Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on National Security of House of Representatives (now Committee on Armed Services of House of Representatives) in case of provisions relating to interoceanic canals, Merchant Marine Academy and State Maritime Academies, or national security aspects of merchant marine by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 3873. Exemption from Metric Conversion Act of 1975

The Commission is exempt from the provisions of the Metric Conversion Act of 1975 (15 U.S.C. 205a et seq.).


REFERENCES IN TEXT

The Metric Conversion Act of 1975, referred to in section catchline and text, is Pub. L. 94-168, Dec. 23, 1975, to subchapter II (§ 205a et seq.) of chapter 6 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under Title 15, Commerce and Trade; section 3302(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

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CODIFICATION

Provisions of this chapter are derived from the Foreign Service Act of 1946, former section 801 et seq. of this title, and related and miscellaneous provisions as follows:

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FOREIGN COMMERCIAL SERVICE

For authority of Secretary of Commerce to establish a Foreign Commercial Service in Department of Commerce, see section 1–104 of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 991, as amended, set out as a note under section 2171 of Title 19, Customs Duties.

SUBCHAPTER I—GENERAL PROVISIONS

§ 3901. Congressional findings and objectives

(a) The Congress finds that—

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

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

(3) the Foreign Service of the United States, established under the Act of May 24, 1924 (commonly known as the Rogers Act) and continued by the Foreign Service Act of 1961, must be preserved, strengthened, and improved in order to carry out its mission effectively in response to the complex challenges of modern diplomacy and international relations;

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

(5) the Foreign Service should be operated on the basis of merit principles.
(b) The objective of this chapter is to strengthen and improve the Foreign Service of the United States by—

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

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

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

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

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

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

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

(8) improving Foreign Service managerial flexibility and effectiveness;

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

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


"(a) Except as otherwise provided, this Act [see Short Title note set out below] shall take effect on February 15, 1981.

"(b) Personnel actions may be taken on and after the effective date of this Act on the basis of any then current Foreign Service evaluation cycle as if this Act [see Short Title note set out below] had been in effect at the beginning of that cycle.


"(d)(1) Section 812 of this Act [section 4052 of this title], and the repeal of sections 601 and 622 of the Foreign Service Act of 1946 [sections 1001 and 1002 of this title] and section 625(k) of the Foreign Assistance Act of 1961 [section 2385(k) of this title], shall be effective as of the date of enactment of this Act [Oct. 17, 1980].

"(2) For purposes of implementing section 2101 [section 4151 of this title], sections 402(a) and 403 [sections 3962(a) and 3963 of this title] shall be effective as of the date of enactment of this Act [Oct. 17, 1980]."

"(e)(1) The provisions of chapter 8 of title I [subchapter VIII of this chapter] regarding the rights of former spouses to any annuity under section 814(a) [section 4159 of this title] shall apply in the case of any individual who after the effective date of this Act becomes a former spouse of an individual who separates from the Service after such date.

"(2) Except to the extent provided in section 2109 [section 4159 of this title], the provisions of such chapter [subchapter VIII of this chapter] regarding the rights of former spouses to receive survivor annuities under chapter 8 [subchapter VIII of this chapter] shall apply in the case of any individual who after the effective date of this Act becomes a former spouse of a participant or former participant in the Foreign Service Retirement and Disability System.""

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110–50, §1, July 30, 2007, 121 Stat. 261, provided that: "This Act [amending section 4064 of this title] may be cited as the 'Passport Backlog Reduction Act of 2007'\n
SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–382, §1, Nov. 13, 1998, 112 Stat. 3406, provided that: "This Act [amending sections 4044 to 4046, 4052, 4071a, and 4071d of this title and enacting provi..."
sions set out as a note under section 404(h) of this title] may be cited as the "Department of State Special Agents Retirement Act of 1998".

**SHORT TITLE OF 1986 AMENDMENT**

Pub. L. 99–335, title IV, §401(a), June 6, 1986, 100 Stat. 609, provided that: "This title [enacting sections 4068 and Act to 4071 of this title, amending sections 4041 to 4049, 4054 to 4056, 4058, 4060, 4061, 4063, 4064, 4066, and 4067 of this title, and enacting provisions set out as a note under section 4046 of this title] may be cited as the "Foreign Service Pension System Act of 1986"."
§ 3901

TITLE 22—FOREIGN RELATIONS AND INTERCOURSE

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(e) Section 1-103 is amended by striking out ‘‘Foreign Service Act of 1946 (22 U.S.C. 390 et seq.),’’ and inserting in lieu thereof ‘‘authorized for a chief of mission as defined in section 102(a)(3) of the Foreign Service Act of 1980 [22 U.S.C. 3902(a)(3)]’’.

SIC. 9. Executive Order No. 12228 is amended as follows:
(a) Section 1-102(c)(1) is amended by striking out ‘‘Section 911(9) of the Foreign Service Act of 1946, as amended (22 U.S.C. 13118, § 10(4), Mar. 31, 1999, 64 F.R. 16598; Ex. Ord. No. 15, 1981.)’’
(b) Section 1-103 is amended by striking out ‘‘Foreign Service Act of 1946, as amended’’ and inserting in lieu thereof ‘‘Section 901(4) of the Foreign Service Act of 1980 [22 U.S.C. 4081(4)]’’.

SIC. 10. The following are hereby revoked:
(a) Executive Order No. 9452 of June 26, 1944;
(b) Executive Order No. 9799 of November 8, 1946;
(c) Executive Order No. 9799 of December 2, 1946;
(d) Executive Order No. 9592 of February 27, 1948;
(e) Executive Order No. 10249 of June 4, 1951;
(f) Section 2 of Executive Order No. 10477 of August 1, 1953 [22 U.S.C. 1472 note];
(g) Executive Order No. 10897 of December 2, 1960;
(h) Part III of Executive Order No. 11264 of December 31, 1965, as amended [22 U.S.C. 3590 note];
(i) Sections 1, 2, and 5 of Executive Order No. 11434 of November 8, 1968;
(j) Executive Order No. 11685 of December 17, 1971;
(k) Executive Order No. 12596 of June 29, 1978;
(l) Executive Order No. 12145 of July 18, 1979;
(m) Section 1–104(b) of Executive Order No. 12188 of January 2, 1980 [19 U.S.C. 2171 note].

SIC. 11. This Order shall be effective as of February 15, 1981.

RONALD REAGAN.

Ex. Ord. No. 12293. Administration of Foreign Service


By the authority vested in me as President by the Constitution and laws of the United States of America, including the Foreign Service Act of 1946 (44 Stat. 707, 22 U.S.C. 3901 et seq.), Section 202 of the Revised Statutes (22 U.S.C. 3566), and Section 301 of Title 3 of the United States Code, and in order to provide for the administration of the Foreign Service of the United States, it is hereby ordered as follows:

SECTION 1. There are hereby delegated to the Secretary of State those functions vested in the President by Sections 203, 401(a), 403, and 401 of the Foreign Service Act of 1980, hereinafter referred to as the Act (22 U.S.C. 3925, 3942(a)(1), 3942(c) [3922(c)], 4013, and 4041).

SIC. 2. The Secretary of State shall, in accord with Section 203 of the Act (22 U.S.C. 3925), consult with the Secretary of Agriculture, the Secretary of Commerce, the Director of the United States Information Agency, the Administrator of the United States Agency for International Development, the Director of the Office of Personnel Management, and the Director of the Office of Management and Budget, in order to ensure compatibility between the Foreign Service personnel system and other government personnel systems.

SIC. 3. The Secretary of State shall make recommendations to the President through the Director of the Office of Management and Budget whenever action is appropriate under Section 207 of the Act (22 U.S.C. 4067) to maintain existing conformity between the Civil Service Retirement and Disability System and the Foreign Service Retirement and Disability System.

Ex. Ord. No. 12293, 22 U.S.C. 3962, and subject to any restrictions therein, there are established the following salary classes with titles for the Senior Foreign Service, at the following range of basic rates of pay:

(a) Career Minister
Range from 100 percent of the minimum rate of basic pay for senior-level positions under 5 U.S.C. 5376 to 100 percent of the rate payable for level II of the Executive Schedule.

(b) Minister-Counselor
Range from 100 percent of the minimum rate of basic pay for senior-level positions under 5 U.S.C. 5376 to 107 percent of the rate payable for level III of the Executive Schedule.

(c) Counselor
Range from 100 percent of the minimum rate of basic pay for senior-level positions under 5 U.S.C. 5376 to 102 percent of the rate payable for level III of the Executive Schedule.
§ 3902. Definitions

(5) Department of Commerce, two members, one of whom must be a career member of the Senior Foreign Service;
(6) Department of Labor, one member;
(7) Office of Personnel Management, one member;
(8) Office of Management and Budget, one member; and
(9) Equal Employment Opportunity Commission, one member;

(c) The membership of the Board shall be selected from among officials who are knowledgeable in matters concerning the management of the Foreign Service. Except for the career members of the Senior Foreign Service from the Department of Agriculture, the Department of Commerce, the United States Information Agency, and the United States Agency for International Development, the members of the Board shall be selected from among those who have the rank of Assistant Secretary or higher or a position of comparable responsibility.

d) The Secretary of State may from time to time request the heads of other agencies to designate representatives to participate in the functions of the Board on a regular or occasional basis.

e) The Secretary of State shall provide all necessary administrative services and facilities for the Board.

§ 3903. Members of Service

As used in this chapter, the term—

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

(2) “agency” means an agency as defined in section 552(e) \(^1\) of title 5;

(3) “chief of mission” means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 3982(c) of this title to be temporarily in charge of such a mission or office;

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

(5) “employee” (except as provided in section 4102(b) of this title) means, when used with respect to an agency or to the Government generally, an officer or employee (including a member of the Service) or a member of the Armed Forces of the United States, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration;

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

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

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

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

(10) “Secretary” means the Secretary of State, except that (subject to section 3921 of this title) with reference to the exercise of functions under this Act with respect to any agency authorized by law to utilize the Foreign Service personnel system, such term means the head of that agency;

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

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

\(^1\) See References in Text note below.

References in Text

Section 552(e) of title 5, referred to in par. (2), was redesignated section 552(f) of title 5 by section 1802(b) of Pub. L. 99–570.

Amendments

1983—Pub. L. 98–164 struck out ““(a)” before “As used in this chapter’”, and struck out subsec. (b) which provided that references to Foreign Service officers in any provision be deemed to refer to, with respect to the United States Information Agency, Foreign Service Information officers.

§ 3903. Members of Service

The following are the members of the Service:

(1) Chiefs of mission, appointed under section 3942(a)(1) of this title or assigned under section 3982(c) of this title.

(2) Ambassadors at large, appointed under section 3942(a)(1) of this title.

(3) Members of the Senior Foreign Service, appointed under section 3942(a)(1) or 3943 of this title, who are the corps of leaders and experts for the management of the Service and the performance of its functions.

(4) Foreign Service officers, appointed under section 3942(a)(1) of this title, who have general responsibility for carrying out the functions of the Service.

(5) Foreign Service personnel, United States citizens appointed under section 3943 of this title, who provide skills and services required for effective performance by the Service.

(6) Foreign national employees, foreign nationals appointed under section 3943 of this
title, who provide clerical, administrative, technical, fiscal, and other support at Foreign Service posts abroad.

(7) Consular agents, appointed under section 3943 of this title by the Secretary of State, who provide consular and related services as authorized by the Secretary of State at specified locations abroad where no Foreign Service posts are situated.


§ 3904. Functions of Service

Members of the Service shall, under the direction of the Secretary—

(1) represent the interests of the United States in relation to foreign countries and international organizations, and perform the functions relevant to their appointments and assignments, including (as appropriate) functions under the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, other international agreements to which the United States is a party, the laws of the United States, and orders, regulations, and directives issued pursuant to law;

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

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


§ 3905. Personnel actions

(a) Merit principles; “personnel action” defined

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

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

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

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

(b) Rules and regulations; discrimination; reprisals for disclosure of information; submission of reports, evaluations, or recommendations; freedom from prohibited personnel practices

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

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

(2) are free from reprisal for—

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

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

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

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

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

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

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

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

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

(c) Withholding or disclosure of information to Congress

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

(d) Minority recruitment program

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

(2) Omitted.

(e) Applicability to other judicial or statutory rights or remedies

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

(1) section 2000e–16 of title 42, prohibiting discrimination on the basis of race, color, religion, sex, or national origin;
§ 3922. Utilization of Foreign Service personnel system by other agencies

(a)(1) The Broadcasting Board of Governors and the Administrator of the Agency for International Development may utilize the Foreign Service personnel system with respect to their respective agencies in accordance with this chapter.

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

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

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

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

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

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

(4)(A) Whenever (and to the extent) the Secretary of State considers it in the best interests of the United States Government, the Secretary of State may authorize the head of any agency or other Government establishment (including any establishment in the legislative or judicial branch) to appoint under section 3943 of this title individuals described in subparagraph (B) as members of the Service and to utilize the Foreign Service personnel system with respect to such individuals under such regulations as the Secretary of State may prescribe.

(B) The individuals referred to in subparagraph (A) are individuals eligible for employment abroad under section 3951(a) of this title.

(b) Subject to section 3923(b) of this title—

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

(2) the head of any other agency (to the extent authority to utilize the Foreign Service personnel system is granted to such agency head under any other chapter), shall in the case of their respective agencies exercise the functions vested in the Secretary by this chapter.

(2) sections 631 and 633a of title 29, prohibiting discrimination on the basis of age;

(3) section 206(d) of title 29, prohibiting discrimination on the basis of sex;

(4) sections 791 and 794a of title 29, prohibiting discrimination on the basis of handicapping condition; or

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


CODIFICATION

Subsec. (d)(2) of this section, which required the Secretary to transmit at least once annually to the Chairman of the Committee on Foreign Relations of the Senate a report reviewing the work of the Department and the Department’s reports on equal employment opportunity, affirmative action, and minority recruitment programs, which reports are required by law, regulation, or directive to be submitted to the Equal Employment Opportunity Commission (EEOC) or the Office of Personnel Management (OPM), terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 129 of House Document No. 103–7.

AMENDMENTS

1990—Subsec. (b)(1). Pub. L. 101–246 inserted “geographic or educational affiliation within the United States,” after “marital status,”.

1987—Subsec. (d)(2). Pub. L. 100–204 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Not later than January 31 of each year, the Secretary shall transmit to each House of the Congress a report, signed by the Secretary, on the activities of the Secretary under paragraph (1). Such report shall include any affirmative action plans submitted by the Secretary under section 2000e–16 of Title 42 and any data necessary to evaluate the effectiveness of the program under paragraph (1) for the preceding fiscal year, together with recommendations for administrative or legislative action the Secretary considers appropriate.”

SUBCHAPTER II—MANAGEMENT OF SERVICE

§ 3921. Administration by Secretary of State

(a) Under the direction of the President, the Secretary of State shall administer and direct the Service and shall coordinate its activities with the needs of the Department of State and other agencies.

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


REFERENCES IN TEXT

This chapter, referred to in subsec. (b), 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.

§ 3922. Utilization of Foreign Service personnel system by other agencies

(a)(1) The Broadcasting Board of Governors and the Administrator of the Agency for International Development may utilize the Foreign Service personnel system with respect to their respective agencies in accordance with this chapter.

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

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

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

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

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

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

(4)(A) Whenever (and to the extent) the Secretary of State considers it in the best interests of the United States Government, the Secretary of State may authorize the head of any agency or other Government establishment (including any establishment in the legislative or judicial branch) to appoint under section 3943 of this title individuals described in subparagraph (B) as members of the Service and to utilize the Foreign Service personnel system with respect to such individuals under such regulations as the Secretary of State may prescribe.

(B) The individuals referred to in subparagraph (A) are individuals eligible for employment abroad under section 3951(a) of this title.

(b) Subject to section 3923(b) of this title—

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

(2) the head of any other agency (to the extent authority to utilize the Foreign Service personnel system is granted to such agency head under any other chapter), shall in the case of their respective agencies exercise the functions vested in the Secretary by this chapter.


REFERENCES IN TEXT

AMENDMENTS

Pub. L. 105–277, § 1335(k)(1), substituted “Broadcasting Board of Governors” for “Director of the United States Information Agency”.

CHANGE OF NAME
“Director of the United States Information Agency” substituted for “Director of the International Communication Agency” in subsec. (a)(1), pursuant to section 303(b) of Pub. L. 97–241, set out as a note under section 6531 of this title.

EXERCISE OF CERTAIN FUNCTIONS BY BOARD OF THE FOREIGN SERVICE AND BOARD OF EXAMINERS FOR THE FOREIGN SERVICE

The Board of the Foreign Service and the Board of Examiners for the Foreign Service were authorized to exercise with respect to Foreign Service personnel of the Department of Commerce, functions delegated to them by Ex. Ord. No. 11264, set out as a note under section 3930 of this title, respecting Foreign Service personnel of the Department of State, see section 1–104(c) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 991, set out as a note under section 2171 of Title 19, Customs Duties.

EX. ORD. NO. 10522. AUTHORITY OF THE DIRECTOR OF THE UNITED STATES INFORMATION AGENCY

Ex. Ord. No. 10522, Mar. 26, 1954, 19 F.R. 1689, provided:

SECTION 1. The Director of the United States Information Agency is hereby authorized to carry out the functions of the Board of the Foreign Service, provided for by the Foreign Service Act of 1946 (60 Stat. 999) [this chapter], with respect to personnel appointed or assigned for service in the United States Information Agency under the provisions of such Act, as amended [this chapter]: Provided, That nothing herein contained shall be construed as transferring to the said Director any function of the said Board relating to any Foreign Service Officer.

SEC. 2. The Director of the United States Information Agency is hereby authorized to prescribe such regulations and issue such orders and instructions, not inconsistent with law, as may be necessary or desirable for carrying out his functions under section 1 of this order.

Dwight D. Eisenhower.

[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of this title.]

§ 3922a. Representation of minorities and women in Foreign Service

(a) Development of program

The head of each agency utilizing the Foreign Service personnel system shall develop, consistent with section 7201 of title 5, a plan designed to increase significantly the number of members of minority groups and women in the Foreign Service in that agency.

(b) Emphasis on mid-levels

Each plan developed pursuant to this section shall, consistent with section 7201 of title 5, place particular emphasis on achieving significant increases in the numbers of minority group members and women who are in the mid-levels of the Foreign Service.


CODIFICATION

Section was enacted as part of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, and not as part of the Foreign Service Act of 1986 which comprises this chapter.

AMENDMENTS

1987—Subsec. (c). Pub. L. 100–204 struck out subsec. (c) which read as follows: “The head of each agency utilizing the Foreign Service personnel system shall report annually to the Congress on the plan developed pursuant to this section as part of the report required to be submitted pursuant to section 3905(d)(2) of this title. Subsequent reports pursuant to that section shall include reports on the implementation of these plans, giving particular attention to the progress being made in increasing, through advancement and promotion, the numbers of members of minority groups and women in the mid-levels of the Foreign Service.”

REPORT CONCERNING MINORITIES AND THE FOREIGN SERVICE

Pub. L. 105–277, div. G, subdiv. B, title XXIII, § 2318, Oct. 21, 1998, 112 Stat. 2811–829, provided that: “The Secretary of State shall during each of calendar years 1998 and 1999 submit a report to the Congress concerning minorities and the Foreign Service officer corps. In addition to such other information as is relevant to this issue, the report shall include the following data for the last preceding examination and promotion cycles for which such information is available (reported in terms of real numbers and percentages and not as ratios):

“(1) The numbers and percentages of all minorities taking the written Foreign Service examination.

“(2) The numbers and percentages of all minorities successfully completing and passing the written Foreign Service examination.

“(3) The numbers and percentages of all minorities successfully completing and passing the oral Foreign Service examination.

“(4) The numbers and percentages of all minorities entering the junior officers class of the Foreign Service.

“(5) The numbers and percentages of all minority Foreign Service officers at each grade.

“(6) The numbers and percentages of minorities promoted at each grade of the Foreign Service officer corps.”

MID-LEVEL WOMEN AND MINORITY PLACEMENT PROGRAM


“(a) PURPOSE.—It is the purpose of this section to promote the acquisition and retention of highly qualified, trained, and experienced women and minority personnel within the Foreign Service, to provide the maximum opportunity for the Foreign Service to meet staffing needs and to acquire the services of experienced and talented women and minority personnel, and to help alleviate the impact of downsizing, reduction-in-force, and budget restrictions occurring in the defense and national security-related agencies of the United States.

“(b) ESTABLISHMENT.—For each of the fiscal years 1994 and 1995, the Secretary of State shall to the maxi-
mum extent practicable appoint to the Foreign Service qualified women and minority applicants who are participants in the priority placement program of the Department of Defense, the Department of Defense outplacement referral program, the Office of Personnel Management Automated Applicant Referral System, or the Office of Personnel Management Interagency Placement Program. The Secretary shall make such appointments through the mid-level entry program of the Department of State under section 306 of the Foreign Service Act of 1980 [22 U.S.C. 3946].

(c) REPORT.—Not later than 180 days after the date of enactment of this Act [Apr. 30, 1994], the Secretary of State shall prepare and submit a report concerning the implementation of subsection (a) to the Chairman and the Speaker of the House of Representatives. Such report shall include recommendations on methods to improve implementation of the purpose of this section.”

WOMEN AND MINORITIES IN FOREIGN SERVICE

Section 183 of Pub. L. 100–204 provided that:

(a) FINDINGS.—The Congress finds that the Department of State and other Foreign Service agencies have not been successful in their efforts—

(1) to recruit and retain members of minority groups in order to increase significantly the number of members of minority groups in the Foreign Service; and

(2) to provide adequate career advancement for women and members of minority groups in order to increase significantly the numbers of women and members of minority groups in the senior levels of the Foreign Service.

(b) A MORE REPRESENTATIVE FOREIGN SERVICE.—The Secretary of State and the head of each of the other agencies utilizing the Foreign Service personnel system—

(1) shall substantially increase their efforts to implement effectively the plans required by section 152(a) of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 [22 U.S.C. 3922a(a)], so that the Foreign Service becomes truly representative of the American people throughout all levels of the Foreign Service; and

(2) shall ensure that those plans effectively address the need to promote increased numbers of qualified women and members of minority groups into the senior levels of the Foreign Service.

(c) DEPARTMENT OF STATE HIRING PRACTICES OF MINORITIES AND WOMEN.—The Secretary of State shall include annually as part of the report required to be submitted pursuant to section 105(d)(2) of the Foreign Service Act of 1980 (former 22 U.S.C. 3905(d)(2))—

(1) a report on the progress made at the Assistant Secretary and Bureau level of the Department of State in increasing the presence of minorities and women at all levels in the Foreign Service and Civil Service workforces of the Department of State, and

(2) the specific actions taken to address the lack of Hispanic Americans, Asian Americans, and Native Americans in the Senior Executive Service and Senior Foreign Service of the Department of State.”

§ 3922b. Public diplomacy training

(a) Statement of policy

The following should be the policy of the United States:

(1) The Foreign Service should recruit individuals with expertise and professional experience in public diplomacy.

(2) United States chiefs of mission should have a prominent role in the formulation of public diplomacy strategies for the countries and regions to which they are assigned and should be accountable for the operation and success of public diplomacy efforts at their posts.

(3) Initial and subsequent training of Foreign Service officers should be enhanced to include information and training on public diplomacy and the tools and technology of mass communication.

(b) Personnel

(1) Qualifications

In the recruitment, training, and assignment of members of the Foreign Service, the Secretary of State—

(A) should emphasize the importance of public diplomacy and applicable skills and techniques;

(B) should consider the priority recruitment into the Foreign Service, including at mid-level entry, of individuals with expertise and professional experience in public diplomacy, mass communications, or journalism; and

(C) shall give special consideration to individuals with language facility and experience in particular countries and regions.

(2) Languages of special interest

The Secretary of State shall seek to increase the number of Foreign Service officers proficient in languages spoken in countries with predominantly Muslim populations. Such increase should be accomplished through the recruitment of new officers and incentives for officers in service.


Codification


Section was enacted as part of the Intelligence Reform and Terrorism Prevention Act of 2004, and also as part of the 9/11 Commission Implementation Act of 2004, and not as part of the Foreign Service Act of 1980 which comprises this chapter.

§ 3923. Compatibility among agencies utilizing Foreign Service personnel system

(a) The Service shall be administered to the extent practicable in a manner that will assure maximum compatibility among the agencies authorized by law to utilize the Foreign Service personnel system. To this end, the other heads of such agencies shall consult regularly with the Secretary of State.

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


§ 3924. Uniform and consolidated administration of Service

The Secretary shall on a continuing basis consider the need for uniformity of personnel policies and procedures and for consolidation (in accordance with section 2695 of this title) of personnel functions among agencies utilizing the Foreign Service personnel system. Where fea-
sible, the Secretary of State shall encourage (in consultation with the other heads of such agencies) the development of uniform policies and procedures and consolidated personnel functions.


§ 3925. Compatibility between Foreign Service and other Government personnel systems

The Service shall be administered to the extent practicable in conformity with general policies and regulations of the Government. The Secretary shall consult with the Director of the Office of Personnel Management, the Director of the Office of Management and Budget, and the heads of such other agencies as the President shall determine, in order to assure compatibility of the Foreign Service personnel system with other Government personnel systems to the extent practicable.


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.

CONSULTATION WITH OTHER FEDERAL DEPARTMENTS AND AGENCIES

For authority for the Secretary of State to consult with the Secretary of Agriculture, the Secretary of Commerce, the Director of the United States Information Agency, the Administrator of the United States Agency for International Development, the Director of the Office of Personnel Management, and the Director of the Office of Management and Budget, to ensure compatibility between the Foreign Service personnel system and other government personnel systems, see section 2 of Ex. Ord. No. 12293, Feb. 23, 1981, 46 F.R. 13969, as amended, set out as a note under section 3901 of this title.

§ 3926. Regulations; delegation of functions

(a) The Secretary may prescribe such regulations as the Secretary deems appropriate to carry out functions under this chapter.

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


REGULATIONS REGARDING FOREIGN LANGUAGE COMPETENCE WITHIN FOREIGN SERVICE

Pub. L. 103–236, title I, §191(a), Apr. 30, 1994, 108 Stat. 4302, provided that: "(3) requiring that employees receiving long-term training in a language, or hired with a hiring preference for a language, serve at least 2 tours in jobs requiring that language, with exceptions for certain limited-use languages and priority needs of the service at the discretion of the Director General;

(4) requiring that significant consideration be given to foreign language competence and use in the evaluation, assignment, and promotion of all Foreign Service Officers of the Department of State, the Agency for International Development, and the United States Information Agency;

(5) requiring the identification of appropriate Washington, D.C. metropolitan area positions as language-designated; and

(6) requiring remedial training and suspension of language differential payments for employees receiving such payments who have failed to maintain required levels of proficiency.

For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6502, and 6551 of this title.)

§ 3927. Chief of mission

(a) Duties

Under the direction of the President, the chief of mission to a foreign country—

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

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

(b) Duties of agencies with employees in foreign countries

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

(c) Promotion of United States goods and services

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

§ 3927a. Review by chief of mission

(a) Review of staff element under chief of mission authority; approval; process

The Secretary of State shall require each chief of mission to review, not less than once every 5 years, every staff element under chief of mission authority, including staff from other departments or agencies of the United States, and recommend approval or disapproval of each staff element. Each such review shall be conducted pursuant to a process established by the President for determining appropriate staffing at diplomatic missions and overseas constituent posts (commonly referred to as the “NSDD–38 process”).

(b) Actions by Secretary of State

The Secretary of State, as part of the process established by the President referred to in subsection (a) of this section, shall take actions to carry out the recommendations made in each such review.

(c) Reports

Not later than 1 year after December 8, 2004, and annually thereafter, the Secretary of State shall submit a report on such reviews that occurred during the previous 12 months, together with the Secretary’s recommendations regarding such reviews to the appropriate committees of Congress, the heads of all affected departments or agencies, and the Inspector General of the Department of State.


CODIFICATION

Section was enacted as part of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2005, and also as part of the Consolidated Appropriations Act, 2005, and not as part of the Foreign Service Act of 1980 which comprises this chapter.

§ 3928. Director General of Foreign Service

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


AMENDMENTS

1994—Pub. L. 103–236 amended section generally. Prior to amendment, section read as follows: “There shall be a Director General of the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, from among the career members of the Senior Foreign Service. The Director General shall assist the Secretary of State in the management of the Service and shall perform such functions as the Secretary of State may prescribe.”

§ 3929. Inspector General

(a) Appointment; supervision by Secretary of State; prohibition against interference by State Department with certain duties; inspections, audits, and other functions; removal from office

(1) There shall be an Inspector General of the Department of State and the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, from among the career members of the Senior Foreign Service, to serve as the Inspector General of the Foreign Service and shall have such duties, powers, and functions as shall be prescribed by law.

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

(b) Subject matter of inspections, investigations, and audits

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

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

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

(3) whether the administration of activities and operations meets the requirements of applicable laws and regulations and, specifically, whether such administration is consistent with the requirements of section 3905 of this title;

(4) whether there exist instances of fraud or other serious problems, abuses, or deficiencies,
and whether adequate steps for detection, correction, and prevention have been taken; and
(5) whether policy goals and objectives are being effectively achieved and whether the interests of the United States are being accurately and effectively represented.

(c) Policies and procedures governing inspection and audit activities; coordination and cooperation with Comptroller General; report to Attorney General on criminal law violations; provision of information to employees; conduct of investigations

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

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

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

(4) The Inspector General shall develop and provide to employees—
(A) information detailing their rights to counsel; and
(B) guidelines describing in general terms the policies and procedures of the Office of Inspector General with respect to individuals under investigation other than matters exempt from disclosure under other provisions of law.

(5) INVESTIGATIONS.—
(A) CONDUCT OF INVESTIGATIONS.—In conducting investigations of potential violations of Federal criminal law or Federal regulations, the Inspector General shall—
(i) abide by professional standards applicable to Federal law enforcement agencies; and
(ii) make every reasonable effort to permit each subject of an investigation an opportunity to provide exculpatory information.

(B) FINAL REPORTS OF INVESTIGATIONS.—In order to ensure that final reports of investigations are thorough and accurate, the Inspector General shall—
(i) make every reasonable effort to ensure that any person named in a final report of investigation has been afforded an opportunity to refute any allegation of wrongdoing or assertion with respect to a material fact made regarding that person’s actions;
(ii) include in every report of investigation any exculpatory information, as well as any inculpatory information, that has been discovered in the course of the investigation.

(d) Reports by Inspector General and Secretary of State

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

(2) The Inspector General shall, not later than April 30 of each year, prepare and furnish to the Secretary of State an annual report summarizing the activities of the Inspector General. Such report shall include—
(A) a description of significant problems, abuses, and deficiencies relating to the administration of activities and operations of Foreign Service posts, and bureaus and other operating units of the Department of State, which were disclosed by the Inspector General within the reporting period;
(B) a description of the recommendations for corrective action made by the Inspector General during the reporting period with respect to significant problems, abuses, or deficiencies described pursuant to subparagraph (A);
(C) an identification of each significant recommendation described in previous annual reports on which corrective action has not been completed;
(D) a summary of matters referred to prosecutorial authorities and the prosecutions and convictions which have resulted;
(E) a listing of each audit report completed by the Inspector General during the reporting period; and
(F) a notification, which may be included, if necessary, in the classified portion of the report, of any instance in a case that was closed during the period covered by the report when the Inspector General decided not to afford an individual the opportunity described in subsection (c)(5)(B)(i) of this section to refute any allegation and the rationale for denying such individual that opportunity.

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

(3) The Inspector General shall report immediately to the Secretary of State whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of activities and operations of Foreign Service posts or bureaus or other operating units of the Department of State. The Secretary of State shall transmit any such report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate commit-
(g) Review of activities and operations of chiefs of mission

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


REFERENCES IN TEXT


AMENDMENTS


EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(7) (div. A, title III, § 339(e)), Nov. 29, 1999, 113 Stat. 1536, 1501A–444, provided that: "The amendments made by this section [amending this section] shall apply to cases opened on or after the date of the enactment of this Act [Nov. 29, 1999]."

CONSTRUCTION OF 1999 AMENDMENT


"(1) section 209(d)(4) of the Foreign Service Act of 1980 (22 U.S.C. 3929(d)(4));

"(2) section 7(b) of the Inspector General Act of 1978 (5 U.S.C. app.);

"(3) the Privacy Act of 1974 (5 U.S.C. 552a);

"(4) the provisions of section 2302(b)(8) of title 5 (relating to whistleblower protection);

"(5) rule 6(e) of the Federal Rules of Criminal Procedure (18 U.S.C. App.) (relating to the protection of grand jury information); or

"(6) any statute or executive order pertaining to the protection of classified information."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (d)(2) of this section relating to the requirement that the Secretary of State transmit a copy of the annual report furnished by the Inspector General, together with any comments which the Secretary deems appropriate, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of...
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Title 31, Money and Finance, and page 129 of House Document No. 103-7.

No Grievance or Right of Action
Pub. L. 106-113, div. B, § 1000(a)(7) [div. A, title III, § 339(d)], Nov. 29, 1999, 113 Stat. 1536, 1501A-444, provided that: “A failure to comply with the amendments made by this section [amending this section] shall not give rise to any private right of action in any court or to an administrative complaint or grievance under any law.”

§ 3929a. Abolishment of Inspector General of Department of State and Foreign Service

Notwithstanding section 3929 of this title, the Inspector General of the Department of State and the Foreign Service is hereby abolished.


Codification
Section was enacted as part of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, and not as part of the Foreign Service Act of 1980 which comprises this chapter.

Another subsec. (c) of section 413 of Pub. L. 99-399 is classified to section 4861(c) of this title.

Amendments
1986—Pub. L. 99-399 substituted provision abolishing the Inspector General of the Department of State and the Foreign Service for provision limiting the authority of the Inspector General to such functions as necessary to carry out section 3929(g) of this title.

