this section.

“(2) EFFECT OF AN ELECTION.—

“(A) IN GENERAL.—If an individual makes an election under this subsection, the amendments made by this Act [amending this section and sections 4045, 4046, 4052, 4071a, and 4071d of this title] shall become applicable with respect to such individual, subject to subparagraph (B).

“(B) TREATMENT OF PRIOR SERVICE.—

“(i) SPECIAL CONTRIBUTION.—An individual may, after making the election under this subsection, make a special contribution up to the full amount of the difference between the contributions actually deducted from pay for prior service and the deductions that would have been required if the amendments made by this Act had then been in effect. Any special contributions under this clause shall be computed under regulations based on section 805(d) of the Foreign Service Act of 1980 [22 U.S.C. 4045(d)] (as amended by section 2), including provisions relating to the computation of interest.

“(ii) ACTUARIAL REDUCTION.—

“(I) RULE IF THE SPECIAL CONTRIBUTION IS PAID.—If the full amount of the special contribution under clause (i) is paid, no reduction under this clause shall apply.

“(II) RULE IF LESS THAN THE ENTIRE AMOUNT IS PAID.—If no special contribution under clause (i) is paid, or if less than the entire amount of such special contribution is paid, the recomputed annuity shall be reduced by an amount sufficient to make up the actuarial present value of the shortfall.

“(c) REGULATIONS AND NOTICE.—Not later than 6 months after the date of the enactment of this Act [Nov. 13, 1998], the Secretary of State—

“(1) shall promulgate such regulations as may be necessary to carry out this Act; and

“(2) shall take measures reasonably designed to provide notice to participants as to any rights they might have under this Act.

“(d) ELECTION DEADLINE.—An election under subsection (b) must be made not later than 90 days after the date on which the relevant notice under subsection (c)(2) is provided.

“(e) DEFINITION.—For purposes of this section, the term ‘special agent’ has the meaning given such term under section 804(15) of the Foreign Service Act of 1980 (22 U.S.C. 4044(15)), as amended by section 2(a).”

[Pub. L. 106-554, § 1(a)(4) [div. B, title I, § 145(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-250, provided that: “The amendment made by this section [amending section 4 of Pub. L. 105-382, set out above] shall take effect on January 1, 2001.”]

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.

§ 4045. Contributions to Fund

(a) Rates and sources; deposits in Fund

(1) Except as otherwise provided in this section, 7.25 percent of the basic salary received by