

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], whichever is later.”

§ 4010. Separation for cause; suspension

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

(1) The Secretary may separate any member from the Service for such cause as will promote the efficiency of the Service, including upon receiving notification from the Bureau of Diplomatic Security that such member has engaged in criminal misconduct, such as murder, rape, or other sexual assault.

(2)(A) Except as provided in subparagraph (B), whenever the Secretary decides under paragraph (1) to separate, on the basis of misconduct, any member of the Service (other than a United States citizen employed under section 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 conducted in accordance with the hearing procedures applicable to grievances under section 4136 of this title and shall be in lieu of any other administrative procedure authorized or required by this or any other Act. Section 4140 of this title shall apply to proceedings under this paragraph.

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

(b) Refund of contributions to Fund; annuity election

Any participant in the Foreign Service Retirement and Disability System who is separated under subsection (a) shall be entitled to receive a refund as provided in section 4055 of this title of the contributions made by the participant to the Foreign Service Retirement and Disability Fund. Except in cases where the Secretary de-

termines that separation was based in whole or in part on the ground of disloyalty to the United States, a participant who has at least 5 years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military and naval service) may elect, in lieu of such refund, to an annuity, computed under section 4046 of this title, commencing at age 60.

(c) Suspension

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

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

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

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

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

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

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

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

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

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

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

(B) the Board may not exercise the authority provided under section 4136(8) of this title.

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

(6) Any member of the Service suspended under paragraph (1)(B) may be suspended without pay only after a final written decision is provided to such member pursuant to paragraph (2).

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

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

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

(Pub. L. 96-465, title I, § 610, Oct. 17, 1980, 94 Stat. 2098; Pub. L. 100-204, title I, § 181(d), Dec. 22, 1987,

101 Stat. 1364; Pub. L. 101-167, title V, §586(b), Nov. 21, 1989, 103 Stat. 1252; Pub. L. 101-246, title I, §143, Feb. 16, 1990, 104 Stat. 36; Pub. L. 102-138, title I, §143(a), Oct. 28, 1991, 105 Stat. 668; Pub. L. 103-415, §1(h)(2), Oct. 25, 1994, 108 Stat. 4300; Pub. L. 105-277, div. G, subdiv. B, title XXIII, §2313, Oct. 21, 1998, 112 Stat. 2681-827; Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title III, §328], Nov. 29, 1999, 113 Stat. 1536, 1501A-438; Pub. L. 107-228, div. A, title III, §314(a), Sept. 30, 2002, 116 Stat. 1378; Pub. L. 114-323, title IV, §415(a), Dec. 16, 2016, 130 Stat. 1933; Pub. L. 117-81, div. E, title LIII, §5317, Dec. 27, 2021, 135 Stat. 2367; Pub. L. 117-263, div. I, title XCII, §9202(b)(1), Dec. 23, 2022, 136 Stat. 3864.)

Editorial Notes

AMENDMENTS

2022—Subsec. (a)(1). Pub. L. 117-263 struck out “decide to” after “The Secretary may” and inserted before period at end “, including upon receiving notification from the Bureau of Diplomatic Security that such member has engaged in criminal misconduct, such as murder, rape, or other sexual assault”.

2021—Subsec. (c)(1). Pub. L. 117-81, §5317(1), substituted “indefinitely suspend without duties” for “suspend” in introductory provisions.

Subsec. (c)(5), (6). Pub. L. 117-81, §5317(3), added pars. (5) and (6). Former par. (5) redesignated (7).

Subsec. (c)(7). Pub. L. 117-81, §5317(2), (4), redesignated par. (5) as (7), struck out subpar. (A) designation before “The term”, substituted “this subsection, the term” for “this subsection: The term”, redesignated cls. (i) and (ii) as subpars. (A) and (B), realigned margins, and struck out former subpar. (B) which read as follows: “The terms ‘suspend’ and ‘suspension’ mean placing a member of the Foreign Service in a temporary status without duties.”

2016—Pub. L. 114-323, §415(a)(1), substituted “Separation for cause; suspension” for “Separation for cause” in section catchline.

Subsec. (c). Pub. L. 114-323, §415(a)(2), added subsec. (c).

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 pars. (2) to (4) and struck out former pars. (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.

1999—Subsec. (a)(6). Pub. L. 106-113 added par. (6).

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 rea-

sonable 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(8) 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.