§ 3930. Board of Foreign Service

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


Amendments
1986—Pub. L. 99-93 substituted “shall be chaired by an individual appointed by the President” for “shall be chaired by a career member of the Senior Foreign Service designated by the Secretary of State”.

Change of Name
“United States Information Agency” substituted in text for “International Communication Agency” pursuant to section 303(b) of Pub. L. 97-241, set out as a note under section 1461 of this title.

Effective Date of 1998 Amendment
Amendment by section 1335(k)(2) of Pub. L. 105-277 effective Oct. 1, 1999, set out as an Effective Date note under section 6531 of this title.

Amendment by section 1422(b)(4)(B) of Pub. L. 105-277 effective Apr. 1, 1999, set out as an Effective Date note under section 6561 of this title.

Ex. Ord. No. 11364

Ex. Ord. No. 11434

§ 3931. Board of Examiners

(a) Establishment; membership; chairman

The President shall establish a Board of Examiners for the Foreign Service to develop, and supervise the administration of, examinations prescribed under section 1461 of this title. The Board shall consist of 15 members, not more than 5 of whom shall be appointed from among individuals who are not Government employees and who shall be qualified for service on the Board by virtue of their knowledge, experience, or training in the fields of testing or equal employment opportunity. The Board shall include representatives of agencies utilizing the Foreign Service personnel system and representatives of other agencies which have responsibility for employment testing. The Board shall be chaired by a member of the Board, designated by the President, who is a member of the Service.

(b) Review of examinations; report to Secretary of State

The Board of Examiners shall periodically review the examinations prescribed under section 1461 of this title in order to determine—

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

(2) methods of minimizing any such adverse impact;
(3) alternatives to any examinations which have such an adverse impact; and
(4) whether such examinations are valid in relation to job performance.

The Board of Examiners shall annually report its findings under this subsection to the Secretary of State and shall furnish to the Secretary of State its recommendations for improvements in the development, use, and administration of the examinations prescribed under section 3941(b) of this title.

(c) Vacancies

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


Establishment of Board of Examiners

For establishment of the Board of Examiners for the Foreign Service and appointment of its members, see section 6 of Ex. Ord. No. 12293, Feb. 23, 1981, 46 F.R. 13970, set out as note under section 3901 of this title.

SUBCHAPTER III—APPOINTMENTS

§ 3941. General provisions

(a) Citizenship requirement

Only citizens of the United States may be appointed to the Service, other than for service abroad as a consular agent or as a foreign national employee.

(b) Examinations

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

(c) Veteran or disabled veteran

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

(d) Career and noncareer appointments

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

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

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


AMENDMENTS

1987—Subsec. (d)(3). Pub. L. 100–204 inserted sentence at end relating to exemption from income taxation.

Effective Date of 1987 Amendment

Section 179(b) of Pub. L. 100–204 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to tax years beginning after December 31, 1987.”

STUDY OF FOREIGN SERVICE EXAMINATION

Pub. L. 101–246, title I, § 153(g), Feb. 16, 1990, 104 Stat. 44, provided that: “The Secretary of State shall enter into a contract with a private organization for a comprehensive review and evaluation of the Foreign Service examination. Such review and evaluation shall—

(1) identify any cultural, racial, ethnic, and sexual bias;
(2) evaluate the ability of the examination to measure an individual’s aptitude for and potential in the Foreign Service;
(3) consider the relevance of the Foreign Service examination to the work of a Foreign Service officer;
(4) make recommendations for the removal of any element of bias in the examination; and
(5) make recommendations for improvements to achieve an examination free of any bias.

Not more than 18 months after the date of the enactment of this Act [Feb. 16, 1990], the Secretary of State shall prepare and submit a report to the Congress which contains the findings of such review and evaluation, together with the comments of the Secretary and measures which the Secretary has initiated to respond to any adverse findings of such review. Such report shall take into consideration the current efforts by the Department of State to review its Foreign Service examination.”

§ 3942. Appointments by the President

(a)(1) The President may, by and with the advice and consent of the Senate, appoint an individual as a chief of mission, as an ambassador at large, as an ambassador, as a minister, as a career member of the Senior Foreign Service, or as a Foreign Service officer.

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

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

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

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

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

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

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

(b) If a member of the Service is appointed to any position in the executive branch by the President, by and with the advice and consent of the Senate, or by the President alone, the period of service in that position by the member shall be regarded as an assignment under subchapter V of this chapter and the member shall not, by virtue of the acceptance of such assignment, lose his or her status as a member of the Service. A member of the Senior Foreign Service who accepts such an assignment may elect to continue to receive the salary of his or her salary class, to remain eligible for performance pay under subchapter IV of this chapter, and to receive the leave to which such member is entitled under subchapter I of chapter 63, title 5, as a member of the Senior Foreign Service, in lieu of receiving the salary and leave (if any) of the position to which the member is appointed by the President.

(Pub. L. 96–465, title I, § 3901 of this title.)

AMENDMENTS


Subsec. (b). Pub. L. 102–138, § 142(a), substituted “may elect to continue to receive the salary of his or her salary class, to remain eligible for performance pay under subchapter IV of this chapter, and to receive the leave to which such member is entitled under subchapter I of chapter 63, title 5, as a member of the Senior Foreign Service, in lieu of receiving the salary and leave (if any) of the position to which the member is appointed by the President” for “shall receive the salary and leave (if any) of the position to which the member is appointed by the President”.

1987—Subsec. (b). Pub. L. 100–204 substituted “shall receive the salary and leave (if any) of the position to which the member is appointed by the President and shall not be eligible for performance pay under subchapter IV of this chapter,” for “may elect to continue to receive the salary of his or her salary class, to remain eligible for performance pay under subchapter IV of this chapter, and to receive the leave to which such member is entitled under subchapter I of chapter 63, title 5 as a member of the Senior Foreign Service, in lieu of receiving the salary and leave (if any) of the position to which the member is appointed by the President.”

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a)(1) delegated to Secretary of State, see section 1 of Ex. Ord. No. 12293, Feb. 23, 1961, 46 F.R. 13899, set out as a note under section 3901 of this title.

EXECUTIVE ORDER NO. 10662


EX. ORD. NO. 10668. UNITED STATES AUTHORITY AND FUNCTIONS IN GERMANY


By virtue of the authority vested in me by the Constitution and the statutes, including the Foreign Service Act of 1980 (94 Stat. 2071), as amended [this chapter], and as President of the United States and Commander in Chief of the armed forces of the United States, it is ordered as follows:

1. Executive Order No. 10662 of June 6, 1949, and Executive Order No. 10144 of July 21, 1950, amending that order, are hereby revoked, and the position of United States High Commissioner for Germany, established by that order, is hereby abolished.

2. The Chief of the United States Diplomatic Mission to the Federal Republic of Germany, hereinafter referred to as the Chief of Mission, shall have supreme authority, except as otherwise provided herein, with respect to all responsibilities, duties, and governmental functions of the United States in all Germany. The Chief of Mission shall exercise his authority under the supervision of the Secretary of State and subject to ultimate direction by the President.

3. The United States Military Commanding authority having area responsibility in Germany, hereinafter referred to as the Commander, shall have authority with respect to all military responsibilities, duties, and functions of the United States in all Germany, including the command, security, and stationing of United States forces in Germany, the assertion and exercise of their rights and discharge of their obligations therein, and emergency measures which he may consider essential for their protection or the accomplishment of his mission.

The Commander may delegate the authority conferred upon him. If action by the Commander or any representative of the Commander, pursuant to the authority hereby conferred, affects the foreign policy of the United States or involves relations or negotiations with non-military German authorities, such action shall be taken only after consultation with and agreement by the Chief of Mission or pursuant to procedures previously agreed to between the Chief of Mission and the Commander or his representative. Either the Chief of Mission or the Commander may raise with the other any question which he believes requires such consultation. If agreement is not reached between them, any differences may be referred to the Department of State and the Department of Defense for resolution.

4. The Chief of Mission and the Commander or his designated representatives shall, to the fullest extent consistent with their respective missions, render assistance and support to each other in carrying out the agreements and policies of the United States.
5. With regard to the custody, care, and execution of sentences and disposition (including pardon, clemency, parole, or release) of war criminals confined or hereafter to be confined in Germany as a result of conviction by military tribunals (A) the Chief of Mission shall share the four-power responsibility in the case of persons convicted by the International Military Tribunal, (B) the Chief of Mission shall exercise responsibility in the case of persons convicted by other military tribunals established by the United States Military Government pursuant to Control Council Law No. 10, and (C) the Commanders shall exercise responsibility in the case of persons convicted by other military tribunals established by United States Military Commanders in Germany and elsewhere. The Commanders shall, on request of the Chief of Mission, take necessary measures for carrying into execution any sentences adjudged against such persons in category (B) as to whom the Chief of Mission has responsibility and control. Transfer of custody of persons in categories (B) and (C) to the Federal Republic of Germany as provided in the Convention on the Settlement of Matters Arising Out of the War and Occupation shall terminate the responsibility of the Chief of Mission and the Commander with respect to such persons to the extent that the responsibility of the United States for them is thereupon terminated pursuant to the provisions of the said Convention.

§ 3943. Appointments by the Secretary

The Secretary may appoint the members of the Service (other than the members of the Service who are in the personnel categories specified in section 3942(a) of this title) in accordance with this chapter and such regulations as the Secretary may prescribe.


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.

PROHIBITION ON CERTAIN EMPLOYMENT AT UNITED STATES DIPLOMATIC AND CONSULAR Missions in Communist Countries


"(a) PROHIBITION.—After September 30, 1990, no national of a Communist country may be employed as a foreign national employee at any area of a United States diplomatic or consular facility in any Communist country where classified materials are maintained.

"(b) DEFINITION.—As used in this section, the term ‘Communist country’ means a country listed in section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)).

"(c) ADDITIONAL FUNDS FOR HIRING UNITED STATES CITIZENS.—The Congress expresses its willingness to provide additional funds to the Department of State for the expenses of employing United States nationals to replace the individuals dismissed by reason of subsection (a).

"(d) REPORT AND REQUEST FOR FUNDS.—As a part of the Department of State’s authorization request for fiscal years 1990 and 1991, the Secretary of State, in consultation with the heads of all relevant agencies, shall submit—

"(1) a report, which shall include—

"(A) a feasibility study of the implementation of this section; and

"(B) an analysis of the impact of the implementation of this section on the budget of the Department of State; and

"(2) a request for funds necessary for the implementation of this section pursuant to the findings and conclusions specified in the report under paragraph (1).

"(e) WAIVER.—The President may waive this section—

"(1) if funds are not specifically authorized and appropriated to carry out this section; or

"(2) the President determines that it is in the national security interest of the United States to continue to employ foreign service nationals.

The President shall notify the appropriate committees of Congress each time he makes the waiver conferred on him by this section.

SOVIET EMPLOYEES AT UNITED STATES DIPLOMATIC AND CONSULAR Missions in the Soviet Union


"(a) LIMITATION.—To the maximum extent practicable, citizens of the Soviet Union shall not be employed as foreign national employees at United States diplomatic or consular missions in the Soviet Union after September 30, 1986.

"(b) REPORT.—Should the President determine that the implementation of subsection (a) poses undue practical or administrative difficulties, he is requested to submit a report to the Congress describing the number and type of Soviet foreign national employees he wishes to retain at or in proximity to United States diplomatic and consular posts in the Soviet Union, the anticipated duration of their continued employment, the reasons for their continued employment, and the risks associated with the retention of these employees.

EMPLOYMENT OF SOVIET NATIONALS AT U.S. DIPLOMATIC AND CONSULAR Missions in the Soviet Union

Determination of President of the United States, No. 6132, Apr. 191, 56 F.R. 15691, provided:

Memorandum for the Secretary of State

By the authority vested in me by the Constitution and laws of the United States, including section 301 of title 3 of the United States Code and section 136 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (Public Law 99–93) ("the Act") (set out as a note above), I hereby determine that implementation of section 136(a) of the Act poses undue practical and administrative difficulties. Consistent with this determination, you are authorized to employ Soviet nationals in nonsensitive areas of the New Embassy Compound in Moscow under strict monitoring by cleared Americans. Further, I delegate to you the responsibility vested in me by section 136(b) of the Act to report to the Congress on circumstances relevant to this determination. Such responsibility may be redelegated within the Department of State.

You are authorized and directed to report this determination to the Congress and to publish it in the Federal Register.

GEORGE BUSH.
§ 3944. Chiefs of Mission

(a) Qualifications; preference for career members; political contributions as factor in appointment; demonstrated competency report

(1) An individual appointed or assigned to be a chief of mission should possess clearly demonstrated competence to perform the duties of a chief of mission, including, to the maximum extent practicable, a useful knowledge of the principal language or dialect of the country in which the individual is to serve, and knowledge and understanding of the history, the culture, the economic and political institutions, and the interests of that country and its people.

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

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

(b) Furnishing of information by Secretary; political campaign contributions report

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

(2) Each individual nominated by the President to be a chief of mission, ambassador at large, or minister shall, at the time of nomination, file with the Committee on Foreign Relations of the Senate, with each nomination for an appointment as a chief of mission, a report on the demonstrated competence of that nominee to perform the duties of the position in which he or she is to serve.

(c) Appointments by Secretary of Commerce

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

(2) Each individual nominated by the President to be a chief of mission, ambassador at large, or minister shall, at the time of nomination, file with the Committee on Foreign Relations of the Senate, with each nomination for an appointment as a chief of mission, a report on the demonstrated competence of that nominee to perform the duties of the position in which he or she is to serve.

(d) Recertification process

The Secretary shall by regulation establish a recertification process for the Senior Foreign Service that is equivalent to the recertification process for the Senior Executive Service under section 3393a of title 5.

Amendments

1999—Subsec. (c). Pub. L. 106–113 struck out subsec. (c) which read as follows: “Within 6 months after assuming the position, the chief of mission to a foreign country shall submit, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, a report describing his or her own foreign language competence and the foreign language competence of the mission staff in the principal language or other dialect of that country.”

§ 3945. Senior Foreign Service

(a) Salary class

Appointment to the Senior Foreign Service shall be to a salary class established under section 3962 of this title, and not to a position.

(b) Limited appointment

An individual may not be given a limited appointment in the Senior Foreign Service if that appointment would cause the number of members of the Senior Foreign Service serving under limited appointments to exceed 5 percent of the total number of members of the Senior Foreign Service, except that (1) members of the Senior Foreign Service assigned to the Peace Corps shall be excluded in the calculation and application of this limitation, and (2) members of the Senior Foreign Service serving under limited appointments with reemployment rights under section 3950 of this title as career appointees in the Senior Executive Service shall be considered to be career members of the Senior Foreign Service for purposes of this subsection.

(c) Appointments by Secretary of Commerce

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

(2) Except as provided in paragraph (3), no more than one individual (other than an individual with reemployment rights under section 3950 of this title as a career appointee in the Senior Executive Service) may serve under a limited appointment in the Senior Foreign Service in the Department of Commerce at any time.

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

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

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

(d) Recertification process

The Secretary shall by regulation establish a recertification process for members of the Senior Foreign Service that is equivalent to the recertification process for the Senior Executive Service under section 3393a of title 5.

Amendments

1999—Subsec. (c). Pub. L. 106–113 struck out subsec. (c) which read as follows: “Within 6 months after assuming the position, the chief of mission to a foreign country shall submit, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, a report describing his or her own foreign language competence and the foreign language competence of the mission staff in the principal language or other dialect of that country.”

§ 3943a. Senior Foreign Service

(a) Salary class

Appointment to the Senior Foreign Service shall be to a salary class established under section 3962 of this title, and not to a position.

(b) Limited appointment

An individual may not be given a limited appointment in the Senior Foreign Service if that appointment would cause the number of members of the Senior Foreign Service serving under limited appointments to exceed 5 percent of the total number of members of the Senior Foreign Service, except that (1) members of the Senior Foreign Service assigned to the Peace Corps shall be excluded in the calculation and application of this limitation, and (2) members of the Senior Foreign Service serving under limited appointments with reemployment rights under section 3950 of this title as career appointees in the Senior Executive Service shall be considered to be career members of the Senior Foreign Service for purposes of this subsection.

(c) Appointments by Secretary of Commerce

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

(2) Except as provided in paragraph (3), no more than one individual (other than an individual with reemployment rights under section 3950 of this title as a career appointee in the Senior Executive Service) may serve under a limited appointment in the Senior Foreign Service in the Department of Commerce at any time.

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

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

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

(d) Recertification process

The Secretary shall by regulation establish a recertification process for members of the Senior Foreign Service that is equivalent to the recertification process for the Senior Executive Service under section 3393a of title 5.

Amendments

1999—Subsec. (c). Pub. L. 106–113 struck out subsec. (c) which read as follows: “Within 6 months after assuming the position, the chief of mission to a foreign country shall submit, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, a report describing his or her own foreign language competence and the foreign language competence of the mission staff in the principal language or other dialect of that country.”

REFERENCES IN TEXT


**AMENDMENTS**

**Effective Date of 1989 Amendment**


**Effective Date of 1985 Amendment**

Section 119(c) of Pub. L. 99–93 provided that: "The amendments made by subsections (a) and (b) [amending this section and provisions set out as a note under section 3901 of this title] shall take effect on October 1, 1985."

**Effective Date**

Section effective Feb. 15, 1981, with an exception that appointments to the Senior Foreign Service by the Secretary of Commerce shall be excluded in the calculation and limitation in subsec. (b) of this section until Oct. 1, 1985, which was repealed by section 119(b) of Pub. L. 99–93, see section 2403 of Pub. L. 101–194, set out as a note under section 3901 of this title.

**Placement of Senior Foreign Service Personnel**


**§ 3946. Career appointments**

(a) **Trial period under limited appointment**

Before receiving a career appointment in the Service, an individual shall first serve under a limited appointment as a career candidate for a trial period of service prescribed by the Secretary. During such trial period of service, the Secretary shall decide whether—

(1) to offer a career appointment to the candidate under section 3943 of this title, or

(2) to recommend to the President that the candidate be given a career appointment under section 3942 of this title.

(b) **Decisions by Secretary**

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

(c) **Foreign Service Grievance Board decisions**

Nothing in this section shall be construed to limit the authority of the Secretary or the Foreign Service Grievance Board under section 4137 of this title.


**AMENDMENTS**


**Effective Date of 1987 Amendment**

Section 181(e) of Pub. L. 100–204 provided that: "The amendments made by this section [amending this section and sections 4010 and 4137 of this title] shall not apply with respect to any grievance in which the Board has issued a final decision pursuant to section 1107 of the Foreign Service Act of 1980 (22 U.S.C. 4137) before the date of enactment of this Act [Dec. 22, 1987]."

**§ 3947. Entry levels for Foreign Service officer candidates**

A career candidate for appointment as a Foreign Service officer may not be initially assigned under section 3964 of this title to a salary class higher than class 4 in the Foreign Service Schedule unless—

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

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


**§ 3948. Recall and reappointment of career members**

(a) **Retired career members**

Whenever the Secretary determines that the needs of the Service so require, the Secretary may recall any retired career member of the Service for active duty in the same personnel category as that member was serving at the time of retirement. A retired career member may be recalled under this section to any appropriate salary class or rate, except that a retired career member of the Senior Foreign Service may not be recalled to a salary class higher than the one in which the member was serving at the time of retirement unless appointed to such higher class by the President, by and with the advice and consent of the Senate.

(b) **Former career members**

Former career members of the Service may be reappointed under section 3942(a)(1) or 3943 of this title, without regard to section 3946 of this title, in a salary class which is appropriate in light of the qualifications and experience of the individual being reappointed.


**USAID Overseas Program**


"(a) **Authority.—Up to $93,000,000 of the funds made available in title III of this Act (title III of div. F of Pub. L. 111–117, 123 Stat. 3321) to carry out the provisions of part I of the Foreign Assistance Act of 1961 [22 U.S.C. 2531 et seq.], including funds appropriated under the heading ‘Assistance for Europe, Eurasia and Central Asia’, may be used by the United States Agency for International Development (USAID) to hire and employ individuals in the United States and overseas on a limi-"
§ 3949. TITLE 22—FOREIGN RELATIONS AND INTERCOURSE Page 1166

ited appointment basis pursuant to the authority of sections 308 and 309 of the Foreign Service Act of 1980 [22 U.S.C. 3948, 3949].

(b) Restrictions.—

"(1) The number of individuals hired in any fiscal year pursuant to the authority contained in subsection (a) may not exceed 175.

"(2) The authority to hire individuals contained in subsection (a) shall expire on September 30, 2011.

"(c) Conditions.—The authority of subsection (a) may only be used to the extent that an equivalent number of positions that are filled by personal services contractors or other non-direct hire employees of USAID, who are compensated with funds appropriated to carry out part I of the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], including funds appropriated under the heading ‘Assistance for Europe, Eurasia and Central Asia’, are eliminated.

"(d) Priority Sectors.—In exercising the authority of this section, primary emphasis shall be placed on enabling USAID to meet personnel positions in technical skill areas currently encumbered by contractor or other non-direct hire personnel.

"(e) Consultations.—The USAID Administrator shall consult with the Committees on Appropriations on a quarterly basis concerning the implementation of this section.

"(f) Program Account Charged.—The account charged for the cost of an individual hired and employed under the authority of this section shall be the account to which such individual’s responsibilities primarily relate: Provided, That funds made available to carry out this section may be transferred to, and merged with, funds appropriated by this Act in title II [title II of div. F of Pub. L. 111–117, 123 Stat. 3321] under the heading ‘Operating Expenses’.

"(g) Foreign Service Limited Extensions.—Individuals hired and employed by USAID, with funds made available in this Act (div. F of Pub. L. 111–117, 123 Stat. 3312) or prior Acts making appropriations for the Department of State, foreign operations, and related programs [see similar provisions listed below], pursuant to the authority of section 309 of the Foreign Service Act of 1980 (22 U.S.C. 3949), may be extended for a period of up to 4 years notwithstanding the limitation set forth in such section.

Similar provisions were contained in the following prior appropriation acts:


Pub. L. 108–190, div. D, title V, §525, Jan. 23, 2004, 118 Stat. 176, provided that: ‘‘Funds appropriated by this and subsequent appropriations Acts to carry out the provisions of part I of the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], including funds appropriated under the heading ‘Assistance for Eastern Europe and the Baltic States’, may be made available to employ individuals overseas on a limited appointment basis pursuant to the authority of sections 308 and 309 of the Foreign Service Act of 1980 [22 U.S.C. 3948, 3949]: Provided, That in fiscal years 2004, 2005, and 2006 the authority of this section may be used to hire not more than 85 individuals in each such year.’’

§ 3949. Limited appointments

(a) A limited appointment in the Service, including an appointment of an individual who is an employee of an agency, may not exceed 5 years in duration and, except as provided in subsection (b) of this section, may not be extended or renewed. A limited appointment in the Service which is limited by its terms to a period of one year or less is a temporary appointment.

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

(1) as a consular agent;

(2) in accordance with section 3951(a) of this title;

(3) as a career candidate, if continued service is determined appropriate to remedy a matter that would be cognizable as a grievance under subchapter XI of this chapter;

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

(5) as a foreign national employee.


Amendments


1987—Pub. L. 100–204 designated existing provisions as subsec. (a), substituted ‘‘subsection (b) of this section’’ for ‘‘section 3951(a) of this title’’, and added subsec. (b).

§ 3950. Reemployment rights following limited appointment

Any employee of an agency who accepts a limited appointment in the Service with the consent of the head of the agency in which the employee is employed shall be entitled, upon the termination of such limited appointment, to be reemployed in accordance with section 3597 of title 5.


Entitlement to Benefits for Services Performed Outside United States; Service Exceeding Thirty Months

Persons appointed, employed, or assigned after May 19, 1959, under former section 1787(c) of this title or section 2385(d) of this title for the purpose of performing functions under the Mutual Security Act of 1961 (see Short Title note set out under section 1754 of this title) and the Foreign Assistance Act of 1961 (section 2151 et seq. of this title) outside the United States shall not, unless otherwise agreed by the agency in which such benefits may be exercised, be entitled to the benefits provided for by this section in cases in which they would be cognizable as a grievance under section 7512 of title 5, and the Foreign Assistance Act of 1961 (section 2151 et seq. of this title) outside the United States shall not, unless otherwise agreed by the agency in which such benefits may be exercised, be entitled to the benefits provided for by this section in cases in which they would be cognizable as a grievance under section 7512 of title 5.

§ 3951. United States citizens hired abroad

(a) Appointment of family members

The Secretary, under section 3943 of this title, may appoint United States citizens, who are family members of government employees assigned abroad or are hired for service at their post of residence, for employment in positions customarily filled by Foreign Service officers, Foreign Service personnel, and foreign national employees.

(b) Family nexus as affirmative hiring factor

The fact that an applicant for employment in a position referred to in subsection (a) of this section is a family member of a Government employee assigned abroad shall be considered an affirmative factor in employing such person.
(c) Compensation of family and non-family member employees

(1) Non-family members employed under this section for service at their post of residence shall be paid in accordance with local compensation plans established under section 3968 of this title.

(2) Family members employed under this section shall be paid in accordance with the Foreign Service Schedule or the salary rates established under section 3967 of this title.

(3) In exceptional circumstances, non-family members may be paid in accordance with the Foreign Service Schedule or the salary rates established under section 3967 of this title, if the Secretary determines that the national interest would be served by such payments.

(d) Non-family member employees ineligible for certain benefits

Nonfamily member United States citizens employed under this section shall not be eligible by reason of such employment for benefits under subchapter VIII of this chapter, or under chapters 83 or 84 of title 5.


(c) Limits of consular districts

The Secretary of State shall define the limits of consular districts.


SUBCHAPTER IV—COMPENSATION

§3961. Salaries of chiefs of mission

(a) Except as provided in section 3942(b) of this title, each chief of mission shall receive a salary, as determined by the President, at one of the annual rates payable for levels II through V of the Executive Schedule under sections 5313 through 5316 of title 5, except that the total compensation, exclusive of danger pay, for any chief of mission shall be subject to the limitation on certain payments under section 5307 of title 5 or the limitation under section 3962(a)(3) of this title, whichever is higher.

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


AMENDMENTS

2004—Subsec. (a). Pub. L. 108–447, which directed the substitution of “shall be subject to the limitation” for “shall not exceed the annual rate of pay payable for level I of such Executive Schedule”, was executed by making the substitution for “shall not exceed the annual rate payable for level I of such Executive Schedule” to reflect the probable intent of Congress.

1991—Subsec. (a). Pub. L. 102–138 substituted “Except as provided in section 3942(b) of this title, each” for “‘Each’ and ‘level I of such’ for ‘level II of such’.”.

1987—Subsec. (a). Pub. L. 100–204 substituted “Each chief” for “Except as provided in section 3942(b) of this title, each chief”, and inserted before period at end “except that the total compensation, exclusive of danger pay, for any chief of mission shall not exceed the annual rate payable for level II of such Executive Schedule”.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–204 not applicable to salary of any individual serving under Presidential ap-

1 So in original. Probably should be “chapter”.
§ 3962. Salaries of Senior Foreign Service members

(a) Prescription by President; basic salary rates; adjustments; determinations by Secretary

(1) The President shall prescribe salary classes for the Senior Foreign Service and shall prescribe an appropriate title for each class. The President shall also prescribe ranges of basic salary rates for each class. Except as provided in paragraph (3), basic salary rates for the Senior Foreign Service may not exceed the maximum rate or be less than the minimum rate of basic pay payable for the Senior Executive Service under section 5382 of title 5.

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

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

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

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

(b) Career appointees in Senior Executive Service accepting limited appointment in Senior Foreign Service; adjustment

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

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

§ 3963. Foreign Service Schedule

The President shall establish a Foreign Service Schedule which shall consist of 9 salary classes and which shall apply to members of the Service who are citizens of the United States and for whom salary rates are not otherwise provided for by this subchapter. The maximum salary rate for the highest class established under this section, which shall be designated class I, may not exceed the maximum rate of basic pay prescribed for GS–15 of the General Schedule under section 5302 of title 5. Salary rates established under this section shall be adjusted in accordance with section 5303 of title 5.

References in Text

Level II of the Executive Schedule, referred to in subsec. (a)(3)(A), is set out in section 5313 of Title 5, Government Organization and Employees.

Amendments

2004—Subsec. (a)(1). Pub. L. 108–447, § 412(a)(1), substituted “The President shall also prescribe ranges of basic salary rates for each class. Except as provided in paragraph (3), basic salary rates for the Senior Foreign Service may not exceed the maximum rate or be less than the minimum rate of basic pay payable for the Senior Executive Service under section 5382 of title 5.” for “The President shall also prescribe one or more basic salary rates for each class. Basic salary rates for the Senior Foreign Service may not exceed the maximum rate or be less than the minimum rate of basic pay payable for the Senior Executive Service under section 5382 of title 5, and shall be adjusted at the same time and in the same manner as rates of basic pay are adjusted for the Senior Executive Service.”


Effective Date

Section effective Feb. 15, 1981, except that subsec. (a), for purposes of implementing section 4131 of this title, is effective Oct. 17, 1980, see section 2406(a) and (d)(2) of Pub. L. 96–465, set out as an Effective Date note under section 3901 of this title.

Establishment of Salary Classes with Titles for Senior Foreign Service

For establishment of salary classes with titles for the Senior Foreign Service, at basic rates of pay equivalent to that established from time to time for the Senior Executive Service under section 5382 of Title 5, Government Organization and Employees, see section 4 of Ex. Ord. No. 12293, Feb. 23, 1981, 46 F.R. 13969, set out as a note under section 3901 of this title.

References in Text

Level II of the Executive Schedule, referred to in subsec. (a)(3)(A), is set out in section 5313 of Title 5, Government Organization and Employees.
Government Organization and Employees. formerly set out as a note under section 5332 of Title 5, provided for a Foreign Service Schedule, was supercordance with a local compensation plan established family members of Government employees paid in ac-


EXED DATE of 1990 AMENDMENT
Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 5329 [title I, § 335] of Pub. L. 101–509, set out as a note under section 5301 of Title 5, Government Organi-

EFFECTIVE DATE
Section effective Feb. 15, 1981, except that for pur-

poses of implementing section 4151 of this title it is ef-

fective Oct. 17, 1980, see section 2403(a) and (d)(2) of Pub. L. 96–465, which provided for a Foreign Service Schedule, was super-


ADJUSTMENT OF FOREIGN SERVICE SCHEDULE
For adjustment of Foreign Service Schedule pay rates under this section, see the executive order detail-

ing the adjustment of certain rates of pay set out as a note under section 5332 of Title 5, Government Organi-

zation and Employees.

§ 3964. Assignments to salary class
(a) The Secretary shall assign all Foreign Service officers and Foreign Service personnel (other than Foreign Service personnel who are paid in accordance with section 3967 of this title or section 5366 of this title) to appropriate salary classes in the Foreign Service Schedule.

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

(2) Except as authorized by subchapter I of chapter 35 of title 5, changes in the salary class of a member of the Senior Foreign Service or a member of the Service assigned to a salary class in the Foreign Service Schedule shall be made only in accordance with subchapter VI of this chapter. The Secretary shall prescribe regulations (which shall be consistent with the relevant provisions of subchapter VI of chapter 53 of title 5 and with the regulations prescribed to carry out such provisions) providing for reten-

tion of pay by members of the Service in cases in which reduction-in-force procedures are applied.


AMENDMENTS
1994—Subsec. (a). Pub. L. 103–236 struck out “‘who are family mem-

bers of Government employees paid in ac-

cordance with a local compensation plan established under” after “section 3967 of this title or’.”

§ 3965. Performance pay
(a) Eligibility; additional lump sum payment; ex-

cessive compensation not precluding award
Subject to subsection (e) of this section, members of the Senior Foreign Service who are serv-

ing—

(1) under career or career candidate appoint-

ments, or

(2) under limited appointments with reem-

ployment rights under section 3950 of this title

as career appointees in the Senior Executive Service,

shall be eligible to compete for performance pay in accordance with this section. Performance pay shall be paid in a lump sum and shall be in addition to the basic salary prescribed under section 3962 of this title and any other award. The fact that a member of the Senior Foreign Service competing for performance pay would, as a result of the payment of such performance pay, receive compensation exceeding the compen-

sation of any other member of the Service shall not preclude the award or its payment.

(b) Criteria; limitations
Awards of performance pay shall take into ac-

count the criteria established by the Office of Personnel Management for performance awards under section 5384 of title 5 and rank awards under section 4507 of title 5. Awards of perform-

ance pay under this section shall be subject to the following limitations:

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

(2) Except as provided in paragraph (3), perform-

ance pay for a member of the Senior Foreign Service may not exceed 20 percent of the annual rate of basic salary for that member.

(3) Not more than 6 percent of the members of the Senior Foreign Service may receive performance pay in any fiscal year in an amount which exceeds the percentage limitation specified in paragraph (2). Payments under this paragraph to a member of the Senior Foreign Service may not exceed, in any fiscal year, the percentage of basic pay established under section 4507(e)(1) of title 5 for a Meritorious Exec-

utive, except that payments of the percentage of the basic pay established under section 4507(e)(2) of such title for Distinguished Execu-

itives may be made in any fiscal year to up to 1 percent of the members of the Senior Foreign Service.

(4) Any award under this section shall be subject to the limitation on certain payments under section 5307 of title 5, or the limitation under section 3962(a)(3) of this title, whichever is higher.

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

(c) Determination of amount by Secretary; dis-

tribution on basis of selection board recommend-

ations
The Secretary shall determine the amount of performance pay available under subsection (b)(2) of this section each year for distribution among the members of the Senior Foreign Serv-

ice and shall distribute performance pay to par-

ticular individuals on the basis of recommendations by selection boards established under sec-

tion 4002 of this title.
(d) Recommendations for meritorious or distinguished service awards

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

(e) Recognition in lieu of award

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


AMENDMENTS

2004—Subsec. (b)(4). Pub. L. 108–447 inserted “; or the limitation under section 3962(a)(3) of this title, which is higher” before period at end.