1989—Subsec. (a)(3) to (5). Pub. L. 101-167 added pars. (3) to (5).

1987—Subsec. (a)(2). Pub. L. 100-204 inserted after first sentence “If such cause 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.”

Statutory Notes and Related Subsidiaries

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.

UPDATE TO FOREIGN AFFAIRS MANUAL

Pub. L. 117-263, div. I, title XCII, §9202(b)(2), Dec. 23, 2022, 136 Stat. 3864, provided that: “The Director of Global Talent Management shall—

“(A) update the ‘Grounds for Disciplinary Action’ and ‘List of Disciplinary Offenses and Penalties’ sections of the Foreign Affairs Manual to reflect the amendments made under paragraph (1) [amending this section]; and

“(B) communicate such updates to Department [of State] staff through publication in Department Notices.”

EXPEDITED SEPARATION OUT

Pub. L. 105-277, div. G, subdiv. B, title XXIII, §2311(b), Oct. 21, 1998, 112 Stat. 2681-826, 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”

Pub. L. 101-167, title V, §586(c), Nov. 21, 1989, 103 Stat. 1252, provided that for purposes of amendments by section 586(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 re-

peal by Pub. L. 102-138, title I, §143(c), Oct. 28, 1991, 105 Stat. 668.

§ 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 career 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 or to appeal to the Merit Systems Protection Board under procedures prescribed by the Board. Grievances under subchapter XI 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.

(Pub. L. 96-465, title I, §611, as added Pub. L. 103-236, title I, §181(a)(2), Apr. 30, 1994, 108 Stat. 417; amended Pub. L. 103-415, §1(ii), Oct. 25, 1994, 108 Stat. 4303.)

Editorial Notes

PRIOR PROVISIONS

A prior section 611 of Pub. L. 96-465 was renumbered section 612 and is classified to section 4011 of this title.

AMENDMENTS

1994—Pub. L. 103-415 made technical amendment relating to style of section catchline.

Statutory Notes and Related Subsidiaries

EMPLOYMENT ASSISTANCE REFERRAL SYSTEM FOR CERTAIN MEMBERS OF FOREIGN SERVICE

Pub. L. 103-236, title I, §179, Apr. 30, 1994, 108 Stat. 415, as amended by Pub. L. 103-415, §1(g), Oct. 25, 1994, 108 Stat. 4300, provided that:

“(a) REFERRAL SYSTEM.—Certain members of the Foreign Service (as described in subsection (b)), may participate in the Office of Personnel Management's Interagency Placement programs or any successor program. Such members of the Foreign Service shall be treated in the same manner as employees participating in such a program as of the effective date of this Act [Apr. 30, 1994].

“(b) CERTAIN MEMBERS OF THE FOREIGN SERVICE.—For purposes of this section, the term ‘members of the Foreign Service’ means any individuals holding career or

career candidate appointments under chapter 3 of the Foreign Service Act of 1980 [22 U.S.C. 3941 et seq.]”

CONSULTATION WITH DIRECTOR OF OFFICE OF PERSONNEL MANAGEMENT PRIOR TO PRESCRIBING REGULATIONS FOR REDUCTIONS IN FORCE

Pub. L. 103-236, title I, §181(c), Apr. 30, 1994, 108 Stat. 418, as amended by Pub. L. 103-415, §1(i), Oct. 25, 1994, 108 Stat. 4301, provided that: “The Secretary of State (or in the case of any other agency authorized by law to utilize the Foreign Service personnel system, the head of that agency) shall consult with the Director of the Office of Personnel Management before prescribing regulations for reductions in force under section 611 of the Foreign Service Act of 1980 [22 U.S.C. 4010a] (as added by subsection (a) of this section), and shall publish such regulations.”

§ 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.

(Pub. L. 96-465, title I, §612, formerly §611, Oct. 17, 1980, 94 Stat. 2099; renumbered §612 and amended Pub. L. 103-236, title I, §§180(a)(7), 181(a)(1), Apr. 30, 1994, 108 Stat. 416.)

Editorial Notes

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 family member of a Government employee serving under a local 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.

(Pub. L. 96-465, title I, §613, formerly §612, Oct. 17, 1980, 94 Stat. 2099; renumbered §613, Pub. L. 103-236, title I, §181(a)(1), Apr. 30, 1994, 108 Stat. 416.)

Editorial Notes

PRIOR PROVISIONS

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