2002—Subsec. (b)(3). Pub. L. 107–228 inserted second sentence and struck out former second sentence which read as follows: “Payments under this paragraph to a member of the Senior Foreign Service may not exceed $10,000 in any fiscal year, except that payments of up to $5,000 in any fiscal year may be made under this paragraph to up to 1 percent of the members of the Senior Foreign Service.”


1998—Subsec. (a). Pub. L. 105–277, § 2311(a)(1), substituted “Subject to subsection (e) of this section, members” for “Members” in introductory provisions.


1994—Subsec. (b)(4). Pub. L. 103–236 amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The total amount of basic salary plus performance pay received in any fiscal year by any member of the Senior Foreign Service may not exceed the salary payable at level I of the Executive Schedule under section 5312 of title 5 as in effect at the end of that fiscal year. Any amount which is not paid to a member of the Senior Foreign Service during a fiscal year because of this limitation shall be paid to that individual in a lump sum at the beginning of the following fiscal year. Any amount paid under this authority during a fiscal year shall be taken into account for purposes of applying the limitation in the first sentence of this subparagraph with respect to such fiscal year.’’

1987—Subsec. (b)(4), (5). Pub. L. 100–204 inserted at end of par. (4) “Any amount which is not paid to a member of the Senior Foreign Service during a fiscal year because of this limitation shall be paid to that individual in a lump sum at the beginning of the following fiscal year. Any amount paid under this authority during a fiscal year shall be taken into account for purposes of applying the limitation in the first sentence of this subparagraph with respect to such fiscal year.” and added par. (5).

EFFECTIVE DATE OF 2002 AMENDMENT


SENIOR FOREIGN SERVICE PERFORMANCE PAY

Section 173(a)–(c) of Pub. L. 103–236, as amended by Pub. L. 103–415, §1(gg), Oct. 25, 1994, 108 Stat. 4303, provided that:

“(a) PROHIBITION ON AWARDS.—Notwithstanding any other provision of law, the Secretary of State may not award or pay performance payments for fiscal years 1994 and 1995 under section 405 of the Foreign Service Act of 1980 (22 U.S.C. 3965), unless the Secretary awards or pays performance awards to other Federal employees for such fiscal years.

“(b) AWARDS IN SUBSEQUENT FISCAL YEARS.—The Secretary may not make a performance award or payment in any fiscal year after a fiscal year referred to in subsection (a) for the purpose of providing an individual with a performance award or payment to which the individual would otherwise have been entitled in a fiscal year referred to in such subsection but for the prohibition described in such subsection.

“(c) APPLICATION TO USIA, AID, AND ACD A.—Sections (a) and (b) shall apply to the United States Information Agency, the Agency for International Development, and the United States Arms Control and Disarmament Agency in the same manner as such subsections apply to the Department of State, except that the Director of the United States Information Agency, the Administrator of the Agency for International Development, and the Director of the United States Arms Control and Disarmament Agency shall be subject to the limitations and authority of the Secretary of State under subsections (a) and (b) for their respective agencies.”

[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of this title, and for abolition, transfer of functions, and treatment of references to United States Arms Control and Disarmament Agency, see section 6511 et seq. of this title.]

REVIEW OF PERFORMANCE PAY PROGRAMS

Section 175(a) of Pub. L. 100–204 provided that:

“(1) SUSPENSION OF AWARDS DURING REVIEW.—During the period beginning on the date of enactment of this Act [Dec. 22, 1987], and ending on the date on which the Inspector General of the Department of State reports to the Congress pursuant to paragraph (2), performance pay may not be awarded under section 405 of the Foreign Service Act of 1980 (22 U.S.C. 3965) to any member of the Senior Foreign Service in the Department of State.

“(2) REVIEW BY INSPECTOR GENERAL.—The Inspector General of the Department of State shall conduct a complete and thorough review of—
“(A) the procedures in the Department of State under which performance pay recipients are chosen to determine whether the procedures and award determinations are free from bias and reflect fair standards; and

“(B) the adequacy of the criteria and the equity of the criteria actually applied in making those awards. The review should be conducted in accordance with generally accepted Government auditing standards. The Inspector General shall report the results of this review to the Secretary of State and to the Congress no later than May 1, 1988.

“(3) REPORT BY SECRETARY OF STATE.—No later than 60 days after the report of the Inspector General is submitted to the Secretary of State under paragraph (2), the Secretary shall submit to the Congress a report containing the comments of the Secretary on the report of the Inspector General and describing the actions taken and proposed to be taken by the Secretary as a result of the report.”

§ 3966. Within-class salary increases

(a) Time period; limitation

Any member of the Service receiving a salary under the Foreign Service Schedule shall be advanced to the next higher salary step in the member’s class at the beginning of the first applicable pay period following the completion by that member of a period of—

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

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

unless the performance of the member during that period is found in a review by a selection board established under section 4002 of this title to fall below the standards of performance for his or her salary class.

(b) Additional increase for meritorious service

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


§ 3967. Salaries for Foreign Service personnel abroad who perform routine duties

(a) The Secretary may establish salary rates at rates lower than those established for the Foreign Service Schedule for the Foreign Service personnel described in subsection (b) of this section. The rates established under this subsection may be no less than the then applicable minimum wage rate specified in section 206(a)(1) of title 29.

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


§ 3968. Local compensation plans

(a) Establishment; rates of pay; leaves of absence; supplemental payments; transfer from Civil Service Retirement and Disability Fund

(1) The Secretary shall establish compensation (including position classification) plans for foreign national employees of the Service and United States citizens employed under section 3951(c)(1) of this title. To the extent consistent with the public interest, each compensation plan shall be based upon prevailing wage rates and compensation practices (including participation in local social security plans) for corresponding types of positions in the locality of employment, except that such compensation plans shall provide for payment of wages to United States citizens at a rate which is no less than the then applicable minimum wage rate specified in section 206(a)(1) of title 29. Any compensation plan established under this section may include provision for (A) leaves of absence with pay for employees in accordance with prevailing law and employment practices in the locality of employment without regard to any limitation contained in section 6310 of title 5, (B) programs for voluntary transfers of such leave and voluntary leave banks, which shall, to the extent practicable, be established in a manner consistent with the provisions of subchapters III and IV, respectively, of chapter 63 of title 5, and (C) payments by the Government and employees to (i) a trust or other fund in a financial institution in order to finance future benefits for employees, including provision for retention in the fund of accumulated interest and dividends for the benefit of covered employees; or (ii) a Foreign Service National Savings Fund established in the Treasury of the United States, which (I) shall be administered by the Secretary, at whose direction the Secretary of the Treasury shall invest amounts not required for the current needs of the Fund; and (II) shall be public monies, which are authorized to be appropriated and remain available without fiscal year limitation to pay benefits, to be invested in public debt obligations bearing interest at rates determined by the Secretary of the Treasury taking into consideration current average market yields on outstanding marketable obligations of the United States of comparable maturity, and to pay administrative expenses. For United States citizens under a compensation plan, the Secretary shall define those allowances and benefits provided under United States law which shall be included as part of the total compensation package, notwithstanding any other provision of law, except that this section shall not be used to override United States minimum wage requirements, or any provision of the Social Security Act [42 U.S.C. 301 et seq.] or title 26.

(2) The Secretary may make supplemental payments to any civil service annuitant who is a former foreign national employee of the Service (or who is receiving an annuity as a survivor of a former foreign national employee of the Service) in order to offset exchange rate losses, if the annuity being paid such annuitant is based on—
(A) a salary that was fixed in a foreign currency that has appreciated in value in terms of the United States dollar; and

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

(3)(A) Whenever a foreign national employee so elected during a one-year period established by the Secretary of State with respect to each post abroad, the Secretary of the Treasury (at the direction of the Secretary of State) shall transfer such employee's interest in the Civil Service Retirement and Disability Fund to a trust or other local retirement plan established by the United States Government under local compensation plans for its employees who are legislative or judicial branch employees (including any establishment in the legislative or judicial branch) may administer such plans.

(B) For purposes of subparagraph (A), the amount of each employee's interest in the Civil Service Retirement and Disability Fund is determined by the Secretary of the Treasury with respect to each post pursuant to section 8331(b) and 8334(a)(1) of title 5, respectively, plus interest at the rate provided in section 8334(e)(3) of such title.

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

(b) Employment programs

For the purpose of performing functions abroad, any agency or Government establishment (including any establishment in the legislative or judicial branch) may administer employment programs for its employees who are foreign nationals, are United States citizens employed abroad, or are family members of Government employees who are paid in accordance with such plans.

(c) Regulations

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

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1), 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.

This chapter, referred to in subsec. (b), 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

2002—Subsec. (a)(1). Pub. L. 107–228 in third sentence substituted "payments by the Government and employees to (i) a trust or other fund in a financial institution in order to finance future benefits for employees, including provision for retention in the fund of accumulated interest and dividends for the benefit of covered employees; or (ii) a Foreign Service National Savings Fund established in the Treasury of the United States, which (I) shall be administered by the Secretary, at whose direction the Secretary of the Treasury shall invest amounts not required for the current needs of the Fund; and (II) shall be public monies, which are authorized to be appropriated and remain available without fiscal year limitation to pay benefits, to be invested in public debt obligations bearing interest at rates determined by the Secretary of the Treasury taking into consideration current average market yields on outstanding marketable obligations of the United States of comparable maturity, and to pay administrative expenses." for "payments by the Government and employees to a trust or other fund in a financial institution in order to finance future benefits for employees, including provision for retention in the fund of accumulated interest for the benefit of covered employees." (B) struck out "(A) provide such citizens with a total compensation package that has the equivalent cost to that received by foreign national employees occupying a similar position at that post and (B)" after "Secretary shall!" and substituted "the total compensation package" for "this total compensation package".

1994—Subsec. (a)(1). Pub. L. 103–236, §180(a)(4)(D), inserted at end "For United States citizens under a compensation plan, the Secretary shall (A) provide such citizens with a total compensation package (including wages, allowances, benefits, and other employer payments, such as for social security) that has the equivalent cost to that received by foreign national employees occupying a similar position at that post and (B) define those allowances and benefits provided under United States law which shall be included as part of this total compensation package, notwithstanding any other provision of law, except that this section shall not be used to override United States minimum wage requirements, or any provision of the Social Security Act or title 26.".

2002—Pub. L. 107–228 in third sentence struck out "employed in the Service abroad who were hired while residing abroad and to those family members of Government employees who are paid in accordance with such plans" after "United States citizens, and in third sentence struck out "foreign national" before "employees whenever appearing.

1991—Subsec. (a)(1). Pub. L. 102–138, §182(a), inserted "United States citizens employed in the Service abroad who were hired while residing abroad," after "employees of the Service," and "to United States citizens employed...".
employed in the Service abroad who were hired while residing abroad and after “payment of wages”.

Pub. L. 102–138, §148, added cl. (B) and redesignated former cl. (B) as (C).

Subsec. (b). Pub. L. 102–138, §152(b), inserted “are United States citizens employed in the Service abroad who were hired while residing abroad,” after “foreign nationals”.


DATE OF TRANSFER FROM CIVIL SERVICE RETIREMENT AND DISABILITY FUND

Section 141(c) of Pub. L. 101–246 provided that: “The transfer of an employee’s interest in the Civil Service Retirement and Disability Fund shall occur after October 1, 1990.”

FOREIGN NATIONAL PAY PLANS

Pub. L. 96–60, title I, §107(a), Aug. 15, 1979, 93 Stat. 397, provided that: “It is the sense of the Congress that the Secretary of State should—

(1) improve coordination between the Department of State and the Department of Defense and other departments and agencies of the United States operating outside the United States with respect to foreign national pay systems and wage schedules to the extent that—

(A) joint wage surveys and compatible pay schedules are adopted in countries where two or more departments or agencies of the United States directly employ foreign nationals, and

(B) Department of Defense wage rates are included in wage surveys of the Department of State where the Department of Defense operates under direct-hire arrangements;

(2) monitor the establishment of wage rates outside the United States more closely to insure that United States missions—

(A) operate under salary schedules that reflect private sector average pay or average pay ranges, and

(B) include the cost of severance in making pay adjustments, and

(C) survey jobs in the private sector which represent as closely as possible the work force of the mission; and

(3) substitute, whenever possible, prevailing local retirement plans for civil service retirement with respect to the retirement of foreign nationals employed by the United States.”

§3969. Salaries of consular agents

The Secretary of State shall establish the salary rate for each consular agent. Such salary rate shall be established after taking into account the workload of the consular agency and the prevailing wage rates in the locality where the agency is located, except that, in the case of a consular agent who is a citizen of the United States, the salary rate may not be less than the then applicable minimum wage rate specified in section 206(a)(1) of title 29.


§3970. Compensation for imprisoned foreign national employees

(a) Eligibility; rates of compensation; terms and conditions of payment; applicability of powers under other statutory provisions

The head of any agency or other Government establishment (including any in the legislative or judicial branch) may compensate any current or former foreign national employee, or any foreign national who is or was employed under a personal services contract, who is or has been imprisoned by a foreign government if the Secretary of State (or, in the case of a foreign national employed by the Central Intelligence Agency, the Director of Central Intelligence) determines that such imprisonment is the result of the employment of the foreign national by the United States. Such compensation may not exceed the amount that the agency head determines approximates the salary and other benefits to which the foreign national would have been entitled had he or she been employed during the period of such imprisonment. Such compensation may be paid under such terms and conditions as the Secretary of State deems appropriate.

For purposes of this section, an agency head shall have the same powers with respect to imprisoned foreign nationals who are or were employed by the agency as an agency head has under subchapter VII of chapter 55 of title 5 to the extent that such powers are consistent with this section.

(b) Time spent imprisoned considered as period of employment

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

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

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

(c) Time of filing of claims

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

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

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

(d) Regulations

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


CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community shall be a reference to the Director of National Intelligence (Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency to be a reference to the Director of the Central Intelligence Agency. See section 1061(a), (b) of Pub. L. 104–456, set out as a note under section 401 of Title 50, War and National Defense.

References:

104–456 set out as a note under section 401 of Title 50, War and National Defense.
§ 3971. Temporary service as principal officer

For such time (in excess of such minimum period as the Secretary of State may establish) as any member of the Service is temporarily in charge of a Foreign Service post during the absence or incapacity of the principal officer, that member shall receive, in addition to the basic salary paid to the member and notwithstanding sections 5335 and 5536 of title 5, an amount equal to that portion (which the Secretary of State may determine to be appropriate) of the difference between such salary and the basic salary provided for the principal officer, or, if there is no principal officer, for the former principal officer.


§ 3972. Special differentials

(a) Additional work requirements

The Secretary may pay special differentials, in addition to compensation otherwise authorized, to Foreign Service officers who are required because of the nature of their assignments to perform additional work on a regular basis in substantial excess of normal requirements.


(c) Compensatory time off

Nothing in this chapter, or in subchapter V of chapter 55 of title 5 shall preclude the granting of compensatory time off for Foreign Service officers.


AMENDMENTS

1994—Subsec. (b). Pub. L. 103–236 struck out subsec. (b) which read as follows: “Before implementing any proposal to limit either the number of Foreign Service officers who may receive a special differential under subsection (a) of this section or the amounts of such special differentials, the Secretary shall submit such proposal to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.”

§ 3973. Death gratuities

(a) Criteria; amount; payment deemed gift

The Secretary may provide for payment of a gratuity to the surviving dependent of any Foreign Service employee, who dies as a result of injuries sustained in the performance of duty abroad, in an amount equal to one year’s salary at the time of death. Any death gratuity payment made under this section shall be held to have been a gift and shall be in addition to any other benefit payable from any source.

(b) Eligibility to elect monthly compensation as condition to payment

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

(c) Order of payment

A death gratuity payment under this section shall be made as follows:

(1) First, to the widow or widower.

(2) Second, to the child, or children in equal shares, if there is no widow or widower.

(3) Third, to the dependent parent, or dependent parents in equal shares, if there is no widow, widower, or child.

If there is no survivor entitled to payment under this subsection, no payment shall be made.

(d) Definitions

As used in this section—

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

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


§ 3974. Border equalization pay adjustment

(a) In general

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

(b) Employee defined

For purposes of this section, the term “employee” means a person who—

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

(2) is employed by the Department of State, the United States Agency for International Development, or the International Joint Commission of the United States and Canada (established under Article VII of the treaty signed January 11, 1909) (36 Stat. 2448), except that the term shall not include members of the Service (as defined in section 3903 of this title).

(c) Treatment as basic pay

An equalization pay adjustment paid under this section shall be considered to be part of basic pay for the same purposes for which comparability payments are considered to be part of basic pay under section 5304 of title 5.

(d) Regulations

The heads of the agencies referred to in subsection (b)(2) of this section may prescribe regulations to carry out this section.
SUBCHAPTER V—CLASSIFICATION OF POSITIONS AND ASSIGNMENTS

§ 3981. Authority of Secretary

The Secretary shall designate and classify positions in the Department and at Foreign Service posts which are to be occupied by members of the Service (other than by chiefs of mission and ambassadors at large). Positions designated under this section are excepted from the competitive service. Position classifications under this section shall be established, without regard to chapter 51 of title 5, in relation to the salaries established under subchapter IV of this chapter. In classifying positions at Foreign Service posts abroad, the Secretary shall give appropriate weight to job factors relating to service abroad and to the compensation practices applicable to United States citizens employed abroad by United States corporations.


§ 3982. Assignments to Foreign Service positions

(a) Positions assignable; basis for assignment

(1) The Secretary (with the concurrence of the agency concerned) may assign a member of the Service to any position classified under section 3981 of this title in which that member is eligible to serve (other than as chief of mission or ambassador at large), and may assign a member from one such position to another such position as the needs of the Service may require.

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

(b) Filling of positions by members of Service; employment of members of State Department and other agencies

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

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

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

(c) Charge d’affaires

The President may assign a career member of the Service to serve as charge d’affaires or otherwise as the head of a mission (or as the head of a United States office abroad which is designated under section 3902(a)(3) of this title by the Secretary of State as diplomatic in nature) for such period as the public interest may require.

(d) Competitive ability with respect to chief of mission positions and for assignments outside areas of specialization

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


REFERENCES IN TEXT

Section 3902(a)(3) of this title, referred to in subsec. (c), was redesignated section 3902(3) of this title pursuant to Pub. L. 98–164, which struck out the designation “(a)” and subsec. (b) of section 3902.

AMENDMENTS


DELEGATION OF FUNCTIONS

Functions of President under subsec. (c) 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 3981 of this title.

REPORT RESPECTING POLICIES AND PROCEDURES ADOPTED TO IMPROVE COMPETITIVE ABILITY OF PERSONNEL

Section 130(c) of Pub. L. 98–164 directed Secretary of State, not later than one year after Nov. 22, 1983, to submit a report to Speaker of House of Representatives and chairmen of Committee on Foreign Relations of Senate describing policies and procedures adopted pursuant to the amendment made by section 130(b) of Pub. L. 98–164, adding subsec. (d) of this section, prior to repeal by Pub. L. 103–236, title I, § 139(10), Apr. 30, 1994, 108 Stat. 398.

§ 3983. Assignments to non-Service and other positions

(a) Positions assignable

The Secretary may (with the concurrence of the agency, organization, or other body concerned) assign a member of the Service for duty—

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

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

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

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

(b) Salary; travel and other expenses

(1) The salary of a member of the Service assigned under this section shall be the higher of

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1 See References in Text note below.
the salary which that member would receive but for the assignment under this section or the salary of the position to which that member is assigned.

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

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

(c) Length of assignment

Except as otherwise provided in subsection (d)(5) of this section, assignments under this section may not exceed four years of continuous service for any member of the Service unless the Secretary approves an extension of such period for that member because of special circumstances.

(d) Assignment to the American Institute in Taiwan

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

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

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

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

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

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

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

§ 3984. Service in United States and abroad

(a) Obligation to serve abroad; length of stay in United States

Career members of the Service shall be obligated to serve abroad and shall be expected to serve abroad for substantial portions of their careers. The Secretary shall establish by regulation limitations upon assignments of members of the Service within the United States. A member of the Service may not be assigned to duty within the United States for any period of continuous service exceeding eight years unless the Secretary approves an extension of such period for that member because of special circumstances.

(b) Intermittent duty within United States

Consistent with the needs of the Service, the Secretary shall seek to assign each career member of the Service who is a citizen of the United States (other than those employed in accordance with section 3951 of this title) to duty within the United States at least once during each period of fifteen years that the member is in the Service.

(c) Sabbaticals

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

§ 3985. Temporary details

A period of duty of not more than six months in duration by a member of the Service shall be considered a temporary detail and shall not be considered an assignment within the meaning of this subchapter.

§ 4001. Promotions

(a) Method of promotion

Career members of the Senior Foreign Service are promoted by appointment under section 3942(a) of this title to a higher salary class in the Senior Foreign Service. Members of the Senior Foreign Service serving under career candidate appointments or noncareer appointments
are promoted by appointment under section 3943 of this title to a higher salary class in the Senior Foreign Service. Foreign Service officers, and Foreign Service personnel who are assigned to a class in the Foreign Service Schedule, are promoted by appointment under section 3942(a) of this title as career members of the Senior Foreign Service or by assignment under section 3964 of this title to a higher salary class in the Foreign Service Schedule.

(b) Recommendations and rankings of selection boards

Except as provided in section 4006(a) of this title, promotions of—

(1) members of the Senior Foreign Service, and

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

shall be based upon the recommendations and rankings of selection boards established under section 4003 of this title except that the Secretary may by regulation specify categories of career members, categories of career candidates, and other members of the Service assigned to salary classes in the Foreign Service Schedule who may receive promotions on the basis of satisfactory performance.

(c) Eligibility; request for promotion; time of consideration; withdrawal of request; basis for decision; affidavits

(1) Promotions into the Senior Foreign Service shall be recommended by selection boards only from among career members of the Service assigned to class 1 in the Foreign Service Schedule who request that they be considered for promotion into the Senior Foreign Service. The Secretary shall prescribe the length of the period after such a request is made (within any applicable time in class limitation established under section 4007(a) of this title) during which such members may be considered by selection boards for entry into the Senior Foreign Service. A request by a member for consideration for promotion into the Senior Foreign Service under this subsection may be withdrawn by the member, but if it is withdrawn, that member under this subsection may be withdrawn by the Secretary who may receive promotions on the basis of satisfactory performance.

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

(A) a regular, predictable flow of recruitment into the Service;

(B) effective career development patterns to meet the needs of the Service; and

(C) a regular, predictable flow of talent upward through the ranks and into the Senior Foreign Service.

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

(4) Not later than March 1, 2001, and every four years thereafter, the Secretary of State shall submit a report to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate which shall include the following:

(A) A description of the steps taken and planned in furtherance of—

(i) maximum compatibility among agencies utilizing the Foreign Service personnel system, as provided for in section 3923 of this title, and

(ii) the development of uniform policies and procedures and consolidated personnel functions, as provided for in section 3924 of this title.

(B) A workforce plan for the subsequent five years, including projected personnel needs, by grade and by skill. Each such plan shall include for each category the needs for foreign language proficiency, geographic and functional expertise, and specialist technical skills. Each workforce plan shall specifically account for the training needs of Foreign Service personnel and shall delineate an intake program of generalist and specialist Foreign Service personnel to meet projected future requirements.

(5) If there are substantial modifications to any workforce plan under paragraph (4)(B) during any year in which a report under paragraph (4) is not required, a supplemental annual notification shall be submitted in the same manner as reports are required to be submitted under paragraph (4).


AMENDMENTS

1999—Subsec. (c)(4), (5). Pub. L. 106–113 added pars. (4) and (5) and struck out former par. (4), which required report not later than Mar. 1 of each year, describing steps taken and planned in furtherance of compatibility and development of uniform procedures and consolidated personnel functions, specifying upper and lower limits planned for recruitment, retention, and advancement of members, and specifying numbers of members assigned to positions more than one grade higher or lower than the member.

1994—Subsec. (b). Pub. L. 103–236, which directed amendment of par. (2) by striking “and” the last place thereof and inserting “and” after “categories of career candidates.”, was executed by striking “and” after “categories of career members,” and making the insertion in concluding provisions below par. (2), to reflect the probable intent of Congress.


REPORTS ELIMINATED


LANGUAGE TRAINING IN FOREIGN SERVICE

§ 4002. Establishment of selection boards

(a) Evaluation of performance; recommendations

The Secretary shall establish selection boards to evaluate the performance of members of the Senior Foreign Service and members of the Service assigned to a salary class in the Foreign Service Schedule. Selection boards shall, in accordance with precepts prescribed by the Secretary, rank the members of a salary class on the basis of relative performance and may make recommendations for—

1. promotions in accordance with section 4001 of this title;
2. awards of performance pay under section 3965(c) of this title;
3. denials of within-class step increases under section 3966(a) of this title;
4. offer or renewal of limited career extensions under section 4007(b) of this title; and
5. such other actions as the Secretary may prescribe by regulation.

(b) Public members; appointment of women and minority groups

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

(c) Disqualification for service on foreign service selection boards

No public members appointed pursuant to this section may be, at the time of their appointment or during their appointment, an agent of a foreign principal (as defined by section 611(b) of this title) or a lobbyist for a foreign entity (as defined in section 1626(c)(2) of title 2) or receive income from a government of a foreign country.

22 CFR § 4002 — Foreign Relations and Intercourse

Amendments

1995—Subsec. (c). Pub. L. 104–65 inserted “or a lobbyist for a foreign entity (as defined in section 1626(c)(2) of title 2)” before “or receive income”.


Effective Date of 1995 Amendment

Amendment by Pub. L. 104–65 effective Jan. 1, 1996, except as otherwise provided, see section 24 of Pub. L. 104–65, set out as an Effective Date note under section 1601 of Title 2, The Congress.

§ 4003. Recommendations and rankings

(a) Recommendations and rankings by selection boards shall be based upon records of the character, ability, conduct, quality of work, industry, experience, dependability, usefulness, and general performance of members of the Service. Such records may include reports prepared by or on behalf of the Inspector General of the Department of State and the Foreign Service, performance evaluation reports of supervisors, and language test scores from the George P. Shultz National Foreign Affairs Training Center, awards, reprimands, and other disciplinary actions, and (with respect to members of the Senior Foreign Service) records of current and prospective assignments.

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

1. a willingness and ability to explain United States policies in person and through the media when occupying positions for which such willingness and ability is, to any degree, an element of the member’s duties, or
2. other experience in public diplomacy.

AMENDMENTS
2004—Subsec. (b). Pub. L. 108–458 inserted at end “The precepts for selection boards shall include, whether the member of the Service or the member of the Senior Foreign Service, as the case may be, has demonstrated—” and pars. (1) and (2).

§ 4004. Records
(a) The records described in section 4003(a) of this title shall be maintained in accordance with regulations prescribed by the Secretary. Except to the extent that they pertain to the receipt, disbursement, and accounting for public funds, such records shall be confidential and subject to inspection only by the President, the Secretary, such employees of the Government as may be authorized by law or assigned by the Secretary to work on such records, the legislative and appropriations committees of Congress, and the Merit Systems Protection Board—
(b) Notwithstanding subsection (a) of this section, any record of disciplinary action that includes a suspension of more than five days taken against a member of the Service, including any correction of that record under section 4137(b)(1) of this title, shall remain a part of the personnel records until the member is tenured as a career member of the Service or next promoted.

AMENDMENTS
1999—Pub. L. 106–113, in section catchline, substituted “Records” for “Confidentiality of records”, designated existing provisions as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1999 AMENDMENT
Pub. L. 106–113, div. B, §1000(a)(7) [div. A, title III, §327(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–438, provided that all amendments made by this section (amending this section) apply to all disciplinary actions initiated on or after the date of enactment of this Act [Nov. 29, 1999].

§ 4005. Implementation of selection board recommendations
(a) Recommendations for promotion made by selection boards shall be submitted to the Secretary in rank order by salary class or in rank order by specialization within a salary class. The Secretary shall make promotions and, with respect to career appointments into or within the Senior Foreign Service, shall make recommendations to the President for promotions, in accordance with the rankings of the selection boards.
(b) Notwithstanding subsection (a) of this section, in special circumstances set forth by regulation, the Secretary may remove the name of an individual from the rank order list submitted by a selection board or delay the promotion of an individual named in such a list.

AMENDMENTS

§ 4006. Other bases for promoting or increasing pay
(a) The Secretary may pursuant to a recommendation of the Foreign Service Grievance Board, an equal employment opportunity appeals examiner, or the Special Counsel of the Merit Systems Protection Board, and shall pursuant to a decision or order of the Merit Systems Protection Board—
(1) recommend to the President a promotion of a member of the Service under section 3942(a) of this title; (2) promote a member of the Service under section 3943 of this title; (3) grant performance pay to a member of the Senior Foreign Service under section 3965(c) of this title; or (4) grant a within-class salary increase under section 3966 of this title to a member of the Service who is assigned to a salary class in the Foreign Service Schedule.
(b) In implementing subsection (a) of this section and in cases in which the Secretary has exercised the authority of section 4005(b) of this title, the Secretary may, in special circumstances set forth by regulation, make retroactive promotions, grant performance pay, make retroactive within-class salary increases, and recommend retroactive promotions by the President.

AMENDMENTS

§ 4007. Retirement for expiration of time in class
(a) Maximum time
(1) The Secretary shall, by regulation, establish maximum time in class limitations for—
(A) career members of the Senior Foreign Service,
(B) Foreign Service officers, and
(C) other career members of the Service who are in such occupational categories as may be designated by the Secretary and who are assigned to salary classes in the Foreign Service Schedule to which Foreign Service officers may also be assigned.
(2) Maximum time in class limitations under this subsection (which may not be less than 3 years for career members of the Senior Foreign Service) may apply with respect to the time a member may remain in a single salary class or in a combination of salary classes.
(3) The Secretary may, by regulation, increase or decrease any maximum time in class established under this subsection as the needs of the Service may require. If maximum time in class is decreased, the Secretary shall provide any member of the Service who is in a category and salary class subject to the new time in class limitation an opportunity to remain in class notwithstanding the new limitation for a period which is at least as long as the shorter of—
(A) the period which the member would have been permitted to remain in class but for the decrease in maximum time in class, or (B) such minimum period as the Secretary determines is necessary to provide members of...
the Service who are in the same category and salary class as that member a reasonable opportunity to be promoted into the next higher class or combination of classes, as the case may be.

(b) Limited career extension

Members of the Service whose maximum time in class under subsection (a) of this section expires—

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

(2) in the case of members of the Senior Foreign Service, while they are in salary classes designated by the Secretary,

may continue to serve only under limited extensions of their career appointments. Such limited extensions may not exceed 5 years in duration and may be granted and renewed by the Secretary in accordance with the recommendations of selection boards established under section 4002 of this title. Members of the Service serving under such limited career extensions shall continue to be career members of the Service.

(c) Members subject to retirement; reception of retirement benefits

Any member of the Service—

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

(2) whose limited career extension under subsection (b) of this section expires and is not renewed,

shall be retired from the Service and receive benefits in accordance with section 4009 of this title, subject to any career extension under subsection (d) of this section.

(d) Extensions

Notwithstanding any other provision of this section—

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

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


§ 4008. Retirement based on failure to meet standard of performance

(a) The Secretary shall prescribe regulations concerning the standards of performance to be met by career members of the Service who are citizens of the United States. Whenever a selection board review indicates that the performance of such a career member of the Service may not meet the standards of performance for his or her class, the Secretary shall provide for an administrative review of the performance of the member. The review shall include an opportunity for the member to be heard.

(b) In any case where the administrative review conducted under subsection (a) of this section substantiates that a career member of the Service has failed to meet the standards of performance for his or her class, the member shall be retired from the Service and receive benefits in accordance with section 4009 of this title.


§ 4009. Retirement benefits

(a) Entitlement

A member of the Service—

(1) who is retired under section 4007(c)(1) or 4007(c)(2) of this title; or

(2) who is retired under section 4007(c)(1) or 4007(b) or 4018a of this title—

(A) after becoming eligible for voluntary retirement under section 4051 of this title or any other applicable provision of chapter 84 of title 5, or

(B) from the Senior Foreign Service or while assigned to class 1 in the Foreign Service Schedule,

shall receive retirement benefits in accordance with section 4046 of this title or section 4071d of this title, as appropriate.

(b) Computation of amount; refund; death of member

Any member of the Service (other than a member to whom subsection (a) of this section applies) who is retired under section 4007(c)(1) or 4007(b) or 4018a of this title shall receive—

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

(2)(A) for those participants in the Foreign Service Retirement and Disability System, a refund as provided in section 4055 of this title of the contributions made by the member to the Foreign Service Retirement and Disability Fund, except that in lieu of such refund a member who has at least 5 years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military and naval service) may elect to receive an annuity, computed under section 4046 of this title, commencing at age 60; and

(B) for those participants in the Foreign Service Pension System, benefits as provided in section 4071 of this title.
In the event that a member of the Service has elected to receive retirement benefits under paragraph (2) and dies before reaching age 60 (for participants in the Foreign Service Retirement and Disability System) or age 62 (for participants in the Foreign Service Pension System), his or her death shall be considered a death in service within the meaning of section 4049 of this title.


AMENDMENTS


1994—Subsecs. (a)(2), (b). Pub. L. 103–236 inserted “or 4010(a)” after “4006(b)”.

EFFECTIVE DATE OF 1998 AMENDMENT


“(1) In general.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 4071d of this title] shall take effect on the date of the enactment of this Act [Oct. 21, 1998].

“(2) Exceptions.—The amendments made by paragraphs (2) and (3) of subsection (a) and paragraphs (1)(A) and (2) of subsection (b) [amending this section and section 4071d of this title] shall apply with respect to any actions taken under section 611 of the Foreign Service Act of 1980 [22 U.S.C. 4010a] on or after January 1, 1996.”

SPECIAL ANNUITY FOR CERTAIN FOREIGN SERVICE OFFICERS


“(a) Subject to the conditions established in subsection (b), any Foreign Service officer—

“(1) who was retired under section 623(a)(1) of the Foreign Service Act of 1946 [former section 1003(a)(1) of this title, see section 4006(a) of this title] before the date of enactment of this section, and

“(2) who was not in class 1, 2, or 3 at the time of retirement;

“(3) who was 40 years of age or older at the time of retirement; and

“(4) who had at least 20 years of service, exclusive of credit for unused sick leave, creditable for purposes of section 821 of such Act [former section 1076 of this title, see section 4046 of this title] or for any purpose, shall be entitled to receive retirement benefits in accordance with the provisions of such section 821 [former section 1076 of this title, see section 4046 of this title] in lieu of any retirement benefits which the officer may be entitled to elect under section 623(b)(2) of such Act [former section 1004(b)(2) of this title, see subsec. (b)(2) of this section]. Such retirement benefits shall be paid from the Foreign Service Retirement and Disability Fund and shall be effective on the date the officer reaches age 50, the date of enactment of this section [Aug. 17, 1977], or October 1, 1977, whichever date is latest.

“(b) Retirement benefits may not be paid under this section unless (1) any refund of contributions paid to the officer under section 624(b)(2) of the Foreign Service Act of 1946 [former section 1004(b)(2) of this title, see subsec. (b)(2) of this section] is repaid to the Foreign Service Retirement and Disability Fund, with interest, in accordance with sections 811(d) and (f) of such Act [former section 1071(d) and (f) of this title, see section 4056(d) and (f) of this title]; and (2) the service forming the basis for such retirement benefits is not used as the basis for any other retirement benefits under any retirement system.

“(c) In the event that an officer who is entitled to retirement benefits under this section dies before reaching the age of fifty, but after the date of enactment of this section [Aug. 17, 1977], his or her death shall be considered a death in service within the meaning of section 832 of the Foreign Service Act of 1946 [former section 1004(d)(2) of this title, see section 4049 of this title], except that no survivor’s annuity (other than a survivor’s annuity which would be payable under the first complete sentence in section 634(b)(2) of such Act [former section 1004(b)(2) of this title, see subsec. (b)(2) of this section] but for the enactment of this section) shall become effective before October 1, 1977.

“(d) An officer entitled to retirement benefits under this section may make the election described in section 821(b) or (f), as appropriate, of the Foreign Service Act of 1946 [former section 1076(b) or (f) of this title, see section 4046(b) and (f) of this title] at any time before reaching the age of fifty or before the end of the sixty-day period beginning on the date of enactment of this section [Aug. 17, 1977].

§4010. Separation for cause

(a) Authorization of Secretary; right to hearing; attorneys fees and backpay; leave without pay

(1) The Secretary may decide to separate any member of the Service for such cause as will promote the efficiency of the Service.

(2)(A) Except as provided in subparagraph (B), whenever the Secretary decides under paragraph (1) to separate, on the basis of misconduct, an officer who is not a family member (other than a United States citizen employed under section 3951 of this title who is not a family member) who either—

(i) is serving under a career appointment, or

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

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

(3) If the Board decides that cause for separation has not been established, the Board may direct the Department to pay reasonable attorneys’ fees to the extent and in the manner provided by section 4137(b)(5) of this title. The hearing provided under this paragraph shall be con-

**AMENDMENTS**

2002—Subsec. (a)(1). Pub. L. 107–228, § 314(a)(1), inserted “decide to” after “may”.

Subsec. (a)(2) to (6). Pub. L. 107–228, § 314(a)(2), (3), added paras. (2) to (4) and struck out former paras. (2) to (6) which related to the rights of members of the Service to hearings before the Foreign Service Grievance Board prior to being separated from the Service, suspensions from the Service pending final resolution of the underlying matter, procedural rights of suspended members, review of suspensions by the Board, and leave without pay pending final resolution for members recommended for separation.


1998—Subsec. (a)(2). Pub. L. 105–277, in first sentence, substituted “Except in the case of an individual who has been convicted of a crime for which a sentence of imprisonment of more than 1 year may be imposed, a member” for “A member”.

1994—Subsec. (a)(2). Pub. L. 103–415 inserted “other than a United States citizen employed under section 3951 of this title who is not a family member” after “A member of the Service.”

1991—Subsec. (a)(3). Pub. L. 102–138, § 143(a)(1), substituted “a member has been convicted of a crime” for “there is reasonable cause to believe that a member has committed a crime”. Subsec. (a)(4)(A). Pub. L. 102–138, § 143(a)(2), substituted “suspension” for “suspension, including the grounds for reasonable cause to believe a crime has been committed.” Subsec. (a)(5). Pub. L. 102–138, § 143(a)(3), substituted “the conviction requirements of subsection (a)(3) of this section have been fulfilled” for “there exists reasonable cause to believe a crime has been committed for which a sentence of imprisonment may be imposed”.

1990—Subsec. (a)(2). Pub. L. 101–246 inserted before period at end of first sentence “or, notwithstanding section 4136(b) of this title, unless the member has been convicted of a crime related to the cause for separation, subject to reinstatement with back pay (for any period during which separation for cause had not been established by such a hearing) if such conviction is reversed on appeal” and inserted sentence at end that section 4140 of this title apply to proceedings under this paragraph.


1987—Subsec. (a)(2). Pub. L. 100–204 inserted after first sentence “if such case is not established at such hearing, the Grievance Board shall have the authority to direct the Department to pay reasonable attorneys fees to the extent and in the manner provided by section 4137(b)(5) of this title.”

**EFFECTIVE DATE OF 1987 AMENDMENT**

Amendment by Pub. L. 100–204 not applicable with respect to any grievance in which the Board has issued a final decision pursuant to section 4137 of this title before Dec. 22, 1987, see section 181(e) of Pub. L. 100–204, set out as a note under section 3946 of this title.

**EXPEDITED SEPARATION OUT**

Pub. L. 105–277, div. G, subdiv. B, title XXIII, § 2311(b), Oct. 21, 1998, 112 Stat. 2681–286, provided that: ‘‘(1) SEPARATION OF LOWEST RANKED FOREIGN SERVICE MEMBERS.—Not later than 90 days after the date of enactment of this Act (Oct. 21, 1998), the Secretary of State shall develop and implement procedures to identify, and recommend for separation, any member of the Foreign Service ranked by promotion boards of the Department of State in the bottom 5 percent of his or her class for 2 or more of the 5 years preceding the date of enactment of this Act (in this subsection referred to as the ‘years of lowest ranking’) if the rating official for such member was not the same individual for any two of the years of lowest ranking.

‘‘(2) SPECIAL INTERNAL REVIEWS.—In any case where the member was evaluated by the same rating official in any 2 of the years of lowest ranking, an internal review of the member’s file shall be conducted to determine whether the member should be considered for action leading to separation.

‘‘(3) PROCEDURES.—The Secretary of State shall develop procedures for the internal reviews required under paragraph (2).’’

**DEFINITION OF ‘REASONABLE CAUSE’**

Section 386(c) of Pub. L. 101–167 provided that for purposes of amendments by section 386(a) and (b) of Pub. L. 101–167, which amended this section and section 4136 of this title, reasonable cause to believe that a member has committed a crime for which a sentence of imprisonment may be imposed was to be defined as a member of the Service having been convicted of, and sentence of imprisonment having been imposed for, a job-related crime, prior to repeal by Pub. L. 102–138, title I, § 143(c), Oct. 28, 1991, 105 Stat. 698.

§ 4010a. Reductions in force

(a) Authorization and regulations

The Secretary may conduct reductions in force and shall prescribe regulations for the separation of members of the Service holding a ca-
reer or career candidate appointment under subchapter III of this chapter, under such reductions in force which give due effect to the following:

(1) Organizational changes.
(2) Documented employee knowledge, skills, or competencies.
(3) Tenure of employment.
(4) Documented employee performance.
(5) Military preference, subject to section 3501(a)(3) of title 5.

(b) Applicability of retirement benefits

The provisions of section 4009 of this title shall be applicable to any member of the Service holding a career or career candidate appointment under subchapter III of this chapter, who is separated under the provisions of this section.

(c) Grievance procedure

An employee against whom action is taken under this section may elect either to file a grievance under subchapter XI of this chapter or to appeal to the Merit Systems Protection Board under procedures prescribed by the Board. Grievances under subchapter XI of this chapter shall be limited to cases of reprisal, interference in the conduct of an employee's official duties, or similarly inappropriate use of the authority of this section.


(b) Repeal of Section 612.—Section 612 is repealed.

(c) Applicability of Retirement Benefits.—The provisions of section 4009 of this title shall be applicable to any member of the Service holding a career or career candidate appointment under subchapter III of this chapter, who is separated under the provisions of this section.

(d) Grievance Procedure.—An employee against whom action is taken under this section may elect either to file a grievance under subchapter XI of this chapter or to appeal to the Merit Systems Protection Board under procedures prescribed by the Board. Grievances under subchapter XI of this chapter shall be limited to cases of reprisal, interference in the conduct of an employee's official duties, or similarly inappropriate use of the authority of this section.

§ 4011. Termination of limited appointments

Except as provided in section 4010(a)(2) of this title, the Secretary may terminate at any time the appointment of any member of the Service serving under a limited appointment who is in the Senior Foreign Service, who is assigned to a salary class in the Foreign Service Schedule or who is paid in accordance with section 3967 of this title or is a United States citizen paid under a compensation plan under section 3968 of this title.


PRIOR PROVISIONS

A prior section 612 of Pub. L. 96–465 was renumbered section 613 and is classified to section 4012 of this title.

AMENDMENTS

1994—Pub. L. 103–236, § 180(a)(7), substituted "or who is paid in accordance with section 3967 of this title or is a United States citizen paid under a compensation plan under section 3968 of this title." for "or who is a United States citizen paid under a compensation plan established under section 3968 of this title."

§ 4012. Termination of appointments of consular agents and foreign national employees

(a) The Secretary of State may terminate at any time the appointment of any consular agent in light of the criteria and procedures normally followed in the locality in similar circumstances.

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


PRIOR PROVISIONS

A prior section 613 of Pub. L. 96–465 was renumbered section 614 and is classified to section 4013 of this title.

§ 4012a. Foreign national employees separation pay

(a) Establishment

There is established in the Treasury of the United States a fund to provide separation pay for foreign national employees of agencies of the United States Government, other than the Department of Defense.

(b) Funding

There shall be deposited in such account—

(1) all amounts previously obligated for accrued separation pay of foreign national employees of such agencies of the United States Government; and

(2) amounts obligated for fiscal years after 1991 by such agencies for the current and future costs of separation pay of foreign national employees.
(c) Availability

Amounts shall be deposited in the fund annually and are authorized to be available until expended.

(d) Expenditures from fund

Amounts deposited in the fund shall be available for expenditure to make separation payments to foreign national employees in countries in which such pay is legally authorized.


CODIFICATION

Section was enacted as part of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, and not as part of the Foreign Service Act of 1980 which comprises this chapter.

§ 4013. Foreign Service awards

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


AMENDMENTS

1989—Pub. L. 105–292 inserted at end “Distinguished, meritorious service in the promotion of internationally recognized human rights, including the right to freedom of religion, shall serve as a basis for granting awards under this section.”

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of State, see section 1 of Ex. Ord. No. 12290, Feb. 23, 1961, 46 F.R. 13869, set out under section 3903 of this title.

SUBCHAPTER VII—CAREER DEVELOPMENT, TRAINING, AND ORIENTATION

§ 4021. Institution for training

(a) Institution or center for training

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

(b) Provision of training

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

(c) Training and instruction to citizens of Trust Territory of the Pacific Islands

Training and instruction may be provided at the Institute for not to exceed sixty citizens of the Trust Territory of the Pacific Islands in order to prepare them to serve as members of the foreign services of the Federated States of Micronesia, the Marshall Islands, and Palau. The authority of this subsection shall expire when the Compact of Free Association is approved by the Congress.

(d) Training and instruction of employees of foreign governments

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

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

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

(e) Training or services for United States person

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

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

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

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

(5) In this subsection, the term "United States person" means—
   (A) any individual who is a citizen or national of the United States; or
   (B) any corporation, company, partnership, association, or other legal entity that is 50 percent or more beneficially owned by citizens or nationals of the United States.

(f) Programs for Members of Congress or the Judiciary
   (1) The Secretary is authorized to provide, on a reimbursable basis, training programs to Members of Congress or the Judiciary.
   (2) Employees of the legislative branch and employees of the judicial branch may participate, on a reimbursable basis, in training programs offered by the institution.
   (3) Reimbursements collected under this subsection shall be credited to the currently available applicable appropriation account.
   (4) Training under this subsection is authorized only to the extent that it will not interfere with the institution's primary mission of training employees of the Department and of other agencies in the field of foreign relations.

(g) Applicability of section 4024 of this title
   The authorities of section 4024 of this title shall apply to training and instruction provided under this section.

Pub. L. 103–236, §126(2)(A), substituted "institution for training" for "Foreign Service Institute" as section catchline.
Subsec. (a). Pub. L. 103–236, §126(2)(B), inserted heading, substituted "an institution or center for training (hereinafter referred to as the 'institution')" for "the Foreign Service Institute (hereinafter in this subchapter referred to as the 'Institute')," and substituted "institution shall" for "Institute shall".
Subsec. (b). Pub. L. 103–236, §126(3), substituted "institution" for "Institute".

CHANGE OF NAME
Pub. L. 107–132, §1(b), Jan. 16, 2002, 115 Stat. 2412, provided that: "Any reference in any provision of law to the National Foreign Affairs Training Center or the Foreign Service Institute shall be considered to be a reference to the 'George P. Shultz National Foreign Affairs Training Center.'"

EFFECTIVE DATE OF 1998 AMENDMENT

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS
For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

DESIGNATION OF FOREIGN LANGUAGE RESOURCES COORDINATOR
Section 192 of Pub. L. 103–236 provided that:
   "(a) POLICY.—It is the sense of the Congress that—
   "(1) the Department of State, by virtue of the Secretary's overall responsibility under section 701(a) of the Foreign Service Act of 1980 (22 U.S.C. 4011(a) [22 U.S.C. 4011(a)]) for training and instruction in the field of foreign relations to meet the needs of all Federal agencies, should take the lead in this interagency effort; and
   "(2) in order to promote efficiency and quality in the training provided by the Secretary of State and other Federal agencies, the Secretary should call upon other agencies to share in the joint management and coordination of Federal foreign language resources.
   "(b) FOREIGN LANGUAGE RESOURCES COORDINATOR.—
   "(1) The Secretary of State should appoint a Foreign Language Resources Coordinator (in this subsection referred to as the 'Coordinator') who shall be responsible—
   "(A) for coordinating the efforts of the appropriate agencies of Government—
   "(i) to strengthen mechanisms for sharing of foreign language resources; and
   "(ii) to identify Federal foreign language resource requirements in the areas of diplomacy, military preparedness, international security, and other foreign policy objectives; and
   "(B) for making recommendations to the Secretary of State as to which Federal foreign language assets, if any, should be made available to the private sector in support of national global economic competitiveness goals.
   "(2) In making recommendations under paragraph (1)(B), the Coordinator should—
   "(A) consult with representatives of the private sector, including members of the President's Foreign Policy Committee (as established by Presidential Directive 50), and professional and business associations; and
   "(3) The Coordinator shall report annually to the Committees on Foreign Relations of the Senate and the House of Representatives on the Coordinator's activities and the implementation of any recommendations made under paragraph (1)(B).
   "(4) The Coordinator shall be assisted by an Advisory Group to advise the Coordinator on matters under the Coordinator's jurisdiction.
“(2) All appropriate United States Government agencies maintaining and utilizing Federal foreign language training and related resources shall cooperate fully with any Coordinator.’’

FOREIGN SERVICE INSTITUTE FACILITIES


“(a) PURPOSE.—The purpose of this section is to promote comprehensive training to meet the foreign language requirements of the United States and to provide facilities designed for that purpose to assure cost efficient training.

“(b) CONSTRUCTION OF TRAINING FACILITIES.—The Administrator of General Services may construct a consolidated training facility for the Foreign Service Institute on a site made available by the Secretary of State or acquired by the Administrator of General Services. Such site shall be located outside the District of Columbia but within reasonable proximity to the Department of State. The Administrator of General Services may carry out this subsection only to the extent that funds are provided in advance in appropriation Acts to the Department of State and are transferred to the Administrator of General Services for carrying out this section.

“(c) USE OF FUNDS.—(1) Of amounts authorized to be appropriated to the Department of State for fiscal years 1986 and 1987 for ‘Administration of Foreign Affairs’ by section 101(1) [Pub. L. 99–93, §110(1), which is not classified to the Code], a total of not to exceed $11,000,000 may be transferred by the Secretary of State to the Administrator of General Services for carrying out feasibility studies, site acquisition, design, architectural, and engineering planning under subsection (b) of this section.

“(2) Of amounts authorized to be appropriated to the Department of State for fiscal years beginning after September 30, 1987, the Secretary of State may transfer a total not to exceed $11,000,000 for ‘Administration of Foreign Affairs’ to the Administrator of General Services for carrying out feasibility studies, site preparation, and design, architectural, and engineering planning under subsection (b).

“(d) Funds may not be obligated for construction of a facility under this section before the end of the period of 30 days of continuous session of Congress beginning on the date on which plans and estimates developed to carry out this section are submitted to the Committees on Foreign Affairs and Public Works of the Senate. In determining days of continuous session of Congress for purposes of this paragraph—

“(1) continuity of session is broken only by an adjournment of Congress sine die; and

“(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the determination.

“If both Houses of Congress are not in session on the day any plans and estimates are submitted to such committees, such submittal shall be deemed to have been submitted on the first succeeding day on which both Houses are in session. If all such committees do not receive a submittal on the same day, such period shall not begin until the date on which all such committees have received it.

“(e) JURISDICTION AND CUSTODY.—The facility constructed under this section and the site of such facility shall be under jurisdiction and in the custody of the Administrator of General Services.

“(f) EXEMPTION FROM PAYMENT OF CHARGES.—(1) Except as provided in paragraph (2), the Department of State shall be exempt from the charges required by section 210(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490)) [now 40 U.S.C. 586(a)], (b) for the use of the facility constructed under this section for the Foreign Service Institute.

“(2) The Administrator of General Services shall charge the Department of State under such section 210(b) for the costs of any operation, maintenance, repairs, or alterations of such facility carried out by the Administrator of General Services.

LANGUAGE TRAINING FOR FAMILY MEMBERS OF FOREIGN SERVICE PERSONNEL

Pub. L. 95–105, title IV, §414, Aug. 17, 1977, 91 Stat. 857, as amended by Pub. L. 97–241, title V, §505(a)(3), (b)(1), Aug. 24, 1982, 96 Stat. 259, provided that: ‘‘It is the sense of Congress that, in order to increase the effectiveness of United States diplomatic representation abroad, the Secretary of State should make greater use of his authority under section 701 of the Foreign Service Act of 1946 [former section 104(1) of this title] in order to increase the language training opportunities available to the family members of Foreign Service personnel.’’

§ 4022. Foreign language requirements

(a) In general

The Secretary shall establish foreign language proficiency requirements for members of the Service who are to be assigned abroad in order that Foreign Service posts abroad will be staffed by individuals having a useful knowledge of the language or dialect common to the country in which the post is located.

(b) Training

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

(c) Report

Not later than January 31 of each year, the Director General of the Foreign Service shall submit a report to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives summarizing the number of positions in each overseas mission requiring foreign language competence that—

(1) became vacant during the previous fiscal year; and

(2) were filled by individuals having the required foreign language competence.

§ 4023. Career development program

(a) Establishment; primary attention and emphasis

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

(b) Primary direction for Junior Foreign Service officer training and midcareer training

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

(c) Purpose; completion of training as condition for placement or appointment

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

(d) University degree credit

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

(e) Institutions conducting training

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

§ 4024. Functions of Secretary

(a) Nature and correlation of training and instruction; encouragement of complementary programs; employment of personnel; acquisition of property and equipment

In the exercise of functions under this subchapter, the Secretary of State may—

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

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

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

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

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

(5) acquire such real and personal property and equipment as may be necessary for the establishment, maintenance, and operation of the facilities necessary to carry out the provisions of this subchapter without regard to section 5 of title 41 and section 252 of title 41.

(b) Payment of salary, tuition, and other expenses; special monetary or other incentives

In furtherance of the objectives of this chapter, the Secretary may—

(1) pay the tuition and other expenses of members of the Service and employees of the Department who are assigned or detailed in accordance with law for special instruction or training, including orientation, language, and career development training;
 § 4025. Training grants

(a) Family members attending approved programs of study; limitations

To facilitate training provided to members of families of Government employees under this subchapter, the Secretary may make grants (by advance payment or by reimbursement) to family members attending approved programs of study. No such grant may exceed the amount actually expended for necessary costs incurred in conjunction with such attendance.

(b) Compensation for individuals unable to participate in language training furnished by Government

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

References in Text


Amendments


§ 4026. Career counseling

(a) Facilitation of transition from Service

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

(b) 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.

References in Text


Amendments

1998—Subsec. (a). Pub. L. 105–277 inserted at end “Career counseling and related services provided pursuant to this chapter shall not be construed to permit an assignment that consists primarily of paid time to con-
duct a job search and without other substantive duties for more than one month.”

Effective Date of 1998 Amendment


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.


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).

§ 4028. Training for Foreign Service Officers

(a) The Secretary of State, with the assistance of other relevant officials, such as the Ambassador at Large for International Religious Freedom appointed under section 614(b) of this title, the Director of the Office to Monitor and Combat Trafficking, and the director of the George P. Shultz National Foreign Affairs Training Center, shall establish as part of the standard training provided after January 1, 1999, for officers of the Service, including chiefs of mission, instruction in the field of internationally recognized human rights. Such training shall include—

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

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

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

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

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


References in Text


Amendments


1998—Pub. L. 105–292, § 602(b), designated existing provisions as subsec. (a) and added subsec. (b).

Effective Date of 2008 Amendment

§ 4029. Increased training in multilateral diplomacy

(1) Statement of policy

It shall be the policy of the United States that training courses should be established for Foreign Service Officers and civil service employees of the State Department, including appropriate chiefs of mission, on the conduct of multilateral diplomacy, including the conduct of negotiations at international organizations and multilateral institutions, negotiating skills that are required at, multi-national settings, coalition-building techniques, and lessons learned from previous United States multilateral negotiations.

(2) Personnel

(A) In general

The Secretary shall ensure that the training described in paragraph (1) is provided at various stages of the career of members of the Service.

(B) Actions of the Secretary

The Secretary shall ensure that—

(i) officers of the Service receive training on the conduct of diplomacy at international organizations and other multilateral institutions and at broad-based multilateral negotiations of international instruments as part of their training upon entry into the Service; and

(ii) officers of the Service, including chiefs of mission, who are assigned to United States missions representing the United States to international organizations and other multilateral institutions or who are assigned in Washington, D.C., to positions that have as their primary responsibility formulation of policy toward such organizations and institutions or toward participation in broad-based multilateral negotiations of international instruments, receive specialized training in the areas described in paragraph (1) prior to beginning of service for such assignment or, if receiving such training at that time is not practical, within the first year of beginning such assignment.

(3) Training for civil service employees

The Secretary shall ensure that employees of the Department of State who are members of the civil service and who are assigned to positions described in paragraph (2) receive training described in paragraph (1) prior to the beginning of service for such assignment or, if receiving such training at such time is not practical, within the first year of beginning such assignment.


REFERENCES IN TEXT

Section 18 of the Act of May 24, 1924 (43 Stat. 144), referred to in text, which was classified to section 211 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 4199 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. 12290, Feb. 23, 1961, 46 F.R. 1969, set out as a note under section 3901 of this title.

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


“(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. 96-35, set out as a note under section 8311 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).


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 chapter 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.


REFERENCES IN TEXT

The Foreign Service Act of 1946, referred to in subsec. (c), is act Aug. 13, 1946, ch. 597, 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


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 9401 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 another 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 subpara-
graph (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 subpara-
graph (A) for at least 3 years.

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;
3406.)

REFERENCES IN TEXT
This chapter, referred to in par. (1), was in the origi-
Stat. 2071, as amended, known as the Foreign Service
Act of 1980, which is classified principally to this chapter
(§3001 et seq.). For complete classification of this
Act to the Code, see Short Title note set out under sec-
tion 3901 of this title and Tables.

AMENDMENTS
1988—Par. (13). Pub. L. 100–238, §211(1), directed the
amendment of par. (13) by striking out "", in the case
of death in service or marriage after retirement."", after ""an-
nuitant 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
""marriage shall be deemed satisfied in any case in which
"", except that the requirement for at least 9 months of
marriage after retirement,"" after ""annu-

"", 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;
3406.)

""(a) Rates and sources; deposits in Fund
(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 elec-
tion 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,

""(ii) Actuarial reduction.—
""(I) Rule if the special contribution is
paid.—If the full amount of the special con-
tribution 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 recom-
puted 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
(Oct. 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 sub-
section (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)."

""(1) Rates and sources; deposits in Fund
(a) Rates and sources; deposits in Fund
§4045.

""(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 elec-
tion 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,

""(ii) Actuarial reduction.—
""(I) Rule if the special contribution is
paid.—If the full amount of the special con-
tribution 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 recom-
puted 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
(Oct. 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 sub-
section (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)."

""(1) Except as otherwise provided in this sec-
tion, 7.25 percent of the basic salary received by
each participant shall be deducted from the salary and contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. The contribution by the employing agency shall be a percentage of basic salary equal to the percentage in effect under section 8334(a)(1) of title 5, plus .25 percent of basic salary, and shall be made from the appropriations or fund used for payment of the salary of the participant. The employing agency shall deposit in the Fund the amounts deducted and withheld from basic salary and the amounts contributed by the employing agency.

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

(A) the employing agency shall deduct and withhold from the basic pay of a Foreign Service criminal investigator/inspector of the Office of the Inspector General, Agency for International Development, who is qualified to have his annuity computed in the same manner as that of a law enforcement officer pursuant to section 8338(d) of title 5, an amount equal to that to be withheld from a law enforcement officer pursuant to section 8338(a)(1) of title 5, plus an amount equal to .25 percent of basic pay. The amounts so deducted shall be contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. An equal amount shall be contributed by the employing agency from the appropriations or fund used for payment of the salary of the participant. The employing agency shall deposit in the Fund the amount deducted and withheld from basic salary and amounts contributed by the employing agency.

(B) The employing agency shall deduct and withhold from the basic pay of a Foreign Service criminal investigator/inspector of the Office of the Inspector General, Agency for International Development, who is qualified to have his annuity computed pursuant to section 8415(d) of title 5, an amount equal to that to be withheld from a law enforcement officer pursuant to section 8422(a)(2)(B)1 of title 5, plus an amount equal to .25 percent of basic pay. The amounts so deducted shall be contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. An equal amount shall be contributed by the employing agency from the appropriations or fund used for payment of the salary of the participant. The employing agency shall deposit in the Fund the amount deducted and withheld from basic salary and amounts contributed by the employing agency.

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

(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 against the participant. The employing agency from the appropriations or fund used for payment of the salary of the participant. The employing agency shall deposit in the Fund the amounts deducted and withheld from basic salary and amounts contributed by the employing agency.

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

(A) the employing agency shall deduct and withhold from the basic pay of a Foreign Service criminal investigator/inspector of the Office of the Inspector General, Agency for International Development, who is qualified to have his annuity computed in the same manner as that of a law enforcement officer pursuant to section 8338(d) of title 5, an amount equal to that to be withheld from a law enforcement officer pursuant to section 8338(a)(1) of title 5, plus an amount equal to .25 percent of basic pay. The amounts so deducted shall be contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. An equal amount shall be contributed by the employing agency from the appropriations or fund used for payment of the salary of the participant. The employing agency shall deposit in the Fund the amount deducted and withheld from basic salary and amounts contributed by the employing agency.

(B) The employing agency shall deduct and withhold from the basic pay of a Foreign Service criminal investigator/inspector of the Office of the Inspector General, Agency for International Development, who is qualified to have his annuity computed pursuant to section 8415(d) of title 5, an amount equal to that to be withheld from a law enforcement officer pursuant to section 8422(a)(2)(B)1 of title 5, plus an amount equal to .25 percent of basic pay. The amounts so deducted shall be contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. An equal amount shall be contributed by the employing agency from the appropriations or fund used for payment of the salary of the participant. The employing agency shall deposit in the Fund the amount deducted and withheld from basic salary and amounts contributed by the employing agency.

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

(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:

<table>
<thead>
<tr>
<th>Time of service</th>
<th>Percent of basic salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1, 1924, through October 15, 1960, inclusive</td>
<td>5</td>
</tr>
<tr>
<td>October 16, 1960, through December 31, 1969, inclusive</td>
<td>6%</td>
</tr>
<tr>
<td>January 1, 1970, through December 31, 1998, inclusive</td>
<td>7</td>
</tr>
<tr>
<td>January 1, 1999, through December 31, 1999, inclusive</td>
<td>7.25</td>
</tr>
<tr>
<td>January 1, 2000, through December 31, 2000, inclusive</td>
<td>7.4</td>
</tr>
<tr>
<td>After December 31, 2000</td>
<td>7</td>
</tr>
</tbody>
</table>

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

1 See References in Text note below.
(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 deposit refund paid, to the date of payment of the special contribution or commencing date of annuity, whichever is earlier. Interest shall be compounded at the annual rate of 4 percent to December 31, 1976, and 3 percent thereafter. No interest shall be charged on special contributions for any period of separation from Government service which began before October 1, 1956. Special contributions may be paid in installments (including by allotment of pay) when authorized by the Secretary.

(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 individual after December 31, 1983, and before January 1, 1987, be equal to 1.3 percent.

(5) Notwithstanding paragraph (1), a special contribution for past service as a Foreign Service criminal investigator/inspector of the Office of the Inspector General, Agency for International Development which would have been creditable toward retirement under either section 8336(c) or 8412(d) 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 4071 of this title and the amount that should have been contributed pursuant to either section 8334 or 8422 of title 5.

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

(e) Contribution for military or naval service

(1) Subject to paragraph (5), each participant who has performed military or naval service before the date of separation on which the entitlement to any annuity under this 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 31, 1956. The amount of such payments shall be based on such evidence of basic

(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.

(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 section 8334(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 annuity 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.

See Amendment of Section note below.
equal to the percentage in effect under section 7003(d)(1) of the Balanced Budget Act of 1997 (Public Law 105–33; 22 U.S.C. 4045 note), and section 505(b) of the Department of Transportation and Related Agencies Appropriations Act, 2001 (as enacted by Public Law 106–346; 114 Stat. 1356–54), plus .25 percent of basic salary, and shall be made" for "An equal amount shall be contributed by the Department."


Pub. L. 107–228, §322(a)(2)(B), which directed amendment of subpars. (A) and (B) by inserting "plus an amount equal to .25 percent of basic pay" at end of first sentence, was executed by making the insertion before the period at end of first sentence to reflect the probable intent of Congress.


1998—Subsec. (a)(1). Pub. L. 105–382, § 2(b)(2), substituted "Except as otherwise provided in this section," for "Except as provided in subsection (b) of this section,"


Subsec. (e)(1). Pub. L. 105–382, § 7001(d)(2)(D)(i), substituted "Subject to paragraph (5), each" for "Each".


1986—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.".

1985—Subsec. (a). Pub. L. 99–335, § 405(a)(1), inserted "Except as provided in subsection (b) of this section," before "7 percent".


Subsec. (h). Pub. L. 99–514 substituted "Internal Revenue Code of 1966" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.


1983—Subsecs. (e) to (g). Ex. Ord. No. 12446 added subsecs. (e) and (f), struck out former subssec. (e), and redesignated former subssec. (f) as (g). Prior to amendment by Ex. Ord. No. 12446, subssec. (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."
(b)(2) [amending section 407e of this title] shall take effect with the first pay period beginning on or after the date that is 90 days after the date of enactment of this Act [Sept. 30, 2002].”

**Effective Date of 2000 Amendment**

Amendment by Pub. L. 106–346 effective upon the close of calendar year 2000 and applicable thereafter, see section 101(a) [title V, § 505(1)] of Pub. L. 106–346, set out as a note under section 8334 of Title 5, Government Organization and Employees.

**Effective Date of 1998 Amendment**


**Effective Date of 1997 Amendment**


**Effective Date of 1996 Amendment**


**Effective Date of 1996 Amendment**


**Effective Date of 1993 Amendment**


**Foreign Service Retirement and Disability System Contributions, Deductions, and Withholdings**


“(1) 7.5 percent of the basic pay of each participant covered under section 805(a)(1) of such Act participating in the Foreign Service Retirement and Disability System; and

“(2) 2 percent of the basic pay of each participant covered under paragraph (2) or (3) of section 805(a) of such Act participating in the Foreign Service Retirement and Disability System, in lieu of the agency contribution otherwise required under section 805(a) of such Act.”


“(1) AGENCY CONTRIBUTIONS.—Notwithstanding section 805(a)(1) and (2) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a)(1) and (2)), during the period beginning on October 1, 1997, through September 30, 2002, each agency employing a participant in the Foreign Service Retirement and Disability System shall contribute to the Foreign Service Retirement and Disability Fund—

“(A) 8.51 percent of the basic pay of each participant covered under section 805(a)(1) of such Act participating in the Foreign Service Retirement and Disability System; and

“(B) 9.01 percent of the basic pay of each participant covered under section 805(a)(2) of such Act participating in the Foreign Service Retirement and Disability System; and

“in lieu of the agency contribution otherwise required under section 805(a)(1) and (2) of such Act.

“(2) INDIVIDUAL DEDUCTIONS, WITHHOLDINGS, AND DEPOSITS.—

“(A) IN GENERAL.—Notwithstanding section 805(a)(1) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a)(1)), beginning on January 1, 1999, through December 31, 2000, the amount withheld and deducted from the basic pay of a participant in the Foreign Service Retirement and Disability System shall be as follows:


“(B) FOREIGN SERVICE CRIMINAL INVESTIGATORS/INSPECTORS OF THE OFFICE OF THE INSPECTOR GENERAL, AGENCY FOR INTERNATIONAL DEVELOPMENT.—Notwithstanding section 805(a)(2) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a)(2)), beginning on January 1, 1999, through December 31, 2000, the amount withheld and deducted from the basic pay of an eligible Foreign Service criminal investigator/inspector of the Office of the Inspector General, Agency for International Development participating in the Foreign Service Retirement and Disability System shall be as follows:


“7.9 ......... January 1, 2000, to December 31, 2000.”

§4046. Computation of annuities

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

(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 4055(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 annuity of a Foreign Service criminal investigator/inspector of the Office of the Inspector General, Agency for International Development, who was appointed to a law enforcement...
position, as defined in section 8331(20) of title 5, 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 in 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 criminal 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) (A) The annuity of a special agent under this part shall be computed under paragraph (1) except that, in the case of a special agent described in subparagraph (B), paragraph (1) shall be applied by substituting for "2 percent":—

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

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

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

(i)(I) retires voluntarily or involuntarily under section 4007, 4008, 4010a, 4031, 4052, or 4053 of this title, under conditions authorizing an immediate annuity, other than for cause on charges of misconduct or delinquency, or retire for disability under section 4048 of this title; and

(II) at the time of retirement—

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

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

(ii) dies in service after completing at least 20 years of service as a special agent; when an annuity is payable under section 4049 of this title.

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

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

(A) for purposes of paragraph (6)(B), any service performed by the individual as a special agent (whether under this part or under part II of this subchapter), as a law enforcement officer (within the meaning of section 8331(20) or section 8401(17) of title 5), or as a member of the Capitol Police shall be creditable; and

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

(8) For purposes of paragraphs (2), (3), (4), and (6) of this subsection, the term “basic pay” includes pay as provided in accordance with section 3972 of this title or section 5545(c)(2) of title 5.

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

(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 2% 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 reduced annuity payable to a beneficiary under this subsection.

(B) 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 by a child or children, each surviving child shall be paid 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 (b)(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 provide a survivor benefit for a spouse shall, if the marriage of the participant to such spouse is dissolved, be recomputed and paid for each full month during which an annuitant is not married (or is remarried if there is no election in effect under the following sentence) as if the annuity had not been so reduced, subject to any reduction required to provide a survivor benefit under section 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.


(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.


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.


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


1986—Subsec. (a)(7). Pub. L. 100–238, § 214(a)(2), 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. (j). Pub. L. 100–238, § 217(c)(1), struck out subsec. (i) which set minimum rates for annuities paid under this part.


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

REPRESENTATIVES, 88th Cong., 5th Sess., 1964, H. Rept. 88–1688, to be printed in the House Document 1970, reported by the Committee on Education and Labor, continued on page 259.}

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

REFERENCES IN TEXT

AMENDMENTS


Former par. (7) redesignated (8).

Subsec. (a)(8). Pub. L. 100–238, § 213(d)(2)(A), 213(d)(3)(A), redesignated par. (7) as (8) and substituted “(4), and (6)” for “(4) and (6)’’.


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


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


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.”


Effective Date of 2002 Amendment

Pub. L. 107–228, div. A, title III, § 322(c)(1), Sept. 30, 2002, 116 Stat. 2136, provided that: “The amendments made by subsections (a)(1) [amending this section] and (b)(1) [amending section 4071d of this title] shall apply to service performed on or after the first day of the first pay period beginning on or after the date that is 90 days after the date of enactment of this Act [Sept. 30, 2002].”


Effective Date of 1998 Amendment


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 4044 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 the date of enactment of this Act [June 6, 1986].”

“(b) 18-Month Period to Elect Survivor Annuity.—(1) Notwithstanding section 261(a) of Pub. L. 100–238, set out as a note under section 4044 of this title, the amendment made by section 407 [amending section 4046 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 4041 of Title 5, Government Organization and Employees.

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 amendments made by section 403 [amending section 4021 of this title shall apply to service performed on or after the date that is 90 days after the date of enactment of this Act [Sept. 30, 2002]].”


Effective Date of 1998 Amendment


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 4044 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 the date of enactment of this Act [June 6, 1986].”

“(b) 18-Month Period to Elect Survivor Annuity.—(1) Notwithstanding section 261(a) of Pub. L. 100–238, set out as a note under section 4044 of this title, the amendment made by section 407 [amending section 4046 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 4041 of Title 5, Government Organization and Employees.

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 amendments made by section 403 [amending section 4021 of this title shall apply to service performed on or after the date that is 90 days after the date of enactment of this Act [Sept. 30, 2002]].”


Effective Date of 1998 Amendment


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 4044 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 the date of enactment of this Act [June 6, 1986].”

“(b) 18-Month Period to Elect Survivor Annuity.—(1) Notwithstanding section 261(a) of Pub. L. 100–238, set out as a note under section 4044 of this title, the amendment made by section 407 [amending section 4046 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 4041 of Title 5, Government Organization and Employees.

Section 407 of Pub. L. 99–335 provided that: “(a) Regulations.—Notwithstanding section 702 of this Act (5 U.S.C. 4401 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 261(a) of this Act, the amendment made by section 407 [amending section 4046 of this title] shall take effect 3 months after the date of enactment of this Act.

“(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 the 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) of such paragraph (relating to interest).

“(c) For purposes of this subsection, the term ‘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).”

§ 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.

References

Section 4 of Pub. L. 105–382, as amended, set out as a note under section 4044 of this title.

Section 4 of Pub. L. 100–238, as amended, set out as a note under section 4044 of this title.

Section 407 of Pub. L. 99–335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

References in Text

§ 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 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, 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.


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”.


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 9401 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 4007 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 the 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 limitations 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 Service credit toward retirement under the System 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

See References in Text note below.

§ 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 the 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 limitations 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 Service credit toward retirement under the System 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

See References in Text note below.
(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.


REFERENCES IN TEXT


AMENDMENTS


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


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.


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 retainer 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 4364 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 6401 of Title 5, Government Organization and Employees.


effective date of 1981 amendment


§ 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 surviving spouse shall be entitled to an annuity equal to 55 percent of the annuity computed in accordance with subsections (e) and (g) of this section and section 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 not 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
§ 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.


§ 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, 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, are transferred to the Civil Service Retirement and Disability Fund effective on the date the participant separates from the Service.

(2) Notwithstanding paragraph (1)—
   (A) an individual described in section 4(a)(2) of the Department of State Special Agents Retirement Act of 1998 who is otherwise eligible for immediate retirement under this subchapter; or
   (B) a Foreign Service criminal investigator/inspector of the Office of Inspector General of the Agency for International Development

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

(b)(1) Any participant who is otherwise required to retire under subsection (a) 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.


§ 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.

REFERENCES IN TEXT


AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105–382 amended first sentence generally. Prior to amendment, first sentence read as follows: "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."

section 4060(b)(1) of this title involving any par-
der under this subsection paid to any former spouse
shall be reduced by the amount of an annuity
combination of annuities under this subsection
participant may provide for an annuity or any com-
for survivor benefits under this part, and in cal-
ing 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.
subsection (b) of this section for purposes of sec-
tion 4046(h) of this title or any comparable pro-
section 4046(b)(1) of this title, a former spouse of a par-
ticipant 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 oc-
curring 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 per-
cent 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
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.
subsection (b) of this section or section 4046(b)(3)
of this title.
subsection (b) of this section for purposes of sec-
tion 4046(h) of this title or any comparable pro-
vision of law.
subsection (b) of this section for purposes of sec-
tion 4046(h) of this title or any comparable pro-
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vision of law.
(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) 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) 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 exceed 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.


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. (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".

**Effective Date of 1988 Amendment**

Section 261 of title II of Pub. L. 100–238 provided that:
"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 and enacting provisions set out as a note under section 4046 of this title, and enacting this section and sections 4044 to 4046, 4048, 4049, 4051, 4055, 4056, 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) Exception.—
"(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 the 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.

§ 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; and
"(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 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) to any annuity payable under subsection (c)."
(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

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 per annum compounded annually from the date of the deduction to the date of retirement or death, shall be applied toward any special contributions due under section 4055(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 4045(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
.§ 4056. Creditable service

(a) Applicability of civil service provisions

(1) Except as otherwise specified by law, all periods of civilian and military and naval service, and all other periods through the date of final separation of a participant from the Service that the Secretary of State determines would be creditable toward retirement under the Civil Service Retirement and Disability System (as determined in accordance with section 8332 of title 5), 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 from this act 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 becomes 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 becomes a participant before October 17, 1983, shall include credit for each period 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.

1 See Amendment of Section note below.

(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 leave without pay occurring after November 7, 1976, the participant may not receive any credit for such periods of leave without pay occurring after such date.

(2) A participant may make a special contribution for any period or periods of approved leave without pay while serving before November 7, 1976, as a full-time officer or employee of an organization composed primarily of Government employees. Any such contribution shall be based upon the suspended Foreign Service salary rate and shall be computed in accordance with section 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

2 A participant who has received a refund of retirement contributions (which has not been repaid) under this or any other retirement system for Government employees covering service which may be creditable may make a special contribution for such service under section 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 three 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(i) 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(i) 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 have been 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 payable 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.


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. 410]) 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. 410]) 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 4055(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 4055(d) of this title unless—

(1) the participant makes a contribution for such period as provided in such section 4055(d) of this title; or

(2) no contribution is required for such service as provided under section 4055(f) of this title as deemed to be amended by this Order, or under any other statute.

AMENDMENTS


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).

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


§ 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 5025 or 5026 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, 1900.


**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.

§ 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 the Treasury 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.


**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 4001 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.


§ 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 4055(a) or (b) 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 connection with any retirement or disability annuity of the participant, and the amount of any such annuity;

(ii) any right of the former spouse to a survivor annuity under section 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.


CODIFICATION


AMENDMENTS


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.

§ 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.


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.

§ 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.


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


TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semianual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (c) of this section is listed on page 127), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 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 4064 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 section 4046 of this title. An 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.


AMENDMENTS


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.

§ 4064. Reemployment

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

(1)(A) Except in the case of an annuitant who makes an election under subsection (b) of this section or in the case of a waiver under subsection (g) 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.

(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 deter-
mined 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.

(g) Waiver of annuity limitations

(1) The Secretary of State may waive the application of subsections (a) through (d) on a case-by-case basis for an annuitant reemployed on a temporary basis, or grant authority to the head of an Executive agency to waive the application of subsections (a) through (d) on a case-by-case basis for an annuitant reemployed on a temporary basis—

(A) if, and for so long as, such waiver is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances;

(B) to facilitate the assignment of persons to Iraq, Pakistan, and Afghanistan or to posts vacated by members of the Service assigned to Iraq, Pakistan, and Afghanistan, if the annuitant is employed in a position for which there is exceptional difficulty in recruiting or retaining a qualified employee;

(C) to provide assistance to consular posts with a substantial backlog of visa applications; or

(ii) to provide assistance to meet the demand resulting from the passport and travel document requirements set forth in section 7209(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 8 U.S.C. 1185 note), including assistance related to the investigation of fraud in connection with an application for a passport.

(2)(A) The authority of the Secretary to waive the application of subsections (a) through (d) for an annuitant pursuant to subparagraph (B) of paragraph (1), or to grant authority to the head of an Executive agency to waive the application of such subsections to an annuitant under such subparagraph, shall terminate on October 1, 2010. An annuitant reemployed pursuant to such authority prior to such termination date may be employed for a period ending not later than one year after such date.

(B) The authority of the Secretary to waive the application of subsections (a) through (d) for an annuitant pursuant to subparagraph (C)(i) of paragraph (1) shall terminate on September 30, 2009.

(C) The authority of the Secretary to waive the application of subsections (a) through (d) for an annuitant pursuant to subparagraph (C)(ii) of paragraph (1) shall terminate on September 30, 2009.

(3) The Secretary should prescribe procedures for the exercise of any authority under paragraph (1)(B), including criteria for any exercise of authority and procedures for a delegation of authority.

(h) Effects of waiver

A reemployed annuitant as to whom a waiver under subsection (g) of this section is in effect shall not be considered a participant for purposes of this part or part II of this subchapter, or an employee for purposes of chapter 83 or 84 of title 5.
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, § 401, 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 Effective Date note under section 4041 of Title 5, Government Organization and Employees.

§ 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.

(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.
§ 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 1/10 of 1 percent) of—

(A) 1/2 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 participant whose annuity has not been so increased, since the annuity was first payable to the deceased participant.

(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 increase 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.

(h) Modification

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 1/10 of 1 percent) of—

(A) 1/2 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 1986 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 401 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**

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 11901 of Pub. L. 103–66, set out as a note under section 8340 of Title 5, Government Organization and Employees.

### § 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.

### AMENDMENTS


### 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 401 of Title 5, Government Organization and Employees.
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 12299–1 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. 12299, Feb. 23, 1981, 46 F.R. 13969, set out as a note under section 3901 of this title.

EX. ORD. NO. 12299. CONFORMING THE FOREIGN SERVICE AND CIVIL SERVICE RETIREMENT AND DISABILITY SYSTEMS


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. 4066(c)) is deemed to be amended—

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 806(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, ending 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 individuals of Japanese ancestry under section 816 [22 U.S.C. 4056] for periods of internment during World War II.

“(g) 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 individuals of Japanese ancestry under section 816 [22 U.S.C. 4056] for periods of internment during World War II.

“(h) 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 individuals of Japanese ancestry under section 816 [22 U.S.C. 4056] for periods of internment during World War II.

“(i) 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)].

“(j) 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 1, 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.

“(k) 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 1956, to section 816(j) [22 U.S.C. 4056(j)], as deemed to be added by this Order.

“(l) 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 1, 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.

“(m) The Secretary of Health and Human Services, as appropriate, shall determine the amount of the annuity to which such individual is entitled to an annuity under such Act (this chapter) and 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 mean-
ing 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, 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 applies 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 hereby 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 (1) 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.

EX. ORD. NO. 13105. OPEN ENROLLMENT SEASON FOR PARTICIPANTS IN THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM AND THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Ex. Ord. No. 13105, Nov. 2, 1998, 63 F.R. 60201, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 3(a) of Public Law 106–571, the Director shall provide for an open enrollment period from November 1, 1998, to April 30, 1999, during which employee participants in the Foreign Service Retirement and Disability System may elect to become subject to the Foreign Service Pension System.

Ex. Ord. No. 13106, Apr. 23, 2003, 68 F.R. 22565, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 307(a) of the Central Intelligence Agency Retirement and Disability System Act of 1984 (50 U.S.C. 2157(a)), the Director shall provide for an open enrollment period from November 1, 1998, to April 30, 1999, during which employee participants in the Central Intelligence Agency Retirement and Disability System may elect to become subject to the Federal Employees’ Retirement System, comparable to the election for civil service employees provided for by the Federal Employees’ Retirement System Open Enrollment Act of 1997, Public Law 106–61 (5 U.S.C. 8331 note).

WILLIAM J. CLINTON.

EX. ORD. NO. 13297. APPLYING THE FEDERAL PHYSICIANS COMPARABILITY ALLOWANCE AMENDMENTS OF 2000 TO PARTICIPANTS IN THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM, THE FOREIGN SERVICE PENSION SYSTEM, AND THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Ex. Ord. No. 13297, Apr. 23, 2003, 68 F.R. 22565, provided:

By the authority vested in me as President by the Constitution and the laws of the United States, including section 827 of the Foreign Service Act of 1980 (22 U.S.C. 4067), section 292 of the Central Intelligence Agency Retirement Act of 1984 (50 U.S.C. 2141), and section 301 of title 3, United States Code, and in order to conform the Foreign Service Retirement and Disability System, the Foreign Service Pension System, and the Central Intelligence Agency Retirement and Disability System to the Civil Service Retirement System, it is hereby ordered as follows:

SECTION 1. In conjunction with section 860 of the Foreign Service Act of 1980 (22 U.S.C. 4071), the Secretary of State shall issue regulations providing for an open enrollment period from November 1, 1998, to April 30, 1999, during which employee participants in the Foreign Service Retirement and Disability System may elect to become subject to the Foreign Service Pension System.

SEC. 2. In conjunction with section 307(a) of the Central Intelligence Agency Retirement Act of 1984 (50 U.S.C. 2157(a)), the Director shall provide for an open enrollment period from November 1, 1998, to April 30, 1999, during which employee participants in the Central Intelligence Agency Retirement and Disability System may elect to become subject to the Federal Employees’ Retirement System, comparable to the election for civil service employees provided for by the Federal Employees’ Retirement System Open Enrollment Act of 1997, Public Law 106–61 (5 U.S.C. 8331 note).

WILLIAM J. CLINTON.

EX. ORD. NO. 13297. APPLYING THE FEDERAL PHYSICIANS COMPARABILITY ALLOWANCE AMENDMENTS OF 2000 TO PARTICIPANTS IN THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM, THE FOREIGN SERVICE PENSION SYSTEM, AND THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Ex. Ord. No. 13297, Apr. 23, 2003, 68 F.R. 22565, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 827 of the Foreign Service Act of 1980 (22 U.S.C. 4067), section 292 of the Central Intelligence Agency Retirement Act of 1984 (50 U.S.C. 2141), and section 301 of title 3, United States Code, and in order to conform the Foreign Service Retirement and Disability System, the Foreign Service Pension System, and the Central Intelligence Agency Retirement and Disability System to the Civil Service Retirement System, it is hereby ordered as follows:


(i) Section 3(a) of Public Law 106–571 [amending section 8331 of Title 5, Government Organization and Employees] to provide that any amount received under section 5948 of title 5, United States Code (physicians comparability allowance), be included in the definition of basic pay;

(ii) Section 3(b) of Public Law 106–571 [amending sections 8331 and 8339 of Title 5] to provide for the inclusion of the physicians comparability allowance in the computation of an annuity under the same rules that apply with respect to the Civil Service Retirement System.

(b) The Secretary of State shall issue regulations that reflect the application of sections 3(a) and 3(b) of Public Law 106–571 to the Foreign Service Retirement and Disability System. Such regulations shall provide that the foregoing provisions be retroactive to December 28, 2000.


(i) Section 3(a) of Public Law 106–571 to provide that any amount received under section 5948 of title 5, United States Code (physicians comparability allowance), be included in the definition of basic pay; and
(ii) Section 3(c) of Public Law 106–571 [amending sections 8401 and 8415 of Title 5] to provide for the inclusion of the physicians comparability allowance in the computation of an annuity under the same rules that apply with respect to the Federal Employees Retirement System.

(b) The Secretary of State shall issue regulations that reflect the application of sections 3(a) and 3(c) of Public Law 106–571 to the Foreign Service Pension System. Such regulations shall provide that the foregoing provisions be retroactive to December 28, 2000.

Sec. 3. Central Intelligence Agency Retirement and Disability System.

(a) The following provisions of the Federal Physicians Comparability Allowance Amendments of 2000 (Public Law 106–571) shall apply to the Central Intelligence Agency Retirement and Disability System, title II of the Central Intelligence Agency Retirement Act of 1989 (50 U.S.C. 211 et seq.), as amended:

(i) Section 3(a) of Public Law 106–571 to provide that any amount received under section 5948 of title 5, United States Code (physicians comparability allowance), be included in the definition of basic pay; and

(ii) Section 3(c) of Public Law 106–571 to provide that the foregoing provisions be retroactive to December 28, 2000.

Sec. 4. Judicial Review. This order is not intended to create, nor does it create any right, benefit, or privilege, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, employees, or any other person.

GEORGE W. BUSH.

§ 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.


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 8331 of title 5. Any reference in such section 8331 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 reference 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.


References in Text

The Civil Service Retirement Spouse Equity Act of 1984, referred to in subsec. (a), is Pub. L. 98–615, Nov. 8,
§ 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 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, § 830, as added Pub. L. 100–238 and is classified to section (b) of this section, to benefits—

(a) Eligibility; percentage of benefits

Any individual who on February 14, 1981, 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—
2. (A) shall commence on the later of—
3. (i) the day the participant upon whose service the benefits are based becomes entitled to benefits under this subchapter; or
4. (ii) the first day of the month in which the divorce or annulment involved becomes final; and
5. (B) shall terminate on the earlier of—
6. (i) the last day of the month before the former spouse dies or remarries before 55 years of age; or
7. (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—
3. (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
4. (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 4053(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 partici-
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pant or former participant under this sub-
chapter.
(Pub. L. 96–465, title I, §831, as added Pub. L.
100–204, 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 sec-
tion 4069b of this title.

EFFECTIVE DATE
Section effective 90 days after Jan. 8, 1988, see section
261(a) of Pub. L. 100–204, 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 ap-
propriations 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 re-
spect 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 shall be equal to the full amount of the
participant’s or former participant’s annuity re-
ferred to in subsection (a) of this section less the
amount of such election.

(c) Disqualification
A former spouse shall not be entitled to a sur-
vivor 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 shall commence—
(i) in the case of a former spouse of a par-
ticipant or former participant who is de-
ceased 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 re-
marrriage 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, com-
plete with any supporting documentation which
the Secretary may by regulation require, within
30 months after December 22, 1987. The Sec-
retary may waive the 30-month application re-
quirement under this subparagraph in any case
in which the Secretary determines that the cir-
cumstances so warrant.
(B) Upon approval of an application provided
under subparagraph (A), the appropriate sur-
vivor 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 be-

(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 regu-
lations 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 par-
ticipant 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 partici-
itant or former participant under this sub-
chapter.

(g) Former spouses of United States Information
Agency and Agency for International Devel-
opment 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 Inter-
national Development, shall be entitled to ben-
efits 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 Ser-
vice Retirement and Disability System; and
(2) the marriage included at least five years
during which the employee was assigned over-
seas.
(Pub. L. 96–465, title I, §831, as added Pub. L.
1370; amended Pub. L. 101–246, title I, §146(b),
Feb. 16, 1990, 104 Stat. 37.)
§ 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 under section 4159 or 4046(f) 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.

(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.

(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.

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 831 of the Foreign Service Act of 1980 was enacted by Pub. L. 100–238 and is classified to section 6531 and 6532 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; and

(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 title 5 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.


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


TRANSFER OF FUNCTIONS

United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau) abolished and functions transferred to Secretary of State, see sections 6531 and 6532 of this title.

§ 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.


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

§ 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.


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 unfunded 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 entrance 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 any former or former participant, over
(B) the sum of—
(i) the actuarial present value of (I) deductions to be withheld from the future
§ 4071b

TITLE 22—FOREIGN RELATIONS AND INTERCOURSE

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;

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

(9) the term “special agent” has the same meaning given in section 4044(15) of this title.


REFERENCES IN TEXT


AMENDMENTS


1985—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 1998 AMENDMENT


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.] or entitled to status as employees under any other State retirement system.

(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, chapter 21 of title 26, or title II of the Social Security Act, shall be 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.] or entitled to status as employees under any other State retirement system.

(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 3331 of this title.


REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a) and (b), is 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


§ 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, 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.), 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

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

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

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

(C) a full-time volunteer for a period of service of at least 1 year’s duration under part A, B,1 or C of title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.),

if the participant makes a payment to the Fund equal to 3 percent of pay received for the volunteer service; except, the amount to be paid for volunteer service beginning on January 1, 1999, through December 31, 2000, shall be as follows:


(2) The amount of such payments shall be determined in accordance with regulations of the Secretary of State consistent with regulations for making corresponding determinations under chapter 83, title 5, 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 B of title 5) or under title III of the Central Intelligence Agency Retirement Act (50 U.S.C. 2011 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 have been paid the participant 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.


1 See References in Text note below.

REFERENCES IN TEXT


AMENDMENTS


1997—Subsec. (c). Pub. L. 105–33 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Credit shall be given under this System to a participant in the Foreign Service Pension System; and

(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.

(3) For purposes of any annuity computation under this subsection, the average pay (as used in section 8414 of title 5) of any member of the

1See References in Text note below.

§ 4071d. Entitlement to annuity
Service whose official duty station is outside the continental United States shall be considered to be the salary that would have been paid to the member had the member's official duty station been Washington, D.C., including locality-based comparability payments under section 5304 of title 5 that would have been payable to the member if the member's official duty station had been Washington, D.C.

(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, 4010a, 4051, 4052, or 4053 of this title under conditions authorizing an immediate annuity for participants in the Foreign Service Retirement and Disability System or for participants in the Foreign Service Pension System, and who has completed at least 5 years as a member of the Foreign Service, shall be entitled to an immediate annuity computed under paragraph (2).

(2) An annuity under paragraph (1) shall be computed—

(A) in accordance with section 8415(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. 2132(a), 2133(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, 4010, or 4010a 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 5). 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 8421(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 8421(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.

References in Text


Amendments


Pub. L. 105–277, § 2312(b)(1)(C), substituted “Service, shall” for “Service shall”.

Pub. L. 105–277, § 2312(b)(1)(B), inserted “or for participants in the Foreign Service Pension System,” after “Retirement and Disability System”.

Subsec. (b)(3). Pub. L. 105–382, which directed the insertion of “4010a,” after “4008,” in par. (3), was not executed to reflect the probable intent of Congress and the amendment by Pub. L. 105–277, § 2312(b)(2). See below.

Pub. L. 105–277, § 2312(b)(2), substituted “4010, or 4008a” for “4010”.

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. 2152a, 2153e(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 2002 amendment

Amendment by Pub. L. 107–228 applicable to service performed on or after the first day of the first pay period beginning on or after the date that is 90 days after Sept. 30, 2002, see section 322(c)(1) of Pub. L. 107–228, set out as a note under section 4046 of this title.


effective date of 1998 amendments

Amendment by Pub. L. 105–382 effective Nov. 5, 1997, with provisions relating to applicability with respect to certain individuals, see section 4 of Pub. L. 105–382, as amended, set out as a note under section 4044 of this title.


effective date of 1986 amendment


declaration of amounts

Amendment by Pub. L. 107–228 applicable to the individual had that individual re-


§ 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.


§ 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.


§ 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.


§ 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.


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”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

§ 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 subsection 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.
§ 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.


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

§ 4081. Travel and related expenses

The Secretary may pay the travel and related expenses of members of the Service and their families, including costs or expenses incurred for—

(1) proceeding to and returning from assigned posts of duty;
(2) authorized or required home leave;
(3) family members to accompany, precede, or follow a member of the Service to a place of temporary duty;
(4) representational travel within the country to which the member of the Service is assigned or, when not more than one family member participates, outside such country;
(5) obtaining necessary medical care for an illness, injury, or medical condition while abroad in a locality where there is no suitable person or facility to provide such care (without regard to those laws and regulations limiting or restricting the furnishing or payment of transportation and traveling expenses), as well as expenses for—

(A) an attendant or attendants for a member of the Service or a family member who is too ill to travel unattended or for a family member who is too young to travel alone, and
(B) a family member incapable of caring for himself or herself if he or she remained at the post at which the member of the Service is serving;
(6) rest and recuperation travel of members of the Service who are United States citizens, and members of their families, while serving at locations abroad specifically designated by the Secretary for purposes of this paragraph, to—

(A) other locations abroad having different social, climatic, or other environmental conditions than those at the post at which the member of the Service is serving, or
(B) locations in the United States or its territories, including American Samoa, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands; except that, unless the Secretary otherwise specifies in extraordinary circumstances, travel expenses under this paragraph shall be limited to the cost for a member of the Service, and for each member of the family of the member, of 1 round trip during any continuous 2-year tour and of 2 round trips during any continuous 3-year tour;
(7) removal of the family members of a member of the Service, and the furniture and household and personal effects (including automobiles) of the family, from a Foreign Service post where there is imminent danger because of the prevalence of disturbed conditions, and the return of such individuals, furniture, and effects to such post upon the cessation of such conditions, or to such other Foreign Service post as may in the meantime have become the post to which the member of the Service has been reassigned;
(8) trips by a member of the Service, and members of his or her family, for purposes of family visitation in situations where the family of the member is prevented by official order 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
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(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 member will reside (or if the member has died, to the place where his or her family will reside);

(12) packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of a member of the Service (and of his or her family)—

(A) when the member is absent from his or her post of assignment under orders or is assigned to a Foreign Service post to which such furniture and household and personal effects cannot be taken or at which they cannot be used, or when it is in the public interest or more economical to authorize storage;

(B) in connection with an assignment of the member to a new post, except that costs and expenses may be paid under this subparagraph only for the period beginning on the date of departure from his or her last post or (in the case of a new member) on the date of departure from the place of residence of the member and ending on the earlier of the date which is 3 months after arrival of the member at the new post or the date on which the member establishes residence quarters, except that in extraordinary circumstances the Secretary may extend this period for not more than an additional 90 days; and

(C) in connection with separation of the member from the Service, except that costs or expenses may not be paid under this subparagraph for storing furniture and household and personal effects for more than 3 months, except that in extraordinary circumstances the Secretary may extend this period for not more than an additional 90 days;

(13) transporting, for or on behalf of a member of the Service, a privately owned motor vehicle in any case in which the Secretary determines that water, rail, or air transportation of the motor vehicle is necessary or expedient for all or any part of the distance between points of origin and destination, but transportation may be provided under this paragraph for only one motor vehicle of a member during any 48-month period while the member is continuously serving abroad, except that another motor vehicle may be so transported as a replacement for such motor vehicle if such replacement—

(A) is determined, in advance, by the Secretary to be necessary for reasons beyond the control of the member and in the interest of the Government, or

(B) is incident to a reassignment when the cost of transporting the replacement motor vehicle does not exceed the cost of transporting the motor vehicle that is replaced;

(14) the travel and relocation of members of the Service, and members of their families, assigned to or within the United States (or any territory or possession of the United States or the Commonwealth of Puerto Rico), including assignments under subchapter VI of chapter 33 of title 5 (notwithstanding section 3375(a) of such title, if an agreement similar to that required by section 3375(b) of such title is executed by the member of the Service); and

(15) 1 round-trip per year for each child below age 21 of a member of the Service assigned abroad—

(A) to visit the member abroad if the child does not regularly reside with the member and the member is not receiving an education allowance or educational travel allowance for the child under section 5924(4) of title 5; or

(B) to visit the other parent of the child if the other parent resides in a country other than the country to which the member is assigned and the child regularly resides with the member and does not regularly attend school in the country in which the other parent resides,

except that a payment under this paragraph may not exceed the cost of round-trip travel between the post to which the member is assigned and the residence of the other parent, or between the post to which the member is assigned and the residence of the child if the child does not reside with a parent.

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

Amendments


Amendments

2006—Par. (6). Pub. L. 109–234, which directed amendment of section 901(d) of the Foreign Service Act by striking out “unbroken by home leave” wherever appearing, was executed by striking out those words after “2-year tour” and “3-year tour” in concluding provisions of par. (6) of this section, which is section 901 of the Foreign Service Act of 1980, to reflect the probable intent of Congress.

2002—Par. (8). Pub. L. 107–228, § 315(a), substituted “Service, and members of his or her family,” for “Service”.

Par. (15). Pub. L. 107–228, § 328, in concluding provisions, substituted “residence of the other parent, or between the post to which the member is assigned and the residence of the child if the child does not reside with a parent” for “port of entry in the contiguous 48 States which is nearest to that post”.

1991—Par. (10). Pub. L. 102–138, § 146, inserted before semicolon “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”.

Par. (12)(B). Pub. L. 102–138, § 145(1), inserted before semicolon “,” except that in extraordinary circumstances the Secretary may extend this period for not more than an additional 90 days”.

Par. (12)(C). Pub. L. 102–138, § 145(2), inserted before semicolon “,” except that in extraordinary circumstances the Secretary may extend this period for not more than an additional 90 days”.

1990—Par. (9). Pub. L. 101–246 amended par. (9) generally. Prior to amendment, par. (9) read as follows: “round-trip travel from a location abroad for purposes of family visitation in emergency situations involving personal hardship”.

Effective Date of 2002 Amendment

Pub. L. 107–228, div. A, title III, § 315(c), Sept. 30, 2002, 116 Stat. 1379, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date on which guidance for implementation of such amendment is issued by the Secretary.” [Guidance on the date on which guidance for implementation of this section, the services of any member of the Service (other than a member employed under section 3951 of this title) who is a citizen of the United States to take a leave of absence under section 6305 of title 5 (without regard to the introductory clause of subsection (a) of that section), upon completion by that member of 12 months of continuous service abroad. The Secretary shall order on such a leave of absence a member of the Service (other than a member employed under section 3951 of this title) who is a citizen of the United States as soon as possible after completion by that member of 3 years of continuous service abroad.

(b) Place leave may be taken

Leave ordered under this section may be taken in the United States or its territories, including American Samoa, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands.

(c) Availability for work or duties in Department

While on a leave of absence ordered under this section, the services of any member of the Service shall be available for such work or duties in the Department or elsewhere as the Secretary may prescribe, but the time of such work or duties shall not be counted as leave.


AMENDMENTS

2008—Subsec. (b). Pub. L. 110–321 substituted “or its territories, including American Samoa, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands” for “, its territories and possessions, or the Commonwealth of Puerto Rico”.

2006—Subsec. (a). Pub. L. 109–234, which directed substitution of “12 months” for “18 months” in section 903(a) of the Foreign Service Act, was executed to subsec. (a) of this section, which is section 903 of the Foreign Service Act of 1980, to reflect the probable intent of Congress.

1994—Subsec. (a). Pub. L. 103–236 inserted “(other than a member employed under section 3951 of this title)” after “member of the Service” in two places.

§ 4084. Health care program

(a) Establishment

The Secretary of State shall establish a health care program to promote and maintain the physical and mental health of members of the Service, and (when incident to service abroad) other designated eligible Government employees, and members of the families of such members and employees.

(b) Services provided

Any such health care program may include (1) medical examinations for applicants for employment, (2) medical examinations and inoculations or vaccinations, and other preventive and remedial care and services as necessary, for members of the Service and employees of the Department who are citizens of the United States and for members of their families, (3) health education and disease prevention programs for all employees, and (4) examinations necessary in order to establish disability or incapacity of participants.
in the Foreign Service Retirement and Disability System or Foreign Service Pension System or to provide survivor benefits under subchapter VIII of this chapter.

(c) Facilities; employment of personnel

The Secretary of State may establish health care facilities and provide for the services of physicians, nurses, or other health care personnel at Foreign Service posts abroad at which, in the opinion of the Secretary of State, a sufficient number of Government employees are assigned to warrant such facilities or services.

(d) Costs of treatment

If an individual eligible for health care under this section incurs an illness, injury, or medical condition which requires treatment while assigned to a post abroad or located overseas pursuant to Government authorization, the Secretary may pay the cost of such treatment.

(e) Death or separation of member

Health care may be provided under this section to a member of the Service or other designated eligible Government employee after the separation of such member or employee from Government service. Health care may be provided under this section to a member of the family of a member of the Service or of a designated eligible Government employee after the separation from Government service or the death of such member of the Service or employee or after dissolution of the marriage.

(f) Review; medical care contracts

The Secretary of State shall review on a continuing basis the health care program provided for in this section. Whenever the Secretary of State determines that all or any part of such program can be provided for as well and as cheaply in other ways, the Secretary may, for such individuals, locations, and conditions as the Secretary of State deems appropriate, contract for health care pursuant to such arrangements as the Secretary deems appropriate.

(g) Retention of medical reimbursements

Reimbursements paid to the Department of State for funding the costs of medical care abroad for employees and eligible family members shall be credited to the currently available applicable appropriation account. Such reimbursements shall be available for obligation and expenditure during the fiscal year in which they are received or for such longer period of time as may be provided in law.

Amendments

2002—Subsec. (b). Pub. L. 107–228 substituted “families, (3) health education and disease prevention programs for all employees, and (4)” for “families, and (3)”.
1988—Subsec. (b). Pub. L. 100–238 inserted “or Foreign Service Pension System” after “System”.
1985—Subsec. (a). Pub. L. 99–93, §122(1), substituted “shall” for “may”.

Subsec. (b). Pub. L. 99–93, §122(2), inserted “, and other preventive and remedial care and services as necessary.”.
Subsec. (d). Pub. L. 99–93, §122(3), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “If an individual eligible for health care under this section incurs an illness, injury, or medical condition while abroad which requires hospitalization or similar treatment, the Secretary may pay all or part of the cost of such treatment. Limitations on such payments established by regulation may be waived whenever the Secretary determines that the illness, injury, or medical condition clearly was caused or materially aggravated by the fact that the individual concerned is or has been located abroad.”

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.

§4085. Entertainment and representation expenses

Notwithstanding section 5536 of title 5, the Secretary may provide for official receptions and may pay entertainment and representation expenses (including expenses of family members) to enable the Department and the Service to provide for the proper representation of the United States and its interests. In carrying out this section, the Secretary shall, to the maximum extent practicable, provide for the use of United States products, including American wine.


§4086. Entitlement to vote in a State in a Federal election; preconditions; applicability

(a) Except as provided in subsection (b) of this section and in such manner as shall be otherwise authorized by a State or other jurisdiction within the territory of the United States, a member of the Service residing outside the United States shall, in addition to any entitlement to vote in a State in a Federal election under section 3 of the Overseas Citizens Voting Rights Act (42 U.S.C. 1973dd–1), be entitled to vote in a Federal election in the State in which such member was last domiciled immediately before entering the Service if such member—

(1) makes an election of that State;
(2) notifies that State of such election and notifies any other States in which he or she is entitled to vote of such election; and
(3) otherwise meets the requirements of such Act [42 U.S.C. 1973dd et seq.].

(b) The provisions of subsection (a) of this section shall apply only to an individual who becomes a member of the Service on or after November 22, 1983, and shall not apply to an individual who registers to vote in a State in which he is entitled to vote under section 3 of Overseas Citizens Voting Rights Act [42 U.S.C. 1973dd–1].


References in Text

The Congress finds that—
(1) experience in both private and public employment indicates that the statutory protection of the right of workers to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—
(A) safeguards the public interest,
(B) contributes to the effective conduct of public business, and
(C) facilitates and encourages the amicable settlement of disputes between workers and their employers involving conditions of employment;
(2) the public interest demands the highest standards of performance by members of the Service and the continuous development and implementation of modern and progressive work practices to facilitate improved performance and efficiency; and
(3) the unique conditions of Foreign Service employment require a distinct framework for the development and implementation of modern, constructive, and cooperative relationships between management officials and organizations representing members of the Service.

Therefore, labor organizations and collective bargaining in the Service are in the public interest and are consistent with the requirement of an effective and efficient Government. The provisions of this subchapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government. (Pub. L. 96–465, title I, §1001, Oct. 17, 1980, 94 Stat. 2128.)

§ 4102. Definitions
As used in this subchapter, the term—
(1) “Authority” means the Federal Labor Relations Authority, described in section 7104(a) of title 5;
(2) “Board” means the Foreign Service Labor Relations Board, established by section 4106(a) of this title;
(3) “collective bargaining” means the performance of the mutual obligation of the management representative of the Department and of the exclusive representative of employees to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting employees, and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but this obligation does not compel either party to agree to a proposal or to make a concession;
(4) “collective bargaining agreement” means an agreement entered into as a result of collective bargaining under the provisions of this subchapter;
(5) “conditions of employment” means personnel policies, practices, and matters, whether established by regulation or otherwise, affecting working conditions, but does not include policies, practices, and matters—
(A) relating to political activities prohibited abroad or prohibited under subchapter III of chapter 73 of title 5;
(B) relating to the designation or classification of any position under section 3651 of this title;
(C) to the extent such matters are specifically provided for by Federal statute; or
(D) relating to Government-wide or multi-agency responsibility of the Secretary affecting the rights, benefits, or obligations of individuals employed in agencies other than those which are authorized to utilize the Foreign Service personnel system;
(6) “confidential employee” means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;
(7) “dues” means dues, fees, and assessments;
(8) “employee” means—
(A) a member of the Service who is a citizen of the United States, wherever serving, other than a management official, a confidential employee, a consular agent, a member of the Service who is a United States citizen (other than a family member) employed under section 3651 of this title, or any individual who participates in a strike in violation of section 7311 of title 5; or
(B) a former member of the Service as described in subparagraph (A) whose employment has ceased because of an unfair labor practice under section 4115 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Board;
(9) “exclusive representative” means any labor organization which is certified as the exclusive representative of employees under section 4111 of this title;
(10) “General Counsel” means the General Counsel of the Authority;
(11) “labor organization” means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose dealing with the Department concerning grievances (as defined in section 4131 of this title) and conditions of employment, but does not include—
(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;
(B) an organization which advocates the overthrow of the constitutional form of government of the United States;
(C) an organization sponsored by the Department; or
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(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(12) “management official” means an individual who—

(A) is a chief of mission or principal officer;

(B) is serving in a position to which appointed by the President, by and with the advice and consent of the Senate, or by the President alone;

(C) occupies a position which in the sole judgment of the Secretary is of comparable importance to the offices mentioned in subparagraph (A) or (B);

(D) is serving as a deputy to any individual described by subparagraph (A), (B), or (C);

(E) is assigned to carry out functions of the Inspector General of the Department of State and the Foreign Service under section 3929 of this title; or

(F) is engaged in the administration of this chapter or in the formulation of the personnel policies and programs of the Department;

(13) “Panel” means the Foreign Service Impasse Disputes Panel, established by section 4110(a) of this title; and

(14) “person” means an individual, a labor organization, or an agency to which this subchapter applies.


AMENDMENTS
1994—Par. (8)(A). Pub. L. 103-236 inserted “a member of the Service who is a United States citizen (other than a family member) employed under section 3861 of this title.”.

§ 4103. Application

(a) Departments and agencies affected

This subchapter applies only with respect to the Department of State, the Broadcasting Board of Governors, the Agency for International Development, the Department of Agriculture, and the Department of Commerce.

(b) Exclusion of subdivisions

The President may by Executive order exclude any subdivision of the Department from coverage under this subchapter if the President determines that—

(1) the subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(2) the provisions of this subchapter cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

(c) Suspension of provisions

The President may by Executive order suspend any provision of this subchapter with respect to any post, bureau, office, or activity of the Department, if the President determines in writing that the suspension is necessary in the interest of national security because of an emergency.


AMENDMENTS

Pub. L. 105-277, §1336(k)(3), substituted “Broadcasting Board of Governors” for “United States Information Agency”.

CHANGE OF NAME
“United States Information Agency” substituted for “International Communication Agency” in subsec. (a), pursuant to section 303(b) of Pub. L. 97-241, set out as a note under section 1461 of this title.

Effective Date of 1998 Amendment
Amendment by section 1336(k)(3) of Pub. L. 105-277 effective Oct. 1, 1999, see section 1301 of Pub. L. 105-277, set out as an Effective Date note under section 6531 of this title.

Amendment by section 1422(b)(4)(C) of Pub. L. 105-277 effective Apr. 1, 1999, see section 1401 of Pub. L. 105-277, set out as an Effective Date note under section 6561 of this title.

§ 4104. Employee rights

(a) Every employee has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal. Each employee shall be protected in the exercise of such right.

(b) Except as otherwise provided under this subchapter, such right includes the right—

(1) to act for a labor organization in the capacity of a representative and, in that capacity, to present the views of the labor organization to the Secretary and other officials of the Government, including the Congress, or other appropriate authorities; and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this subchapter.


§ 4105. Management rights

(a) Subject to subsection (b) of this section, nothing in this subchapter shall affect the authority of any management official of the Department, in accordance with applicable law—

(1) to determine the mission, budget, organization, and internal security practices of the Department, and the number of individuals in the Service or in the Department;

(2) to hire, assign, direct, lay off, and retain individuals in the Service or in the Department, to suspend, remove, or take other disciplinary action against such individuals, and to determine the number of members of the Service to be promoted and to remove the name of or delay the promotion of any member in accordance with regulations prescribed under section 4005(b) of this title;

(3) to conduct reductions in force, and to prescribe regulations for the separation of em-
employees pursuant to such reductions in force conducted under section 4010a of this title;
(4) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which the operations of the Department shall be conducted;
(5) to fill positions from any appropriate source;
(6) to determine the need for uniform personnel policies and procedures between or among the agencies to which this subchapter applies; and
(7) to take whatever actions may be necessary to carry out the mission of the Department during emergencies.

(b) Nothing in this section shall preclude the Department and the exclusive representative from negotiating—

(1) at the election of the Department, on the numbers, types, and classes of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;
(2) procedures which management officials of the Department will observe in exercising any function under this section; or
(3) appropriate arrangements for employees adversely affected by the exercise of any function under this section by such management officials.


AMENDMENTS
1994—Subsec. (a)(3) to (7). Pub. L. 103–236, as amended by Pub. L. 103–415, added par. (3) and redesignated former pars. (3) to (6) as (4) to (7), respectively.

§ 4107. Functions of Foreign Service Labor Relations Board

(a) General provisions

The Board shall—
(1) supervise or conduct elections and determine whether a labor organization has been selected as the exclusive representative by a majority of employees who cast valid ballots and otherwise administer the provisions of this subchapter relating to the according of exclusive recognition to a labor organization;
(2) resolve complaints of alleged unfair labor practices;
(3) resolve issues relating to the obligation to bargain in good faith;
(4) resolve disputes concerning the effect, the interpretation, or a claim of breach of a collective bargaining agreement, in accordance with section 4114 of this title; and
(5) take any action considered necessary to administer effectively the provisions of this subchapter.

(b) Consistency or precedence of decisions under other provisions of law

Decisions of the Board under this subchapter shall be consistent with decisions rendered by the Authority under chapter 71 of title 5, other than in cases in which the Board finds that special circumstances require otherwise. Decisions of the Board under this subchapter shall not be construed as precedent by the Authority, or any court or other authority, for any decision under chapter 71 of title 5.

(c) Implementation

In order to carry out its functions under this subchapter—
§ 4109. Judicial review and enforcement

(a) Persons entitled to maintain action; time of filing; venue

Except as provided in section 4114(d) of this title, any person aggrieved by a final order of the Board may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of such order in the United States Court of Appeals for the District of Columbia.

(b) Enforcement of order; temporary relief or restraining order

The Board may petition the United States Court of Appeals for the District of Columbia for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the Department to carry out its essential functions or if the Board fails to establish probable cause that an unfair labor practice is being committed.


§ 4110. Foreign Service Impasse Disputes Panel

(a) Establishment; composition

There is established within the Federal Labor Relations Authority the Foreign Service Impasse Disputes Panel, which shall assist in resolving negotiating impasses arising in the course of collective bargaining under this subchapter. The Chairperson shall select the Panel from among individuals the Chairperson considers knowledgeable in labor-management relations or the conduct of foreign affairs. The Panel shall be composed of 5 members, as follows:

(1) 2 members of the Service (other than a management official, a confidential employee, or a labor organization official);
(2) one individual employed by the Department of Labor;
(3) one member of the Federal Service Impasses Panel; and
(4) one public member who does not hold any other office or position in the Government.

The Chairperson of the Board shall set the terms of office for Panel members and determine who shall chair the Panel.

(b) Compensation; travel expenses

Panel members referred to in subsection (a)(3) and (4) of this section shall receive compensation for each day they are performing their duties (including traveltime) at the daily equivalent of the maximum rate payable for grade GS–18 of the General Schedule under section 5332 of title 5. except that the member who is also a member of the Federal Service Impasses Panel shall not be entitled to pay under this subsection for any day for which he or she receives pay under section 7119(b)(4) of title 5. Members of the Panel shall be entitled to travel expenses as provided under section 5703 of title 5.

(c) Impasse investigation and settlement; hearings and other actions upon failure to settle; notice; binding nature of action

(1) The Panel or its designee shall promptly investigate any impasse presented to it by a party. The Panel shall consider the impasse and shall either—

(A) recommend to the parties to the negotiation procedures for the resolution of the impasse; or

1 See References in Text note below.
such parties during the term of the collective
Stat. 2133.)
otherwise.
(1), the Panel may—
(A) hold hearings;
(b) administer oaths, take the testimony or
deposition of any individual under oath, and
issue subpoenas as provided in section 7132 of
title 5; and
(C) take whatever action is necessary and
not inconsistent with this subchapter to re-
solve the impasse.
(3) Notice of any final action of the Panel
under this section shall be promptly served upon
the parties, and the action shall be binding on
such parties during the term of the collective
bargaining agreement unless the parties agree
otherwise.
Stat. 2133.)
REFERENCES IN TEXT
Section 7119(b)(4) of title 5, referred to in subsec. (b),
probably means section 7119(c)(4) of Title 5, Government
Organizations and Employees.
REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY
RATES
References in laws to the rates of pay for GS–16, 17,
or 18, or to maximum rates of pay under the General
Schedule, to be considered references to rates payable
under specified sections of Title 5, Government Organiza-
tion and Employees, see section 529 [title I, § 1811(c)(1)]
of Pub. L. 101–509, set out in a note under section 5376
of Title 5.
§ 4111. Exclusive recognition
(a) Secret ballot election; majority vote
The Department shall accord exclusive rec-
ognition to a labor organization if the organiza-
tion has been selected as the representative, in
a secret ballot election, by a majority of the em-
ployees in a unit who cast valid ballots in the
election.
(b) Investigation of petition; hearing; supervision
of election; certification of results; length of
time between elections
If a petition is filed with the Board—
(1) by any person alleging—
(A) in the case of a unit for which there is no
exclusive representative, that 30 percent
of the employees in the unit wish to be re-
presented for the purpose of collective bar-
gaining by an exclusive representative, or
(B) in the case of a unit for which there is an
exclusive representative, that 30 percent
of the employees in the unit alleged that the
exclusive representative is no longer the re-
presentative of the majority of the employees
in the unit; or
(2) by any person seeking clarification of, or
an amendment to, a certification then in ef-
effect or a matter relating to representation;
the Board shall investigate the petition, and if
it has reasonable cause to believe that a ques-
tion of representation exists, it shall provide an
opportunity for a hearing (for which a transcript
shall be kept) after reasonable notice. If the
Board finds on the record of the hearing that a
question of representation exists, the Board
shall supervise or conduct an election on the
question by secret ballot and shall certify the
results thereof. An election under this sub-
section shall not be conducted in any unit with-
in which a valid election under this subsection
has been held during the preceding 12 calendar
months or with respect to which a labor organi-
ization has been certified as the exclusive rep-
resentative during the preceding 24 calendar
months.
(c) Intervention of labor organizations; placement
on ballot
A labor organization which—
(1) has been designated by at least 10 percent
of the employees in the unit; or
(2) is the exclusive representative of the em-
ployees involved;
may intervene with respect to a petition filed
pursuant to subsection (b) of this section and
shall be placed on the ballot of any election
under subsection (b) of this section with respect
to the petition.
(d) Eligibility to vote; regulations; choices on bal-
lot; preferential voting; certification as exclu-
sive representative
(1) The Board shall determine who is eligible
to vote in any election under this section and
shall establish regulations governing any such
election, which shall include regulations allow-
ing employees eligible to vote the opportunity
to choose—
(A) from labor organizations on the ballot,
that labor organization which the employees
wish to have represent them; or
(B) not to be represented by a labor organi-
ization.
(2) In any election in which more than two
choices are on the ballot, the regulations of the
Board shall provide for preferential voting. If no
choice receives a majority of first preferences,
the Board shall distribute to the two choices
having the most first preferences the pref-
ereace, as between those two of the other valid
ballots cast. The choice receiving a majority of
preferences shall be declared the winner. A labor
organization which is declared the winner of the
election shall be certified by the Board as the
exclusive representative.
(e) Submission of required material
A labor organization seeking exclusive rec-
ognition shall submit to the Board and to the
Department a roster of its officers and rep-
resentatives, a copy of its constitution and by-
laws, and a statement of its objectives.
(f) Grounds for denial of exclusive recognition
status
Exclusive recognition shall not be accorded to
(a labor organization—
(1) if the Board determines that the labor or-
ganization is subject to corrupt influence or
influences opposed to democratic principles; or
§ 4112. Employees represented

The employees of the Department shall constitute a single and separate worldwide bargaining unit, from which there shall be excluded—

(1) employees engaged in personnel work in other than a purely clerical capacity; and
(2) employees engaged in criminal or national security investigations or who audit the work of individuals to insure that their functions are discharged honestly and with integrity.

§ 4113. Representation rights and duties

(a) Negotiation of collective bargaining agreements; nondiscriminatory representation

A labor organization which has been accorded exclusive recognition is the exclusive representative of, and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit described in section 4112 of this title. An exclusive representative is responsible for representing the interests of all employees in that unit without discrimination and without regard to labor organization membership.

(b) Places of representation

(1) An exclusive representative shall be given the opportunity to be represented at—

(A) any formal discussion between one or more representatives of the Department and one or more employees in the unit (or their representatives), concerning any grievance (as defined in section 4131 of this title) or any personnel policy or practice or other general condition of employment; and
(B) any examination of an employee by a Department representative in connection with an investigation if—

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee, and
(ii) the employee requests such representation.

(2) The Department shall annually inform employees of their rights under paragraph (1)(B).

(c) Duty to bargain in good faith; determination of techniques assisting negotiation

The Department and the exclusive representative, through appropriate representatives, shall meet and negotiate in good faith for the purpose of arriving at a collective bargaining agreement. In addition, the Department and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 4110 of this title, to assist in any negotiation.

(d) Applicability to other employee rights or remedies

The rights of an exclusive representative under this section shall not preclude an employee from—

(1) being represented by an attorney or other representative of the employee's own choosing, other than the exclusive representative, in any grievance proceeding under subchapter XI of this chapter; or
(2) exercising grievance or appeal rights established by law, rule, or regulation.

(e) Obligations included in good faith bargaining

The duty of the Department and the exclusive representative to negotiate in good faith shall include the obligation—

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;
(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;
(3) to meet at reasonable times and convenient places as frequently as may be necessary and to avoid unnecessary delays;
(4) for the Department to furnish to the exclusive representative, or its authorized representative, upon request and to the extent not prohibited by law, data—

(A) which is normally maintained by the Department in the regular course of business;
(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and
(C) which does not constitute guidance, advice, counsel, or training provided for management officials or confidential employees, relating to collective bargaining;

(5) to negotiate jointly with respect to conditions of employment applicable to employees in more than one of the agencies authorized to utilize the Foreign Service personnel system, as determined by the heads of such agencies; and
(6) if agreement is reached, to execute, upon the request of any party to the negotiation, a written document embodying the agreed terms, and to take the steps necessary to implement the agreement.

(f) Approval of agreement by Secretary; effective date; binding effect

(1) An agreement between the Department and the exclusive representative shall be subject to approval by the Secretary.
(2) The Secretary shall approve the agreement within 30 days after the date of the agreement unless the Secretary finds in writing that the agreement is contrary to applicable law, rule, or regulation.
(3) Unless the Secretary disapproves the agreement by making a finding under paragraph (2),
the agreement shall take effect after 30 days from its execution and shall be binding on the Department and the exclusive representative subject to all applicable laws, orders, and regulations.

(g) Consultation by Department with exclusive representative

The Department shall consult with the exclusive representative with respect to Government-wide or multiagency matters affecting the rights, benefits, or obligations of individuals employed in agencies not authorized to utilize the Foreign Service personnel system. The exclusive representative shall be informed of any change proposed by the Department with respect to such matters, and shall be permitted reasonable time to present its views and recommendations regarding such change. The Department shall consider the views and recommendations of the exclusive representative before taking final action on any such change, and shall provide the exclusive representative a written statement of the reasons for taking the final action.


§ 4114. Resolution of implementation disputes

(a) Grievance procedure

Any dispute between the Department and the exclusive representative concerning the effect, interpretation, or a claim of breach of a collective bargaining agreement shall be resolved through procedures negotiated by the Department and the exclusive representative. Any procedures negotiated under this section shall—

(1) be fair and simple,

(2) provide for expeditious processing, and

(3) include provision for appeal to the Foreign Service Grievance Board by either party of any dispute not satisfactorily settled.

(b) Review by Foreign Service Labor Relations Board

Either party to an appeal under subsection (a)(3) of this section may file with the Board an exception to the action of the Foreign Service Grievance Board in resolving the implementation dispute. If, upon review, the Board finds that the action is deficient—

(1) because it is contrary to any law, rule, or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Board may take such action and make such recommendations concerning the Foreign Service Grievance Board action as it considers necessary, consistent with applicable laws, rules, and regulations.

(c) Time of filing exceptions; finality and binding nature of action

If no exception to a Foreign Service Grievance Board action is filed under subsection (b) of this section within 30 days after such action is communicated to the parties, such action shall become final and binding and shall be implemented by the parties.

(d) Judicial review

Resolutions of disputes under this section shall not be subject to judicial review.


§ 4115. Unfair labor practices

(a) Department of State

It shall be an unfair labor practice for the Department—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this subchapter;

(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish upon request customary and routine services and facilities on an impartial basis to labor organizations having equivalent status;

(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint or petition, or has given any information, affidavit, or testimony under this subchapter;

(5) to refuse to consult or negotiate in good faith with a labor organization, as required under this subchapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this subchapter;

(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of title 5) which is in conflict with an applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) to fail or refuse otherwise to comply with any provision of this subchapter.

(b) Labor organizations

It shall be an unfair labor practice for a labor organization—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this subchapter;

(2) to cause or attempt to cause the Department to discriminate against any employee in the exercise by the employee of any right under this subchapter;

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment or reprisal, or for the purpose of hindering or impeding the member’s work performance or productivity as an employee or the discharge of the member’s functions as an employee;

(4) to discriminate against an employee with regard to the terms and conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreference civil service status, political affiliation, marital status, or handicapping condition;

(5) to refuse to consult or negotiate in good faith with the Department, as required under this subchapter;

(6) to fail or refuse to cooperate in good faith with the Department, as required under this subchapter;

(7) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(8) to refuse to consult or negotiate in good faith with a labor organization, as required under this subchapter;
(7) (A) to call, or participate in, a strike, work stoppage, or slowdown, or to picket the Department in a labor-management dispute (except that any such picketing in the United States which does not interfere with the Department’s operations shall not be an unfair labor practice); or
(B) to condone any unfair labor practice described in subparagraph (A) by failing to take action to prevent or stop such activity;

(8) to deny membership to any employee in the unit represented by the labor organization except—
(A) for failure to tender dues uniformly required as a condition of acquiring and retaining membership, or
(B) in the exercise of disciplinary procedures consistent with the organization’s constitution or bylaws and this subchapter; or

(9) to fail or refuse otherwise to comply with any provision of this subchapter.

c) Personal views, arguments, opinions, or statements

The expression of any personal view, argument, or opinion, or the making of any statement, which—

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such an election;
(2) corrects the record with respect to any false or misleading statement made by any person; or

(3) informs employees of the Government’s policy relating to labor-management relations and representation,

if the expression contains no threat of reprisal or force or promise of benefit and was not made under coercive conditions shall not—

(A) constitute an unfair labor practice under this subchapter, or

(B) constitute grounds for the setting aside of any election conducted under this subchapter.

d) Election of remedies

Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 4139(a)(2) of this title, an employee has an option of using the grievance procedure under subchapter XI of this chapter or an appeals procedure, issues which can be raised under section 4114 of this title or subchapter XI of this chapter may—

(A) for failure to tender dues uniformly required as a condition of acquiring and retaining membership, or

(B) in the exercise of disciplinary procedures consistent with the organization’s constitution or bylaws and this subchapter; or

(c) Answer; personal appearance

The labor organization or Department involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

d) Time of filing of charges

(1) Except as provided in paragraph (2), no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Board.

(2) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in paragraph (1) by reason of—

(A) any failure of the Department or labor organization against which the charge is made to perform a duty owed to the person, or

(B) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

e) Regulations providing for resolution through informal methods

The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(f) Hearing

The Board (or any member thereof or any individual employed by the Board and designated for
such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of title 5, except that the parties shall not be bound by the rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Board, in its discretion, may upon notice receive further evidence or hear argument.

(g) Findings of fact relative to issuance of orders; backpay

If the Board (or any member thereof or any individual employed by the Board and designated for such purpose) determines after any hearing on a complaint under subsection (f) of this section that the preponderance of the evidence received demonstrates that the Department or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue an order—

(1) to cease and desist from any such unfair labor practice in which the Department or labor organization is engaged;

(2) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Board and requiring that the agreement, as amended, be given retroactive effect;

(3) requiring reinstatement of an employee with backpay in accordance with section 5596 of title 5; or

(4) including any combination of the actions described in paragraphs (1) through (3) or such other actions as will carry out the purpose of this subchapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the Department (as provided in section 5596 of title 5) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(h) Findings of fact requiring dismissal of complaint

If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the Department or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.


§ 4117. Standards of conduct for labor organizations

(a) Freedom from corrupt influences and influences opposed to basic democratic principles

The Department shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to a governing requirement adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices, including—

(A) provisions for periodic elections to be conducted subject to recognized safeguards, and

(B) provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Furnishing of information

A labor organization may be required to furnish evidence of its freedom from corrupt influences opposed to basic democratic principles if there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from, or is subject to other sanction by, a parent labor organization, or federation of organizations with which it has been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or

(2) the organization is in fact subject to influences that would preclude recognition under this subchapter.

(c) Reports; bonding of officials and other employees; compliance with trusteeship and election standards

A labor organization which has or seeks recognition as a representative of employees under this subchapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and others employed by the organization, and comply with trusteeship and election standards.
§ 4118  TITLE 22—FOREIGN RELATIONS AND INTERCOURSE

(d) Regulations; filing of complaints; cease and desist orders

The Assistant Secretary of Labor shall prescribe such regulations as are necessary to carry out this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as the Assistant Secretary considers appropriate to carry out the policies of this section.

(e) Participation in labor organizations restricted

(1) Notwithstanding any other provision of this subchapter—

(A) participation in the management of a labor organization for purposes of collective bargaining or acting as a representative of a labor organization for such purposes is prohibited under this subchapter—

(i) on the part of any management official or confidential employee;

(ii) on the part of any individual who has served as a management official or confidential employee during the preceding two years; or

(iii) on the part of any other employee if the participation or activity would result in a conflict of interest or apparent conflict of interest or would otherwise be incompatible with law or with the official functions of such employee; and

(B) service as a management official or confidential employee is prohibited on the part of any individual having participated in the management of a labor organization for purposes of collective bargaining or having acted as a representative of a labor organization during the preceding two years.

(2) For the purposes of paragraph (1)(A)(ii) and paragraph (1)(B), the term "management official" does not include—

(A) any chief of mission;

(B) any principal officer or deputy principal officer;

(C) any administrative or personnel officer abroad; or

(D) any individual described in section 4102(12)(B), (C), (D), or (E) of this title who is not involved in the administration of this subchapter or in the formulation of the personnel policies and programs of the Department.

(f) Willful and intentional violations

If the Board finds that any labor organization has willfully and intentionally violated section 4115(b)(7) of this title by omission or commission with regard to any strike, work stoppage, slowdown, the Board shall—

(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

(2) take any other appropriate disciplinary action.
(d) Official time usage

The following provisions shall apply to the use of official time:

(1) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this subchapter shall be authorized official time for such purposes, including attendance at impasse proceedings, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this paragraph shall not exceed the number of individuals designated as representing the Department for such purposes.

(2) Any activities performed by any employee relating to the internal business of the labor organization, including the solicitation of membership, elections of labor organization officials, and collection of dues, shall be performed during the time the employee is in a nonduty status.

(3) Except as provided in paragraph (1), the Board shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Board shall be authorized official time for such purpose during the time the employee would otherwise be in a duty status.

(4) Except as provided in paragraphs (1), (2), and (3), any employee representing an exclusive representative, or engaged in any other matter covered by this subchapter, shall be granted official time in any amount the Department and the exclusive representative agree to be reasonable, necessary, and in the public interest.


SUBCHAPTER XI—GRIEVANCES

§ 4131. Definitions and applicability

(a)(1) Except as provided in subsection (b) of this section, for purposes of this subchapter, the term “grievance” means any act, omission, or condition subject to the control of the Secretary which is alleged to deprive a member of the Service who is a citizen of the United States (other than a United States citizen employed under section 3951 of this title who is not a family member) of a right or benefit authorized by law or regulation or which is otherwise a source of concern or dissatisfaction to the member, including—

(A) separation of the member allegedly contrary to laws or regulations, or predicated upon alleged inaccuracy, omission, error, or falsely prejudicial character of information in any part of the official personnel record of the member;

(B) other alleged violation, misinterpretation, or misapplication of applicable laws, regulations, or published policy affecting the terms and conditions of the employment or career status of the member;

(C) allegedly wrongful disciplinary action against the member;

(D) dissatisfaction with respect to the working environment of the member;

(E) alleged inaccuracy, omission, error, or falsely prejudicial character of information in the official personnel record of the member which is or could be prejudicial to the member;

(F) action alleged to be in the nature of reprisal or other interference with freedom of action in connection with participation by the member in procedures under this subchapter;

(G) alleged denial of an allowance, premium pay, or other financial benefit to which the member claims entitlement under applicable laws or regulations; and

(H) any discrimination prohibited by—

(i) section 2000e–16 of title 42,

(ii) section 208(d) of title 29,

(iii) section 791 of title 29,

(iv) sections 631 and 633a of title 29, or

(v) any rule, regulation, or policy directive prescribed under any provision of law described in clauses (i) through (iv).

(2) The scope of grievances described in paragraph (1) may be modified by written agreement between the Department and the labor organization accorded recognition as the exclusive representative under subchapter X of this chapter (hereinafter in this subchapter referred to as the “exclusive representative”).

(b) For purposes of this subchapter, the term “grievance” does not include—

(1) an individual assignment of a member under subchapter V of this chapter, other than an assignment alleged to be contrary to law or regulation;

(2) the judgment of a selection board established under section 4002 of this title, a tenure board established under section 3946(b) of this title, or any other equivalent body established by laws or regulations which similarly evaluates the performance of members of the Service on a comparative basis;

(3) the expiration of a limited appointment, the termination of a limited appointment under section 4011 of this title, or the denial of a limited career extension or of a renewal of a limited career extension under section 4007(b) of this title; or

(4) any complaint or appeal where a specific statutory hearing procedure exists, except as provided in section 419B(a)(2) of this title.

Nothing in this subsection shall exclude any act, omission, or condition alleged to violate any law, rule, regulation, or policy directive referred to in subsection (a)(1)(H) of this section from such term.

(c) This subchapter applies only with respect to the Department of State, Broadcasting Board of Governors, the Agency for International Development, the Department of Agriculture, and the Department of Commerce.

§ 4132. Grievances concerning former members or their survivors

Within the time limitations of section 4134 of this title, a former member of the Service or the surviving spouse (or, if none, another member of the family) of a deceased member or former member of the Service may file a grievance under this subchapter only with respect to allegations described in section 4131(a)(1)(G) of this title.


§ 4133. Freedom of action

(a) Nature of protection

Any individual filing a grievance under this subchapter (hereinafter in this subchapter referred to as the "grievant"), and any witness, labor organization, or other person involved in a grievance proceeding, shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them.

(b) Right to representation

(1) The grievant has the right to a representative of his or her own choosing at every stage of the proceedings under this subchapter.

(2) In any case where the grievant is a member of a bargaining unit represented by an exclusive representative, but is not represented in the grievance by that exclusive representative, the exclusive representative shall have the right to appear during the grievance proceedings.

(3) The grievant, and any representative of the grievant who is a member of the Service or employee of the Department, shall be granted reasonable periods of administrative leave to appear and testify at any proceedings under this subchapter.

(c) Administrative leave for witnesses

Any witness who is a member of the Service or employee of the Department shall be granted reasonable periods of administrative leave to appear and testify at any proceedings under this subchapter.

(d) Records

(1) No record of—

(A) a determination by the Secretary to reject a recommendation of the Foreign Service Grievance Board,

(B) a finding by the Grievance Board against the grievant, or

(C) the fact that a grievance proceeding is pending or has been held,

shall be entered in the personnel records of the grievant (except by order of the Grievance Board as a remedy for the grievance) or those of any other individual connected with the grievance. Nothing in this subsection shall prevent a grievant from placing a rebuttal to accompany a record of disciplinary action in such grievant's personnel records nor prevent the Department from including a response to such rebuttal, including documenting those cases in which the Board has reviewed and upheld the discipline.

(2) The Department shall maintain records pertaining to grievances under appropriate safeguards to preserve confidentiality.

(3) The Foreign Service Grievance Board may enforce compliance with the requirements of paragraphs (1) and (2).

(e) Expedition of security clearance procedures

The Department will use its best endeavors to expedite security clearance procedures whenever necessary to assure a fair and prompt resolution of a grievance.


AMENDMENTS

1999—Subsec. (d)(1). Pub. L. 106–113 inserted at end "Nothing in this subsection shall prevent a grievant from placing a rebuttal to accompany a record of disciplinary action in such grievant’s personnel records nor prevent the Department from including a response to such rebuttal, including documenting those cases in which the Board has reviewed and upheld the discipline."

§ 4134. Time limitations

(a) Limitations period

A grievance is forever barred under this subchapter unless it is filed with the Department...
not later than two years after the occurrence giving rise to the grievance or, in the case of a grievance with respect to the grievant’s rater or reviewer, one year after the date on which the grievant ceased to be subject to rating or review by that person, but in no case more than three years after the occurrence giving rise to the grievance. There shall be excluded from the computation of any such period any time during which, as determined by the Foreign Service Grievance Board, the grievant was unaware of the grounds for the grievance and could not have discovered such grounds through reasonable diligence.

(b) Failure of Department to resolve grievance; grievance filed with Foreign Service Grievance Board

If a grievance is not resolved under Department procedures (which have been negotiated with the exclusive representative, if any) within ninety days after it is filed with the Department, the grievant or the exclusive representative (on behalf of a grievant who is a member of the bargaining unit) shall be entitled to file a grievance with the Foreign Service Grievance Board for its consideration and resolution.

(c) Grievances based on alleged discrimination

(1) In applying subsection (a) of this section with respect to an alleged violation of a law, rule, regulation, or policy directive referred to in section 4131(a)(1)(H) of this title, the reference to ‘‘2 years’’ shall be deemed to read ‘‘180 days’’, subject to paragraph (2).

(2) If the occurrence or occurrences giving rise to the grievance are alleged to have occurred while the grievant was assigned to a post abroad, the 180-day period provided for under paragraph (1) shall not commence until the earlier of—

(A) the date as of which the grievant is no longer assigned to such post; or

(B) the expiration of the 18-month period beginning on the date of the occurrence giving rise to the grievance or the last such occurrence, as the case may be.


Effective Date of 1999 Amendment


§4135. Foreign Service Grievance Board

(a) Establishment; composition

There is established the Foreign Service Grievance Board (hereinafter in this subchapter referred to as the ‘‘Board’’). The Board shall consist of no fewer than 5 members who shall be independent, distinguished citizens of the United States, well known for their integrity, who are not employees of the Department or members of the Service.

(b) Appointment and selection of nominees; length of terms; vacancies

The Chairperson and other members of the Board shall be appointed by the Secretary of State, from nominees approved in writing by the agencies to which this subchapter applies and the exclusive representative (if any) for each such agency. Each member of the Board shall be appointed for a term of 2 years, subject to renewal with the same written approvals required for initial appointment. In the event of a vacancy on the Board, an appointment for the unexpired term may be made by the Secretary of State in accordance with the procedures specified in this section. In the event of inability to obtain agreement on a nominee, each such agency and exclusive representative shall select 2 nominees and shall, in an order determined by lot, in turn strike a name from a list of such nominees until only one name remains. For purposes of this section, the nominee whose name remains shall be deemed to be approved in writing by each such agency head and exclusive representative.

(c) Compensation

Members of the Board who are not employees of the Government shall be paid for each day they are performing their duties (including traveltime) at the daily equivalent of the maximum rate payable for grade GS–18 of the General Schedule under section 5332 of title 5.

(d) Removal

The Secretary of State may, upon written notice, remove a Board member for corruption, neglect of duty, malfeasance, or demonstrated incapacity to perform his or her functions, established at a hearing (unless the right to a hearing is waived in writing by the Board member).
§ 4136. Foreign Service Grievance Board procedures

The Board may adopt regulations concerning its organization and procedures. Such regulations shall include provision for the following:

(1) The Board shall conduct a hearing at the request of a grievant in any case which involves—
   (A) disciplinary action or the retirement of a grievant from the Service under section 4007 or 4008 of this title, or
   (B) issues which, in the judgment of the Board, can best be resolved by a hearing or presentation of oral argument.

(2) The grievant, the representatives of the grievant, the exclusive representative (if the grievant is a member of the bargaining unit represented by the exclusive representative), and the representatives of the Department are entitled to be present at the hearing. The Board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be open to others. Testimony at a hearing shall be given under oath, which any Board member or individual designated by the Board shall have authority to administer.

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

(4) During any hearing held by the Board, any oral or documentary evidence may be received, but the Board shall exclude any irrelevant, immaterial, or unduly repetitious evidence, as determined under section 556 of title 5.

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

(6) In those grievances in which the Board does not hold a hearing, the Board shall afford to each party the opportunity to review and to supplement, by written submissions, the record of proceedings prior to the decision by the Board. The decision of the Board shall be based exclusively on the record of proceedings.

(7) The Board may act by or through panels or individual members designated by the Chairperson, except that hearings within the continental United States shall be held by
panels of at least three members unless the parties agree otherwise. References in this subchapter to the Board shall be considered to be references to a panel or member of the Board where appropriate. All members of the Board shall act as impartial individuals in considering grievances.

(8) If the Board determines that the Department is considering the involuntary separation of the grievant (other than an involuntary separation for cause under section 4010(a) of this title), disciplinary action against the grievant, or recovery from the grievant of alleged overpayment of salary, expenses, or allowances, which is related to a grievance pending before the Board and that such action should be suspended, the Department shall suspend such action until the date which is one year after such determination or until the Board has ruled upon the grievance, whichever comes first. The Board shall extend the one-year limitation under the preceding sentence and the Department shall continue to suspend such action, if the Board determines that the agency or the Board is responsible for the delay in the resolution of the grievance. The Board may also extend the 1-year limit if it determines that the delay is due to the complexity of the case, the unavailability of witnesses or to circumstances beyond the control of the agency, the Board or the grievant.

(9) The Board may reconsider any decision upon presentation of newly discovered or previously unavailable material evidence.


Amendments

2005—Par. (8). Pub. L. 109–140 inserted “the involuntary separation of the grievant (other than an involuntary separation for cause under section 4010(a) of this title),” after “considering” and substituted “the grievant,” for “the grievant or.”

2002—Par. (8). Pub. L. 107–228, in first sentence, struck out “the involuntary separation of the grievant;” before “disciplinary action” and substituted “grievant,” for “grievant or,” and struck out last sentence which read as follows: “Notwithstanding the first sentence of this paragraph, the Board’s authority to suspend such action shall not extend to instances where the Secretary, or his designee, has exercised his authority under subsection (a)(3) of section 4010 of this title or with respect to any action which would delay the separation of an employee pursuant to a reduction in force conducted under section 4010a of this title.”

1994—Par. (8). Pub. L. 103–236, §181(a)(4)(B), inserted before period at end “with respect to any action which would delay the separation of an employee pursuant to a reduction in force conducted under section 4010a of this title.”

§4137. Foreign Service Grievance Board decisions

(a) Record; findings of fact and statement of reasons

Upon completion of its proceedings, the Board shall expeditiously decide the grievance on the basis of the record of proceedings. In each case the decision of the Board shall be in writing, and shall include findings of fact and a statement of the reasons for the decision of the Board.

(b) Authority of Department upon finding of meritorious grievance

If the Board finds that the grievance is meritorious, the Board shall have the authority to direct the Department—

(1) to correct any official personnel record relating to the grievant which the Board finds to be inaccurate or erroneous, to have an improper prejudicial character;

(2) to reverse a decision denying the grievant compensation or any other perquisite of employment authorized by laws or regulations;

(3) to retain in the Service a member whose exclusion is determined in writing to be essential to the functioning of the post or office to which the grievant is assigned;

(4) to reinstate the grievant, and to grant the grievant back pay in accordance with section 5596(b)(1) of title 5;

(5) to pay reasonable attorney fees to the grievant to the same extent and in the same manner as such fees may be required by the Merit Systems Protection Board under section 7701(g) of title 5; and

(6) to take such other remedial action as may be appropriate under procedures agreed to by the Department and the exclusive representative (if any).
(c) Finality of decisions; judicial review

Except as provided in subsection (d) of this section, decisions of the Board under this subchapter shall be final, subject only to judicial review as provided in section 4140 of this title.

(d) Recommendations

(1) If the Board finds that the grievance is meritorious and that remedial action should be taken that relates directly to promotion, tenure or assignment of the grievant or to other remedial action not otherwise provided for in this section, or if the Board finds that the evidence before it warrants disciplinary action against any employee of the Department or member of the Service, it shall make an appropriate recommendation to the Secretary. The Secretary shall make a written decision on the recommendation of the Board within 30 days after receiving the recommendation. The Secretary shall implement the recommendation of the Board except to the extent that, in a decision made within that 30-day period, the Secretary rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would be contrary to law or would adversely affect the foreign policy or national security of the United States. If the Secretary rejects the recommendation in whole or in part, the decision shall specify the reasons for such action. Pending the decision of the Secretary, there shall be no ex parte communication concerning the grievance between the Secretary and any person involved in the proceedings of the Board. The Secretary shall, however, have access to the entire record of the proceedings of the Board.

(2) A recommendation under paragraph (1) shall, for purposes of section 4140 of this title, be considered a final action upon the expiration of the 30-day period referred to in such paragraph, except to the extent that it is rejected by the Secretary by an appropriate written decision.

(3)(A) If the Secretary makes a written decision under paragraph (1) rejecting a recommendation in whole or in part on the basis of a determination that implementing such recommendation would be contrary to law, the Secretary shall, within the 30-day period referred to in such paragraph—

(i) submit a copy of such decision to the Board; and

(ii) request that the Board reconsider its recommendation or, if less than the entirety is rejected, that the Board reconsider the portion rejected.

(B)(1) Within 30 days after receiving a request under subparagraph (A), the Board shall, after reviewing the Secretary’s decision, make a recommendation to the Secretary either confirming, modifying, or vacating its original recommendation or, if less than the entirety was rejected, the portion involved.

(ii) Reconsideration under this subparagraph shall be limited to the question of whether implementing the Board’s original recommendation, either in whole or in part, as applicable, would be contrary to law.

(C) A recommendation made under subparagraph (B) shall be considered a final action for purposes of section 4140 of this title, and shall be implemented by the Secretary.

(e) Record of grievances; copy to committee of Congress; right of review

(1) The Board shall maintain records of all grievances awarded in favor of the grievant in which the grievance concerns gross misconduct by a supervisor. Subject to paragraph (2), the Committee on Foreign Relations of the Senate shall be provided with a copy of the grievance decision whenever such a supervisor is nominated for any position requiring the advice and consent of the Senate and the Board shall provide access to the entire record of any proceedings of the Board concerning such a grievance decision to any Member of the Committee on Foreign Relations upon a request by the Chairman or Ranking Minority Member of such committee.

(2)(A) Except as provided in subparagraph (B), all decisions, proceedings, and other records disclosed pursuant to paragraph (1) shall be treated as confidential and may be disclosed only to Committee members and appropriate staff.

(B) Whenever material is provided to the Committee or a Member thereof pursuant to paragraph (1), the Board shall, at the same time, provide a copy of all such material to the supervisor who is the subject of such material.

(C) A supervisor who is the subject of records disclosed to the committee pursuant to this subsection shall have the right to review such record and provide comments to the Committee concerning such record. Such comments shall be treated in a confidential manner.

(f) Alleged discrimination; substantive law to be applied

The Board shall, with respect to any grievance based on an alleged violation of a law, rule, regulation, or policy directive referred to in section 4131(a)(1)(H) of this title, apply the substantive law that would be applied by the Equal Employment Opportunity Commission if a charge or claim alleging discrimination under such law, rule, regulation, or policy directive had been filed with the commission.


AMENDMENTS

1987—Subsec. (d). Pub. L. 100–204, § 181(a), (b), designated existing provisions as par. (1), inserted “tenure” after “promotion” in first sentence, and added paras. (2) and (3).
Subsec. (e). Pub. L. 100–204, § 182, added subsec. (e).

EFFECTIVE DATE OF 1991 AMENDMENT


EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–204 not applicable with respect to any grievance in which the Board has issued a final decision pursuant to this section before Dec. 22,
§ 4138. Access to records

(a) Review by Foreign Service Grievance Board of decision denying access

If a grievant is denied access to any agency record prior to or during the consideration of the grievance by the Department, the grievant may raise such denial before the Board in connection with the grievance.

(b) Access by Foreign Service Grievance Board; relevant and material records; adverse effect on national security or foreign policy

In considering a grievance, the Board shall have access to any agency record as follows:

(1)(A) The Board shall request access to any agency record which the grievant requests to substantiate the grievance if the Board determines that such record may be relevant and material to the grievance.

(B) The Board may request access to any other agency record which the Board determines may be relevant and material to the grievance.

(2) Any agency shall make available to the Board any agency record requested under paragraph (1) unless the head or deputy head of such agency personally certifies in writing to the Board that disclosure of the record to the Board and the grievant would adversely affect the foreign policy or national security of the United States or that such disclosure is prohibited by law. If such a certification is made with respect to any record, the agency shall supply to the Board a summary or extract, as the case may be, of such record unless the reasons specified in the preceding sentence preclude such a summary or extract.

(c) Access by grievant

If the Board determines that an agency record, or a summary or extract of a record, made available to the Board under subsection (b) of this section is relevant and material to the grievance, the agency concerned shall make such record, summary, or extract, as the case may be, available to the grievant.

(d) Denial of access as factor in determination of grievance

In considering a grievance, the Board may take into account the fact that the grievant or the Board was denied access to an agency record which the Board determines is or may be relevant and material to the grievance.

(e) Proceedings and decisions of Foreign Service Grievance Board

The grievant in any case decided by the Board shall have access to the record of the proceedings and the decision of the Board.

§ 4139. Relationship to other remedies

(a)(1) A grievant may not file a grievance with the Board if the grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided under another provision of law, regulation, or Executive order, other than under section 1214 or 1221 of title 5, and the matter has been carried to final decision under such provision on its merits or is still under consideration.

(2) If a grievant is not prohibited from filing a grievance under paragraph (1), the grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief under chapter 12 of title 5 or a regulation or Executive order other than under this subchapter. An election of remedies under this subsection shall be final upon the acceptance of jurisdiction by the Board.

(3) This subsection shall not apply to any grievance with respect to which subsection (b) of this section applies.

(b)(1) With respect to a grievance based on an alleged violation of a law, rule, regulation, or policy directive referred to in section 4131(a)(1)(H) of this title, a grievant may either—

(A) file a grievance under this subchapter, or

(B) initiate in writing a proceeding under another provision of law, regulation, or Executive order that authorizes relief, but not both.

(2) A grievant shall be considered to have exercised the option under paragraph (1) as soon as the grievant timely either—

(A) files a grievance under this subchapter, or

(B) initiates in writing a proceeding under such other provision of law, regulation, or Executive order.


Amendments

1991—Subsec. (a). Pub. L. 102–138, § 153(d)(1)(A), (B), redesignated former subsec. (b) as par. (1), redesignated former subsec. (b) as par. (2) of subsec. (a) and substituted “paragraph (1)” for “subsection (a) of this section” and “under this subsection” for “under this section”, and added par. (3).


1989—Subsec. (a). Pub. L. 101–12 substituted “1214 or 1221” for “1206”.

Effectiveness Date of 1991 Amendment


Effectiveness Date of 1989 Amendment


§ 4140. Judicial review

(a) Any aggrieved party may obtain judicial review of a final action of the Secretary or the Board on any grievance in the district courts of the United States in accordance with the standards set forth in chapter 7 of title 5, if the re-
The Foreign Service of the United States should be representative of the American people. In order to facilitate and encourage the entry into the Foreign Service of individuals who meet the rigorous requirements of the Service, while ensuring a Foreign Service system which reflects the cultural and ethnic diversity of the United States, intensive recruitment efforts are mandated. This is particularly true for Native Americans, African Americans, and Hispanic Americans, where other affirmative action and equal opportunity efforts have not been successful in attracting the ablest applicants for entry into the Foreign Service. The United States remains committed to equal opportunity and to a Foreign Service system operated on the basis of merit principles.

(b) Objectives

The objective of this subchapter is to strengthen and improve the Foreign Service of the United States through the establishment of a Foreign Service Internship Program. The program shall promote the Foreign Service as a viable and rewarding career opportunity for qualified individuals who reflect the cultural and ethnic diversity of the United States through a highly selective internship program for students enrolled in institutions of higher education.


§ 4141a. Foreign Service Internship Program

(a) Establishment

In consultation with the heads of other agencies utilizing the Foreign Service system, the Secretary of State shall establish a Foreign Service internship program to carry out the objectives of this subchapter in accordance with the provisions of this subchapter.

(b) Foreign Service Internship Program

The program shall introduce interns to the practice of diplomacy and the unique rewards of the Foreign Service. The program shall consist of three successive summer internships of not less than eight weeks duration in each year to be completed over the course of not more than four years. Special emphasis shall be given to preparing the intern for the Foreign Service examination process. In each year not less than 10 interns shall enter the program.

(c) Eligibility to participate

(1) Students enrolled full-time in institutions of higher education from groups which are underrepresented in the Foreign Service in terms of the cultural and ethnic diversity of the Foreign Service and for whom equal opportunity and affirmative action recruitment efforts have not been successful in achieving balanced representation in appointments to the Foreign Service shall be eligible to be interns in programs under this subchapter.

(2) An intern shall have successfully completed not less than one academic year of study at an institution of higher education to be admitted to the program. In each succeeding year of participation an intern shall have completed an additional year of undergraduate or graduate study and shall maintain an exemplary record of academic achievement.
(3) In selecting interns, the Secretary shall consider only the ablest students of superior ability selected on the basis of demonstrated achievement and exceptional promise whose academic records reflect the requisite standards of performance necessary for the Foreign Service.

(d) Summer internships

(1) The primary focus of the first internship shall be the study of international relations, the functions of the Department of State and other agencies which utilize the Foreign Service system, and the nature of the Foreign Service. The internship shall be held in Washington, District of Columbia, at the Department of State. As appropriate, the Secretary shall utilize the personnel and facilities of the George P. Shultz National Foreign Affairs Training Center.

(2) The second internship shall be, principally, an assignment to a specific bureau of the Department of State. Emphasis shall be on providing insight into the economic and political functional areas.

(3) The third internship shall be an assignment to a United States mission abroad in the political or economic area.

(4) The first and second internships may include a detail to the Congress.

(e) Administration

The Secretary of State shall determine the academic requirements, other selection criteria, and standards for successful completion of each internship period. The Secretary shall be responsible for the design, implementation, and operation of the program.

(f) Mentors

Each intern shall be assigned a career Foreign Service officer as a mentor. The mentor shall act as a counselor and advisor throughout each summer internship and as a personal Foreign Service contact throughout the period of participation in the program. In the assignment of mentors, the Secretary shall give preference to Foreign Service officers who volunteer for such assignment and who may be role models for the interns.

(g) Compensation

Interns shall be compensated at a rate determined by the Secretary which shall not be less than the compensation of comparable summer interns at the Department of State. As determined by the Secretary, for the purposes of travel, housing, health insurance, and other appropriate benefits, interns shall be considered employees of the Foreign Service during each internship period.

(h) Study of Foreign Service examination

The Secretary of State shall study the feasibility of administering the Foreign Service examination in separate segments over several years. Not later than 180 days after February 16, 1990, the Secretary shall submit a report summarizing the findings of such a study to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

References in Text

Section 3905(d)(2) of this title, referred to in text, was omitted from the Code.

§ 4141b. Report to Congress

Together with the annual submission required under section 3905(d)(2) of this title, the Secretary of State shall submit a report to the Congress concerning the implementation of the program established under this subchapter. Such report accompanied by such other information as the Secretary considers appropriate, shall include specific information concerning the completion rates of interns in the program, interns who took the Foreign Service examination, former interns appointed to the Foreign Service, assignments of former interns, and the advancement of former interns through the Foreign Service System.\(^1\)


References in Text

Section 3905(d)(2) of this title, referred to in text, was omitted from the Code.

§ 4141c. Authorization of appropriations

Of the amounts authorized to be appropriated by section 101(a)(1) of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991, $100,000 for the fiscal year 1990 and $150,000 for the fiscal year 1991 shall be available only to carry out this subchapter. Sums appropriated for the purposes of this subchapter are authorized to remain available until expended.


References in Text


SUBCHAPTER XII—TRANSITION

§ 4151. Pay and benefits pending conversion

Until converted under the provisions of this subchapter, any individual who is in the Foreign Service before February 15, 1981, and is serving under an appointment as a Foreign Service officer, Foreign Service information officer, Foreign Service Reserve officer with limited or unlimited tenure, or Foreign Service staff officer or employee, shall be treated for purposes of salary, allowances, and other matters as if such in-

\(^1\) See References in Text note below.

\(^2\) So in original. Probably should not be capitalized.
§ 4152. Conversion to Foreign Service Schedule

(a) Not later than 120 days after February 15, 1981, the Secretary shall, in accordance with section 4156 of this title, convert to the appropriate class in the Foreign Service Schedule established under section 3963 of this title those individuals who are serving immediately before February 15, 1981, under appointments at or below class 3 of the schedule established under section 412 or 414 of the Foreign Service Act of 1946, or at any class in the schedule established under section 415 of such Act as—

(1) Foreign Service officers, or
(2) Foreign Service Reserve officers with limited or unlimited tenure, and Foreign Service staff officers or employees, who the Secretary determines are available for worldwide assignment.

(b) Not later than 3 years after February 15, 1981, Foreign Service Reserve officers and staff officers and employees who the Secretary determines are not available for worldwide assignment shall also be converted, in accordance with section 4156 of this title, to the appropriate class in the Foreign Service Schedule established under section 3963 of this title if—

(1) the Secretary certifies that there is a need for their services in the Foreign Service; and
(2) they agree in writing to accept availability for worldwide assignment as a condition of continued employment.


REFERENCES IN TEXT

Sections 412, 414 and 415 of the Foreign Service Act of 1946, referred to in subsec. (a), which were classified to sections 867, 869 and 870, respectively, of this title, were repealed by Pub. L. 96–465, title II, § 2105(1), Oct. 17, 1980, 94 Stat. 2159.

CODIFICATION

“February 15, 1981” substituted in text 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 3961 of this title.

§ 4153. Conversion to Senior Foreign Service

(a) Criteria; application less than 120 days after effective date of Foreign Service Act of 1980

Foreign Service officers and Foreign Service Reserve officers with limited or unlimited tenure who, immediately before February 15, 1981, are serving under appointments at class 2 or a higher class of the schedule established under section 412 or 414 of the Foreign Service Act of 1946 may at any time within 120 days after such date submit to the Secretary a written request for appointment to the Senior Foreign Service.

(b) Limited appointment

Except as provided in subsection (d) of this section, if a request is submitted under subsection (a) of this section by a Foreign Service Reserve officer with limited tenure, the Secretary shall grant to such officer a limited appointment to the Senior Foreign Service in the appropriate class established under section 3962 of this title.

(c) Career appointment

If a request is submitted under subsection (a) of this section by a Foreign Service officer or, except as provided in subsection (d) of this section, a Foreign Service Reserve officer with unlimited tenure, the Secretary shall recommend to the President a career appointment of such officer, by and with the advice and consent of the Senate, to the Senior Foreign Service in the appropriate class established under section 3962 of this title.

(d) Availability for worldwide assignment

If the Secretary determines that a Foreign Service Reserve officer with limited or unlimited tenure who submits a request under subsection (a) of this section is not available for worldwide assignment, an appointment under subsection (b) of this section or a recommendation for appointment under subsection (c) of this section shall be made only if—

(1) the Secretary certifies that there is a need for the services of such officer in the Senior Foreign Service; and
(2) such officer agrees in writing to accept availability for worldwide assignment as a condition of continued employment.

(e) Application more than 120 days after effective date of Foreign Service Act of 1980

If a Foreign Service officer or a Foreign Service Reserve officer who is eligible to submit a request under subsection (a) of this section submits a written request for appointment to the Senior Foreign Service to the Secretary more than 120 days after February 15, 1981, and before the end of the 3-year period beginning on February 15, 1981, the Secretary (in the case of a Foreign Service Reserve officer with limited tenure) may grant a limited appointment to, or (in the case of a Foreign Service officer or Foreign Service Reserve officer with unlimited tenure) may recommend to the President a career appointment of, the requesting officer to the appropriate class established under section 3962 of this title, subject to the conditions specified in subsection (d) of this section and such other conditions as the Secretary may prescribe con-
sistent with the provisions of subchapter VI of this chapter relating to promotion into the Senior Foreign Service.

(f) Forced conversion

Any officer of the Foreign Service who is eligible to submit a request under subsection (a) of this section and—

(1) who does not submit a request under subsection (a) of this section, or

(2) who submits such a request more than 120 days after February 15, 1981, and is not appointed to the Senior Foreign Service for any reason other than failure to meet the conditions specified in subsection (d) of this section, may not remain in the Foreign Service for more than 3 years after February 15, 1981. During such period, the officer shall be subject to the provisions of subchapters I to XI of this chapter applicable to members of the Senior Foreign Service, except that such officer shall not be eligible to compete for performance pay under section 3905 of this title, and shall not be eligible for a limited career extension as described in section 4007(b) of this title. Upon separation from the Service, any such officer who is a participant in the Foreign Service Retirement and Disability System shall be entitled to retirement benefits on the same basis as a member retired from the Senior Foreign Service under section 4007(c)(1) of this title, and section 4009(a)(2)(B) of this title shall be deemed to apply to such officer.


References in Text

Sections 412 and 414 of the Foreign Service Act of 1946, referred to in subsec. (a), which were classified to sections 887 and 889, respectively, of this title, were repealed by Pub. L. 96–465, title II, § 2305(1), Oct. 17, 1980, 94 Stat. 2159.

Codification

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

Amendments

1983—Subsec. (f). Pub. L. 98–164 substituted provisions relating to applicability of sections 4007(c)(1) and 4009(a)(2)(B) of this title, for provisions relating to applicability of subchapter VIII of this chapter.

§ 4154. Conversion from Foreign Service

(a) Individuals serving under appointment

In the case of any individual in the Foreign Service who, immediately before February 15, 1981, is serving under an appointment described in section 4152(a) or 4153(a) of this title and who is not converted under section 4152 or section 4153 of this title because such individual does not meet the conditions specified in section 4152(b) or 4153(d) of this title, the Secretary shall, not later than 3 years after February 15, 1981, provide that—

(1) the position such individual holds shall be subject to chapter 51 and subchapter III of chapter 53 of title 5;

(2) such individual shall be appointed to such position without competitive examination; and

(3) such position shall be considered to be in the competitive service so long as the individual continues to hold that position;

except that any such individual who meets the eligibility requirements for the Senior Executive Service and who elects to join that Service shall be converted by the Secretary to the Senior Executive Service in the appropriate rate of basic pay established under section 5382 of title 5.

(b) United States Information Agency individuals

In the case of individuals in the Foreign Service in the United States Information Agency who immediately before October 17, 1980, are covered by a collective bargaining agreement between the Agency and the exclusive representative of those individuals, the 3-year period referred to in subsection (a) of this section shall begin on July 1, 1981.

(c) Department of State security officers

The three-year period referred to in subsection (a) of this section shall be extended for an additional period not to exceed one year from November 22, 1983, in the case of Department of State security officers who are members of the Service and who were initially ineligible for conversion under that subsection because they were available for worldwide assignment and there was a need for their services in the Service, but as to whom subsequent events require the services of these members (and of those later employed who are similarly situated) only or primarily for domestic functions.


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.

In subsec. (c), “November 22, 1983” was in the original “the date of enactment of this section” which was translated as meaning the date of enactment of this subsection, as the probable intent of Congress.

Amendments


Change of Name

“United States Information Agency” substituted for “International Communication Agency” in subsec. (b), pursuant to section 303(b) of Pub. L. 97–241, set out as a note under section 1461 of this title, United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau) abolished and functions transferred to Secretary of State, see sections 6331 and 6332 of this title.

§ 4155. Conversion of certain positions in Department of Agriculture

(a) Designation and classification of positions to be occupied; notice

Not later than 15 days after February 15, 1981, the Secretary of Agriculture shall—
(1) designate and classify under section 3981 of this title those positions in the Foreign Agricultural Service under the General Schedule described in section 5332 of title 5 which the Secretary of Agriculture determines are to be occupied by career members of the Foreign Service, and

(2) provide written notice to individuals holding those positions of such designation and classification of the personnel category under section 3903 of this title which will apply to such individual.

(b) Election to convert

Each employee serving in a position at the time it is designated under subsection (a) of this section shall, not later than 120 days after notice of such designation, elect—

(1) to accept conversion to the Foreign Service, in which case such employee shall be converted in accordance with the provisions of subsection (c) of this section; or

(2) to decline conversion to the Foreign Service and have the provisions of subsection (d) of this section apply.

(c) Recommendations for appointment

(1) The Secretary of Agriculture shall recommend to the President for appointment to the appropriate class (as determined under paragraph (2)), by and with the advice and consent of the Senate, those employees who elect conversion under subsection (a)(1) of this section.

(2) The Secretary of Agriculture shall appoint as Foreign Service personnel those employees who elect to accept conversion and who are not eligible for appointment under paragraph (1).

(d) Results of declining to convert

Any employee who declines conversion under subsection (b)(2) of this section shall for so long as that employee continues to hold the designated position be deemed to be a member of the Foreign Service for purposes of allowances, differentials, and similar benefits (as determined by the Secretary of Agriculture).


Copulation

In subsection (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.

§ 4156. Preservation of status and benefits

(a) Conversion to class, grade, or step corresponding to level prior to conversion; reduction in position or salary; conversion from Foreign Service under section 4154 of this title

(1) Every individual who is converted under this subchapter shall be converted to the class or grade and pay rate that most closely corresponds to the class or grade and step at which the individual was serving immediately before conversion. No conversion under this subchapter shall cause any individual to incur a reduction in his or her class, grade, or basic rate of salary.

(2) An individual converted under section 4154 of this title to a position in the competitive service shall be entitled to have that position, or any other position to which the individual is subsequently assigned (other than at the request of the individual), be considered for all purposes as at the grade which corresponds to the class in which the individual served immediately before conversion so long as the individual continues to hold that position.

(b) Participation in Foreign Service Retirement and Disability System

(1) Any participant in the Foreign Service Retirement and Disability System who would, but for this paragraph, participate in the Civil Service Retirement and Disability System so long as he or she is employed in an agency which is authorized to utilize the Foreign Service personnel system, if such an election is not made, the individual shall then be covered by the Civil Service Retirement and Disability System and contributions made by the participant to the Foreign Service Retirement and Disability Fund shall be transferred to the Civil Service Retirement and Disability Fund.

(2) Any Foreign Service Reserve officer with limited tenure who has reemployment rights to a personnel category in the Foreign Service in which he or she would be a participant in the Foreign Service Retirement and Disability System and who would, but for this paragraph, continue to participate in the Civil Service Retirement and Disability System by virtue of conversion so long as he or she is employed in an agency which is authorized to utilize the Foreign Service personnel system. If such an election is not made, the individual shall then be covered by the Civil Service Retirement and Disability System and contributions made by that individual to the Civil Service Retirement and Disability Fund shall be transferred to the Civil Service Retirement and Disability Fund.

(c) Conversion to type of appointment corresponding in tenure to that prior to conversion

Individuals who are converted under this subchapter shall be converted to the type of appointment which corresponds most closely in tenure to the type of appointment under which they were serving immediately prior to such conversion, except that this subchapter shall not operate to extend the duration of any limited appointment or previously applicable time in class.

(d) Reappointment resulting from enactment of Foreign Service Act of 1980

Any individual who on February 15, 1981, is serving—
§ 4159. Survivor benefits for certain former spouses

(a) Eligible participants; election of benefits

Any participant or former participant in the Foreign Service Retirement and Disability System who on February 15, 1981, has a former spouse may, by a spousal agreement, elect to receive a reduced annuity and provide a survivor annuity for such former spouse under section 4054(b) of this title.

(b) Time of election

(1) If the participant or former participant has not retired under such system on or before February 15, 1981, an election under this section may be made at any time before retirement.

(2) If the participant or former participant has retired under such system on or before February 15, 1981, an election under this section may be made within such period after February 15, 1981, as the Secretary of State may prescribe.

(3) For purposes of applying subchapter VIII of this chapter, any such election shall be treated the same as if it were a spousal agreement under section 4060(b)(1) of this title.

(c) Portion of annuity as basis for benefits

An election under this section may provide for a survivor benefit based on all or any portion of that part of the annuity of the participant which is not designated or committed as a base for survivor benefits for a spouse or any other former spouse of the participant. The participant and his or her spouse may make an election under section 4046(b)(1)(B) of this title prior to the time of retirement for the purpose of allowing an election to be made under the section.

(d) Amount of reduction; effective date

The amount of the reduction in the participant’s annuity shall be determined in accordance with section 4046(b)(2) of this title. Such reduction shall be effective as of—

(1) the commencing date of the participant’s annuity, in the case of an election under subsection (b)(1) of this section, or

(2) February 15, 1981, in the case of an election under subsection (b)(2) of this section.

(e) Definitions

For purposes of this section, the terms “former spouse”, “participant”, and “spousal agreement” have the meanings given such terms in sections 4043 and 4044 of this title.


SUBCHAPTER XIII—MISCELLANEOUS

§ 4171. Model foreign language competence posts

(a) Designation of posts; time of designation and implementation; determination of competency standards

In order to carry out the purposes of section 4022 of this title and to help ascertain the relationship between foreign language competence and the effectiveness of representation of the United States abroad, the Secretary of State shall designate as model foreign language competence posts at least two Foreign Service posts in countries where English is not the common
language. Such designation shall be made no later than October 1, 1981, and shall be implemented so that no later than October 1, 1983, each Government employee permanently assigned to those posts shall possess an appropriate level of competence in the language common to the country where the post is located. The Secretary of State shall determine appropriate levels of language competence for employees assigned to those posts by reference to the nature of their functions and the standards employed by the George P. Shultz National Foreign Affairs Training Center.

(b) Continuation; report to Congress concerning operation of posts and advantages of meeting competency requirements

The posts designated under subsection (a) of this section shall continue as model foreign language competence posts at least until September 30, 1985. The Secretary of State shall submit no later than January 31, 1986, a report to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate describing the operation of such posts and the costs, advantages and disadvantages associated with meeting the foreign language competence requirements of this section.

(c) Exceptions; report to Congress

The Secretary of State may authorize exceptions to the requirements of this section if he determines that unanticipated exigencies so require.


AMENDMENTS


1994—Subsec. (c). Pub. L. 103–236, § 139(7), (25), amended subsec. (c) identically, striking out at end “Such exceptions shall be annually reported to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate.”

EXPANSION OF MODEL FOREIGN LANGUAGE COMPETENCE POSTS


“(a) Designation of Posts.—In order to carry out the purposes of section 702 of the Foreign Service Act of 1980 [22 U.S.C. 4622], and in light of the positive report issued on March 28, 1988, by the Department of State, as required by section 2207 of the Foreign Service Act of 1980 [22 U.S.C. 4171], the Secretary of State shall designate as model foreign language competence posts a minimum of six Foreign Service posts, representing the Department of State’s five geographic bureaus, in countries where English is not the common language. Such designation shall be made not later than 120 days after the date of enactment of this Act [Feb. 16, 1990], and shall be implemented so that not later than October 1, 1991, in the case of non-hard language posts, and October 1, 1992, in the case of hard language posts, each Government employee permanently assigned to those posts shall possess an appropriate level of competence in the language common to the country where the post is located. The Secretary of State shall determine appropriate levels of language competence for employees assigned to those posts by reference to the nature of their functions and the standards employed by the George P. Shultz National Foreign Affairs Training Center.

(b) ‘Hard Language Country’ Post To Be Designated.—At least one of the posts designated under subsection (a) shall be in a ‘hard language’ country, as identified in the report to the Under Secretary of State for Management of May 12, 1988, entitled ‘Hard Language Proficiency in the Foreign Service’. Such post shall be in one of the countries where the official or principal language is Arabic, Chinese, Japanese, or Russian.

(c) Termination Date.—The posts designated under subsection (a) shall continue as model foreign language posts at least until September 30, 1993, in the case of non-hard language posts, and September 30, 1994, in the case of hard language posts.

(d) Exemption Authority.—The Secretary of State may authorize exceptions to the requirements of this section if—

“(1) he determines that unanticipated exigencies so require; and

“(2) he immediately reports such exceptions to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

(e) Excluded Posts.—The posts designated under subsection (a) may not include Dakar, Senegal, or Montevideo, Uruguay. The report required under subsection (c) shall include progress made in these posts in maintaining the high foreign language standards achieved under the initial pilot program.

(f) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary to carry out this section.”

§ 4172. Savings provisions

(a) Determinations, authorizations, etc., under authority of Foreign Service Act of 1946 and grievances, claims, or appeals filed and pending on effective date of this chapter

All determinations, authorizations, regulations, orders, agreements, exclusive recognition of an organization or other actions made, issued, undertaken, entered into, or taken under the authority of the Foreign Service Act of 1946 or any other law repealed, modified, or affected by this chapter shall continue in full force and effect until modified, revoked, or superseded by appropriate authority. Any grievances, claims, or appeals which were filed or made under any such law and are pending resolution on February 15, 1981, shall continue to be governed by the provisions repealed, modified, or affected by this chapter.

(b) Increase in annuity or other right to benefits

This chapter shall not affect any increase in annuity or other right to benefits, which was provided by any provision amended or repealed by this chapter, with respect to any individual who became entitled to such benefit prior to February 15, 1981.

(c) Cross references

References in law to provisions of the Foreign Service Act of 1946 or other law superseded by this chapter shall be deemed to include reference to the corresponding provisions of this chapter.

REFERENCES IN TEXT
The Foreign Service Act of 1946, referred to in subsecs. (a) and (c), is act Aug. 13, 1946, ch. 957, titles I to X, 60 Stat. 999, as amended, which was classified principally to chapter 14 (§§501 et seq.) of this title, and was repealed by Pub. L. 96–465, title II, §2205(1), Oct. 17, 1980, 94 Stat. 2159.

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. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of this title and Tables.

CODIFICATION
In subsecs. (a) and (b), "February 15, 1961" 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.

§ 4173. Congressional oversight of implementation
(c) Consultation with agency representatives
The Secretary shall consult, in accordance with the procedures set out in section 4113(g) of this title, with the exclusive representative (if any) of members of the Foreign Service in each agency specified in section 4108(a) of this title with respect to steps to be taken in implementing this chapter and reported under section 4001(c)(4) of this title. To that end, each such exclusive representative will have timely access to all relevant information at each stage. Each such report shall include the views of each such exclusive representative on any and all aspects of the report and the information contained in such report.


AMENDMENTS
1987—Subsecs. (a), (b). Pub. L. 100–204 struck out subsec. (a) which related to report by Secretary of State and its contents and subsec. (b) which related to annual supplemental report and its contents.
Subsec. (c). Pub. L. 100–204 substituted "under section 4001(c)(4) of this title" for "under this section".

SUBCHAPTER XIV—POWERS, DUTIES AND LIABILITIES OF CONSULAR OFFICERS GENERALLY
CODIFICATION
Subchapter was not enacted as a part of the Foreign Service Act of 1980 which comprises this chapter.

§ 4191. General application of provisions to consular officers
The various provisions of title 18 of the Revised Statutes which are expressed in terms of general application to any particular classes of consular officers, shall be deemed to apply as well to all other classes of such officers and to such other United States citizen employees of the Department of State as may be designated by the Secretary of State pursuant to such regulations as the Secretary may prescribe, so far as may be consistent with the subject matter of the same and with the treaties of the United States.


REFERENCES IN TEXT
Title 18 of the Revised Statutes, referred to in text, was in the original "this Title", meaning title 18 of the Revised Statutes, consisting of R.S. §§1674 to 1752, and insofar as classified to the Code, is classified to sections 4191, 4193 to 4197, 4200, 4204, 4205, 4207 to 4214, and 4216 to 4221 of this title. For complete classification of R.S. §§1674 to 1752 to the Code, see Tables.

CODIFICATION
R.S. §1689 derived from act Aug. 18, 1856, ch. 127, §31, 11 Stat. 64.
Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.
Section was formerly classified to section 1171 of this title, and prior thereto to section 83 of this title.

AMENDMENTS
1998—Pub. L. 105–277 inserted "and to such other United States citizen employees of the Department of State as may be designated by the Secretary of State pursuant to such regulations as the Secretary may prescribe" after "such officers".

Section, R.S. §4082, related to solemnization of marriages by consular officers of the United States in a foreign country.

CODIFICATION
Pub. L. 101–246, §123, which directed the repeal of section 31 of the Act of June 22, 1860 (12 Stat. 79; 22 U.S.C. 4192), was enacted as though repeal section 4082 of the Revised Statutes, which is classified to this section, to reflect the probable intent of Congress. Section 31 of the Act of June 22, 1860, was restated in section 4082 of the Revised Statutes and repealed by section 5596 of the Revised Statutes.

§ 4193. Protests
Consuls and vice consuls shall have the right, in the ports or places to which they are severally appointed, of receiving the protests or declarations which captains, masters, crews, passengers, or merchants, who are citizens of the United States, may respectively choose to make there; and also such as any foreigner may choose to make before them relative to the personal interest of any citizen of the United States.

(R.S. §1707; June 25, 1948, ch. 646, §39, 62 Stat. 992.)

CODIFICATION
R.S. §1707 derived from act Apr. 14, 1792, ch. 24, §2, 1 Stat. 255.
Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.
Section was formerly classified to section 1173 of this title, and prior thereto to section 73 of this title.

AMENDMENTS
1948—Act June 25, 1948, repealed second sentence relating to authenticated copies of consular acts received as evidence.

EFFECTIVE DATE OF 1948 AMENDMENT
Section 38 of act June 25, 1948, provided that the amendment made by that act is effective Sept. 1, 1948.
§ 4194. Lists and returns of seamen and vessels, etc.

Every consular officer shall keep a detailed list of all seamen and mariners shipped and discharged by him, specifying their names and the names of the vessels on which they are shipped and from which they are discharged, and the payments, if any, made on account of each so discharged; also of the number of the vessels arrived and departed, the amounts of their registered tonnage, and the number of their seamen and mariners, and of those who are protected, and whether citizens of the United States or not, and as nearly as possible the nature and value of their cargoes, and where produced, and shall make returns of the same, with their accounts and other returns, to the Secretary of Commerce.

(R.S. §1708; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736.)

CODIFICATION


Act Feb. 14, 1903, substituted “Secretary of Commerce and Labor” for “Secretary of the Treasury”. Act Mar. 4, 1913, substituted “Secretary of Commerce” for “Secretary of Commerce and Labor”.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1174 of this title, and prior thereto to section 74 of this title.

TRANSFER OF FUNCTIONS

Certain shipping and navigation functions of Secretary of Commerce transferred to Commandant of Coast Guard and Commissioner of Customs by Reorg. Plan No. 3 of 1946, §101 to 104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, 1098 set out in the Appendix to Title 5, Government Organization and Employees.

Functions of all officers of Department of the Treasury (which included Commandant of Coast Guard and Commissioner of Customs), and functions of all agencies and employees of Department, transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 28 of 1955, §§1, 2, eff. July 31, 1956, 15 F.R. 1935, 64 Stat. 1290, set out in the Appendix to Title 5, Government Organization and Employees.

Coast Guard transferred to Department of Transportation and functions, powers, and duties, relating to Coast Guard, of Secretary of the Treasury and of other offices and officers of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, §16(b)(1), Oct. 15, 1966, 80 Stat. 931. Section 2(b)(1) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14. See section 108 of Title 49, Transportation.

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.


EFFECTIVE DATE OF REPEAL

Repeal effective six months after Nov. 29, 1999, see section 1000(a)(7) [div. A, title II, §234(c)] of Pub. L. 106–113, set out as an Effective Date note under section 2715b of this title.

§ 4196. Notification of death of decedent; transmission of inventory of effects

For the information of the representative of the deceased, the consular officer, or, if no consular officer is present, a diplomatic officer, in the settlement of his estate shall immediately notify his death in one of the gazettes published in the consular district, and also to the Secretary of State, that the same may be notified in the State to which the deceased belonged; and he shall, as soon as may be, transmit to the Secretary of State an inventory of the effects of the deceased taken as before directed.

(R.S. §1710; July 12, 1940, ch. 618, 54 Stat. 760.)

CODIFICATION

R.S. §1710 derived from act Apr. 14, 1792, ch. 24, §1, 2 Stat. 255.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1176 of this title, and prior thereto to section 76 of this title.

AMENDMENTS

1940—Act July 12, 1940, substituted “the consular officer, or, if no consular officer is present, a diplomatic officer,” for “the consul or vice-consul.”.

§ 4197. Following testamentary directions; assistance to testamentary appointee

When a citizen of the United States dies in a foreign country and leaves, by any lawful testamentary disposition, special directions for the custody and management, by the consular officer, or, in his absence a diplomatic officer, within whose jurisdiction the death occurred, of the personal property in the foreign country which he possessed at the time of death, such officer shall, so far as the laws of the foreign country permit, strictly observe such directions if not contrary to the laws of the United States. If such citizen has named, by any lawful testamentary disposition, any other person than a consular officer or diplomatic officer to take charge of and manage such property, it shall be the duty of the officer, whenever required by the person so named, to give his official aid in whatever way may be practicable to facilitate the proceedings of such person in the lawful execution of his trust, and, so far as the laws of the country or treaty provisions permit, to protect the property of the deceased from any inter-
ference by the authorities of the country where such citizen died. To this end it shall be the duty of the consular officer, or if no consular officer is present a diplomatic officer, to safeguard the decedent’s property by placing thereon his official seal and to break and remove such seal only upon the request of the person designated by the deceased to take charge of and manage his property.

(R.S. §1711; July 12, 1940, ch. 618, 54 Stat. 760.)

**Codification**


Section was not enacted as part of the Foreign Service Act of 1960 which comprises this chapter.

Section was formerly classified to section 1177 of this title, and prior thereto to section 77 of this title.

**Amendments**

1940—Act July 12, 1940, amended section generally.

§ 4198. Bond as administrator or guardian; action on bond

No consular officer of the United States shall accept an appointment from any foreign state as administrator, guardian, or to any other office or trust for the settlement or conservation of estates of deceased persons or of their heirs or of persons under legal disabilities, without executing a bond, with security, to be approved by the Secretary of State, and in a penal sum to be fixed by him and in such form as he may prescribe, conditioned for the true and faithful performance of all his duties according to law and for the true and faithful accounting for delivering, and paying over to the persons thereto entitled of all moneys, goods, effects, and other property which shall come to his hands or to the hands of any other person to his use as such administrator, guardian, or in other fiduciary capacity. Said bond shall be deposited with the Secretary of the Treasury. In case of a breach of any such bond, any person injured by the failure of such officer faithfully to discharge the duties of his said trust according to law, may institute, and prior thereto to section 77 of this title.

**Codification**

Section was not enacted as part of the Foreign Service Act of 1960 which comprises this chapter.

Section was formerly classified to section 1179 of this title, and prior thereto to section 79 of this title.

**Amendments**

1940—Act July 12, 1940, amended section generally.

§ 4199. Penalty for failure to give bond and for embezzlement

Every consular officer who accepts any appointment to any office of trust mentioned in section 4198 of this title without first having complied with the provisions thereof by due execution of a bond as therein required, or who shall willfully fail or neglect to account for, pay over, and deliver any money, property, or effects so received to any person lawfully entitled thereto, after having been requested by the latter, his representative or agent so to do, shall be deemed guilty of embezzlement and shall be punishable by imprisonment for not more than five years and by a fine of not more than $5,000.

(June 30, 1902, ch. 1331, §2, 32 Stat. 547.)

**Codification**

Section was not enacted as part of the Foreign Service Act of 1960 which comprises this chapter.

Section was formerly classified to section 1179 of this title, and prior thereto to section 79 of this title.

§ 4200. Certification of invoices generally

No consular officer shall certify any invoice unless he is satisfied that the person making oath thereto is the person he represents himself to be, that he is a credible person, and that the statements made under such oath are true; and he shall, thereupon, by his certificate, state that he was so satisfied.

(R.S. §1715.)

**Codification**


Section was not enacted as part of the Foreign Service Act of 1960 which comprises this chapter.

Section was formerly classified to section 1180 of this title, and prior thereto to section 83 of this title.

§ 4201. Fees for certification of invoices

Fees for the consular certification of invoices shall be, and they are, included with the fees for official services for which the President is authorized by section 4219 of this title to prescribe rates or tariffs.

(Apr. 5, 1906, ch. 1366, §9, 34 Stat. 101.)

**Codification**

Section was not enacted as part of the Foreign Service Act of 1960 which comprises this chapter.

A further provision of section 9 of act Apr. 5, 1906, repealed R.S. §2853, which provided for certification of invoices of imported merchandise by the collector of the port, and R.S. §1721, which prescribed a fee of one dollar to be charged by the consul-general for the British North American provinces, for certifying invoices of goods not exceeding $100 in value.

Section was formerly classified to section 1181 of this title, and prior thereto to section 84 of this title.

§ 4202. Exaction of excessive fees for verification of invoices; penalty

The fee provided by law for the verification of invoices by consular officers shall, when paid, be held to be a full payment for furnishing blank forms of declaration to be signed by the shipper, and for making, signing, and sealing the certificate of the consular officer thereto; and any consular officer who, under pretense of charging for blank forms, advice, or clerical services in the preparation of such declaration or certificate, charges or receives any fee greater in amount than that provided by law for the ver-
§ 4203. Destruction of old invoices

The Secretary of State is authorized to cause, from time to time, the destruction of invoices that have been filed in the consular offices for a period of more than five years.

(Feb. 24, 1903, ch. 753, 32 Stat. 854.)

Codification

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1183 of this title, and prior thereto to section 88 of this title.

§ 4204. Restriction as to certificate for goods from countries adjacent to United States

No consular officer of the United States shall grant a certificate for goods, wares, or merchandise shipped from countries adjacent to the United States which have passed a consulate after purchase for shipment.

(R.S. § 1717.)

Codification


Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1184 of this title, and prior thereto to section 87 of this title.

§ 4205. Retention of papers of American vessels until payment of demands and wages

All consular officers are authorized and required to retain in their possession all the papers of vessels of the United States, which shall be deposited with them as directed by law, till payment shall be made of all demands and wages on account of such vessels.

(R.S. § 1718.)

Codification


Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1185 of this title, and prior thereto to section 88 of this title.

§ 4206. Fees for services to American vessels or seamen prohibited

No fees named in the tariff of consular fees prescribed by order of the President shall be charged or collected by consular officers for the official services to American vessels and seamen. Consular officers shall furnish the master of every such vessel with an itemized statement of such services performed on account of said vessel, with the fee so prescribed for each service, and make a detailed report to the Secretary of the Treasury of such services and fees, under such regulations as the Secretary of State may prescribe.

(June 26, 1884, ch. 121, §12, 23 Stat. 56.)

Codification

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Provisions of section 12 of act June 26, 1884 (this section), permitting the Secretary of the Treasury to allow consular officers who are paid in whole or in part by fees such compensation for their services as they would have received but for the prohibition in this section, were superseded by section 222 of said act and were omitted, as was a provision of said section appropriating a sum sufficient for the payment of the compensation herein mentioned.

Section was formerly classified to section 1186 of this title, and prior thereto to section 89 of this title.

§ 4207. Profits from dealings with discharged seamen; prohibition

No consular officer, nor any person under any consular officer shall make any charge or receive, directly or indirectly, any compensation, by way of commission or otherwise, for receiving or disbursing the wages or extra wages to which any seaman or mariner is entitled who is discharged in any foreign country, or for any money advanced to any such seaman or mariner who seeks relief from any consulate; nor shall any consular officer, or any person under any consular officer, be interested, directly or indirectly, in any profit derived from clothing, boarding or otherwise supplying or sending home any such seaman or mariner. Such prohibition as to profit, however, shall not be construed to relieve or prevent any such officer who is the owner of or otherwise interested in any vessel of the United States from transporting in such vessel any such seaman or mariner, or from receiving or being interested in such reasonable allowance as may be made for such transportation by law.

(R.S. § 1719; Apr. 5, 1906, ch. 1366, §3, 34 Stat. 100.)

Codification


Reference to “commercial agency” was omitted in view of the abolition of the grade of commercial agent by act Apr. 5, 1906.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1187 of this title, and prior thereto to section 90 of this title.

§ 4208. Valuation of foreign coins in payment of fees

Consuls, vice consuls, and consular agents in the Dominion of Canada, in the collection of official fees, shall receive foreign moneys at the rate given in the Treasury schedule of the value of foreign coins.

(R.S. § 1722.)
§ 4209. Exaction of excessive fees generally; penalty of treble amount

Whenever any consular officer collects, or knowingly allows to be collected for any service, any other or greater fees than are allowed by law for such service, he shall, besides his liability to refund the same, be liable to pay to the person by whom or in whose behalf the same are paid, treble the amount of the unlawful charge so collected, as a penalty, to be recovered with costs, in any proper form of action, by such person for his own use. And in any such case the Secretary of the Treasury may retain, out of the proceeds of any such suit, so far as may be necessary, the whole or any part of the fees collected for consular services.

(R.S. § 1723.)

§ 4210. Liability for uncollected fees

Every consul general, consul, or vice consul appointed to perform the duty of any such officer, who omits to collect any fees which he is entitled to charge for any official service, shall be liable to the United States for the whole or any part of the fees thereby omitted to be collected, as a penalty, on the same terms and in the same manner as the Government Accountability Office shall prescribe, of all such fees as they or any person in their behalf so collect.


Section 4212. R.S., §§ 1726, 1727, required receipts for fees collected for consular services.

Section 4213. R.S. § 1727, required registry of fees.


§ 4215. Notarial acts, oaths, affirmations, affidavits, and depositions; fees

Every consular officer of the United States is required, whenever application is made to him therefor, within the limits of his consulate, to administer to or take from any person any oath, affirmation, affidavit, or deposition, and to perform any other notarial act which any notary public is required or authorized by law to do within the United States; and for every such notarial act performed he shall charge in each instance the appropriate fee prescribed by the President under section 4219 of this title.


Codification

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1195 of this title, and prior thereto to section 98 of this title.

Amendments

§ 4216. Posting rates of fees

It shall be the duty of all consular officers at all times to keep posted up in their offices, respectively, in a conspicuous place, and subject to the examination of all persons interested therein, a copy of such rates or tariffs as shall be in force.

(R.S. § 1731.)

CODIFICATION
Section was not enacted as part of the Foreign Service Act of 1900 which comprises this chapter.
Section was formerly classified to section 1197 of this title, and prior thereto to section 101 of this title.

§ 4217. Embezzlement of fees or of effects of American citizens

Every consular officer who willfully neglects to render true and just quarterly accounts and returns of the business of his office, and of moneys received by him for the use of the United States, or who neglects to pay over any balance of said moneys due to the United States at the expiration of any quarter, before the expiration of the next succeeding quarter, or who shall receive money, property, or effects belonging to a citizen of the United States and shall not within a reasonable time after demand made upon him by the Secretary of State or by such citizen, his executor, administrator, or legal representative, account for and pay over all moneys, property, and effects, less his lawful fees, due to such citizen, shall be deemed guilty of embezzlement, and shall be punishable by imprisonment for not more than five years, and by a fine of not more than $2,000.

(R.S. § 1734; Dec. 21, 1898, ch. 36, §3, 30 Stat. 771.)

CODIFICATION
Section was not enacted as part of the Foreign Service Act of 1900 which comprises this chapter.
Section was formerly classified to section 1198 of this title, and prior thereto to section 102 of this title.

§ 4218. False certificate as to ownership of property

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

(R.S. § 1737; Apr. 5, 1906, ch. 1366, §3, 34 Stat. 100.)

CODIFICATION
R.S. § 1737 derived from act Feb. 22, 1803, ch. 9, §7, 2 Stat. 204.
References to “commercial agency” and “vice-commercial agency” were omitted in view of the abolition of the grade of commercial agent by act Apr. 5, 1906.

§ 4219. Regulation of fees by President

The President is authorized to prescribe, from time to time, the rates or tariffs of fees to be charged for official services, and to designate what shall be regarded as official services, besides such as are expressly declared by law, in the business of the several embassies, legations, and consulates, and to adapt the same, by such differences as may be necessary or proper, to each embassy, legation, or consulate; and it shall be the duty of all officers and persons connected with such embassies, legations, and consulates to collect for such official services such and only such fees as may be prescribed for their respective embassies, legations, and consulates, and such rates or tariffs shall be reported annually to Congress.

(R.S. § 1745; Apr. 5, 1906, ch. 1366, §3, 34 Stat. 100.)

CODIFICATION
References to “commercial agencies” and “commercial agency” were omitted in view of the abolition of the grade of commercial agent by act Apr. 5, 1906.

Section was not enacted as part of the Foreign Service Act of 1900 which comprises this chapter.
Section was formerly classified to section 1201 of this title, and prior thereto to section 127 of this title.

Ex. Ord. No. 10718. DELEGATION OF AUTHORITY TO SECRETARY OF STATE

Ex. Ord. No. 10718, June 27, 1957, 22 F.R. 4632, provided:
Section 1. There is hereby delegated to the Secretary of State the authority vested in the President by section 1745 of the Revised Statutes of the United States (22 U.S.C. 1201) [this section] to prescribe, from time to time, the rates or tariffs of fees and the regulations applicable thereto; but authority delegated by section 1 of this order shall be deemed to be included within the authority delegated by section 1 of this order.
Section 3. The rates or tariffs of fees and the regulations prescribed and any other actions taken by the Secretary of State under authority of this order shall be published in the Federal Register.

Dwight D. Eisenhower.

§ 4220. Medium for payment of fees

All fees collected by diplomatic and consular officers for and in behalf of the United States shall be collected in the coin of the United States, or at its representative value in exchange.

(R.S. § 1746.)

CODIFICATION
Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter. Section was formerly classified to section 1202 of this title, and prior thereto to section 1201 of this title.

§ 4221. Depositions and notarial acts; perjury

Every secretary of embassy or legation and consular officer is authorized, whenever he is required or deems it necessary or proper so to do, at the post, port, place, or within the limits of his embassy, legation, or consulate, to administer or take from any person an oath, affirmation, affidavit, or deposition, and to perform any notarial act which any notary public is required or authorized by law to do within the United States. At any post, port, or place where there is no consular officer, the Secretary of State may authorize any other officer or employee of the United States Government who is a United States citizen serving overseas, including any contract employee of the United States Government, to perform such acts, and any such contractor so authorized shall not be considered to be a consular officer. Every such oath, affirmation, affidavit, deposition, and notarial act administered, sworn, affirmed, taken, had, or done, by or before any such officer, when certified under his hand and seal of office, shall be valid, and of like force and effect within the United States, to all intents and purposes, as if done, by or before any such officer, when certified by the lawful custodian of such document with a false or counterfeit seal or signature thereof, shall be admitted in evidence without further proof of any such seal or signature being genuine or of the official character of such person; and if any person shall forge any such seal or signature, or shall tender in evidence any such document with a false or counterfeit seal or signature thereto, knowing the same to be false or counterfeit, he shall be deemed and taken to be guilty of a misdemeanor and on conviction shall be imprisoned not exceeding three years nor less than one year, and fined, in a sum not to exceed $3,000, and may be charged, proceeded against, tried, convicted, and dealt with therefor in the district where he may be arrested or in custody. Pursuant to such regulations as the Secretary of State may prescribe, the Secretary may designate any other employee of the Department of State who is a citizen of the United States to perform any notarial function authorized to be performed by a consular officer of the United States under this Act.


REFERENCES IN TEXT

This Act, referred to in text, probably means the act of Aug. 18, 1856, ch. 127, 11 Stat. 52, as amended. That act was incorporated into the Revised Statutes as R.S. §§208, 211, 1747 to 1764, 1680, 1683 to 1687, 1689, 1690, 1692, 1695, 1697, 1699, 1700, 1701, 1703, 1706, 1706, 1711, 1713, 1715, 1718, 1719, 1730, 1731, 1735, 1738 to 1741, 1743 to 1748, 1750 to 1752, 4307, 4313, 4350, 4581, 4583, and 4584. For complete classification of those sections of the Revised Statutes to the Code, see Tables.

CODIFICATION


Reference to “commercial agency” was omitted in view of the abolition of the grade of commercial agent by act Apr. 5, 1906.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter. Section was formerly classified to section 1203 of this title, and prior thereto to section 131 of this title.

AMENDMENTS

1994—Pub. L. 103–415, which directed amendment of section 24 of the Act of August 18, 1856 (11 Stat. 61, 22 U.S.C. 4221) by inserting at end “Pursuant to such regulations as the Secretary of State may prescribe, the Secretary may designate any other employee of the Department of State who is a citizen of the United States to perform any notarial function authorized to be performed by a consular officer of the United States under this Act.”, was executed to this section, which is section 1750 of the Revised Statutes, to reflect the probable intent of Congress. Section 24 of the Act of Aug. 18, 1856, was restated in section 1750 of the Revised Statutes and repealed by section 5596 of the Revised Statutes.

§ 4222. Authentication of documents of State of Vatican City by consular officer in Rome

Until the United States shall have consular officer resident in the State of the Vatican City, a copy of any document of record or on file in a public office of said State of the Vatican City, certified by the lawful custodian of such document, may be authenticated, as provided in section 1741 of title 28, by a consular officer of the United States resident in the city of Rome, Kingdom of Italy, and such document or record shall, when so certified and authenticated, be admissible in evidence in any court of the United States.

(June 20, 1936, ch. 640, §6A, as added June 25, 1938, ch. 682, 52 Stat. 1163.)

CODIFICATION

§ 4223. General duty to account for fees

All fees, official or unofficial, received by any officer in the Consular Service for services rendered in connection with the duties of his office or as a consular officer, including fees for notarial services, and fees for taking depositions, executing commissions or letters rogatory, settling estates, receiving or paying out moneys, caring for or disposing of property, shall be accounted for and paid into the Treasury of the United States, and the sole and only compensation of such officers shall be by salaries fixed by law. And vice-consuls, in addition to such compensation as they may be entitled to receive as consuls or clerks, may receive such portion of the salaries of the consul-general or consuls for whom they act as shall be provided by regulation.


Codification

Compensation provisions pertaining to the positions of vice-consul-general, deputy consul-general, and deputy consuls were omitted from this section on the authority of act Feb. 5, 1915. Section was not enacted as a part of the Foreign Service Act of 1980 which comprises this chapter. Section was formerly classified to section 99 of this title.

Amendments

1946—Act Aug. 13, 1946, struck out “but this shall not apply to consular agents, who shall be paid one-half of the fees received in their offices, up to a maximum sum of one thousand dollars in any one year, the other half being accounted for and paid into the Treasury of the United States.”

Effective Date of 1946 Amendment

Amendment by act Aug. 13, 1946, effective three months after Aug. 13, 1946.

Repeals


§ 4224. Fees; accounting; stamps

The provisions of sections 1196 and 4223 of this title, relative to official fees and the method of accounting therefor shall apply to diplomatic officers below the grade of minister and to consular officers.


References in Text

Section 1196 of this title, referred to in text, was repealed by act June 28, 1955, ch. 196, 69 Stat. 187.

Codification

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

1 See References in Text note below.
(U.S.C., title 31, sec. 496)"], 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. Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 810 of this title, and prior thereto to section 23 of this title.

**AMENDMENTS**

1972—Pub. L. 92–310 struck out provisions which required district accounting and disbursing officers and their agents to be bonded.

**EFFECTIVE DATE**

Section effective July 1, 1931, see section 7 of act Feb. 23, 1931, set out as an Effective Date of 1931 Amendment note under section 4224 of this title.

**TRANSFER OF FUNCTIONS**

Function of disbursement of moneys of the United States of any agency (with certain exceptions) transferred to Treasury Department by Ex. Ord. No. 6166, § 4, June 10, 1933, set out as a note under section 901 of Title 31, Money and Finance. Section 4 of Ex. Ord. No. 6166 was repealed by Pub. L. 97–258, §5(b), Sept. 13, 1982, 96 Stat. 1086, the first section of which enacted Title 31, Money and Finance. See section 3321 of Title 31.

§ 4226. Fees and official monies from diplomatic missions, consular offices and district accounting and disbursing offices; disposition

All fees and other official monies received by diplomatic missions or consular offices or by the district accounting and disbursing offices provided in section 4225 of this title, may be transmitted through the Department of State for deposit in the United States Treasury, or may be used in payment of salaries, allowances, and current expenses of said missions and offices, under such rules and regulations as the President may from time to time prescribe; the residue, if any, to be transmitted through the Department of State for deposit in the United States Treasury. Section 3302(b) of title 31 is hereby amended.

(May 24, 1924, ch. 182, §36, as added Feb. 23, 1931, ch. 276, §7, 46 Stat. 1216.)

**CODIFICATION**

"Section 3302(b) of title 31" substituted in text for "Section 3617 of the Revised Statutes of the United States (U.S.C., title 31, sec. 484)" 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.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 814 of this title, and prior thereto to section 23 of this title.

**EFFECTIVE DATE**

Section effective July 1, 1931, see section 7 of act Feb. 23, 1931, set out as an Effective Date of 1931 Amendment note under section 4224 of this title.

**CHAPTER 53—AUTHORITIES RELATING TO THE REGULATION OF FOREIGN MISSIONS**

Sec.

4301. Congressional declaration of findings and policy.

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4304. Provision of benefits.

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4309. Application to public international organizations and official missions to such organizations.


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4313. Severability.

4314. Extraordinary protective services.

4315. Use of foreign mission in manner incompatible with its status as foreign mission.

4316. Application of travel restrictions to personnel of certain countries and organizations.

§ 4301. Congressional declaration of findings and policy

(a) Findings

The Congress finds that the operation in the United States of foreign missions and public international organizations and the official missions to such organizations, including the permissible scope of their activities and the location and size of their facilities, is a proper subject for the exercise of Federal jurisdiction.

(b) Policy

The Congress declares that it is the policy of the United States to support the secure and efficient operation of United States missions abroad, to facilitate the secure and efficient operation in the United States of foreign missions and public international organizations and the official missions to such organizations, and to assist in obtaining appropriate benefits, privileges, and immunities for those missions and organizations and to require their observance of corresponding obligations in accordance with international law.

(c) Treatment of foreign missions in United States

The treatment to be accorded to a foreign mission in the United States shall be determined by the Secretary after due consideration of the benefits, privileges, and immunities provided to missions of the United States in the country or territory represented by that foreign mission, as well as matters relating to the protection of the interests of the United States.


**AMENDMENTS**

1985—Subsec. (c). Pub. L. 99–93 inserted "as well as matters relating to the protection of the interests of the United States".

**EFFECTIVE DATE**

Section 204 of title II of Pub. L. 97–241 provided that: "The amendments made by this title [see Short Title note below] shall take effect on October 1, 1982."

**SHORT TITLE OF 1983 AMENDMENT**

Pub. L. 98–164, title VI, §601, Nov. 22, 1983, 97 Stat. 1042, provided that: "This title [enacting section 4304a