

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

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

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

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

“(b) **WAIVER.**—The Secretary of State may waive the applicability of subsection (a) on a case-by-case basis with respect to an employee if he determines that it is vital to the national security of the United States to do so and he reports such waiver to the appropriate committees of the Congress.”

TEMPORARY RETIREMENT CONTRIBUTIONS AND PROCEDURES FOR CERTAIN PARTICIPANTS

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

Executive Documents

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.

§ 4042. Maintenance of Fund

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

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

Editorial Notes

REFERENCES IN TEXT

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

AMENDMENTS

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

Statutory Notes and Related Subsidiaries

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 Effect-

tive 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), 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), 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) is not a participant in this System.

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

Editorial Notes

REFERENCES IN TEXT

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

AMENDMENTS

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

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

Statutory Notes and Related Subsidiaries

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 Effect-

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

§ 4044. Definitions

As used in this part, unless otherwise specified, the term—

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

(2) “child” means an individual—

(A) who—

(i) is an offspring or adopted child of the participant,

(ii) is a stepchild or recognized natural child of the participant and who received more than one-half support from the participant, or

(iii) lived with the participant, for whom a petition of adoption was filed by the participant, and who is adopted by the surviving spouse of the participant after the death of the participant;

(B) who is unmarried; and

(C) who—

(i) is under the age of 18 years,

(ii) is a student under the age of 22 years (for purposes of this clause, an individual whose 22d birthday occurs before July 1 or after August 31 of the calendar year in which that birthday occurs, and while the individual is a student, is deemed to become 22 years of age on the first July 1 which occurs after that birthday), or

(iii) is incapable of self-support because of a physical or mental disability which was incurred before the individual reached the age of 18 years;

(3) “court” means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court as defined by section 1301(3) of title 25;

(4) “court order” means any court decree of divorce or annulment, or any court order or court approved property settlement agreement incident to any court decree of divorce or annulment;

(5) “Foreign Service normal cost” means the level percentage of payroll required to be deposited in the Fund to meet the cost of benefits payable under the System (computed in accordance with generally accepted actuarial practice on an entry-age basis) less the value of retirement benefits earned under another retirement system for Government employees and less the cost of credit allowed for military and naval service;

(6) “former spouse” means a former wife or husband of a participant or former participant who was married to such participant for not less than 10 years during periods of service by that participant which are creditable under section 4056 of this title;

(7) “Fund balance” means the sum of—

(A) the investments of the Fund calculated at par value, plus

(B) the cash balance of the Fund on the books of the Treasury;

(8) “lump-sum credit” means the compulsory and special contributions to the credit of a participant or former participant in the Fund plus interest on such contributions at 4 percent a year compounded annually to December 31, 1976, and after such date, for a participant who separates from the Service after completing at least 1 year of civilian service and before completing 5 years of such service, at the rate of 3 percent per year to the date of separation (except that interest shall not be paid for a fractional part of a month in the total service or on compulsory and special contributions from an annuitant for recall service or other service performed after the date of separation which forms the basis for annuity);

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

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

(B) in the Regular or Reserve Corps¹ 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 that participant is of (B) the total number of years of such creditable service (creditable under part I or II);

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

(A) a participant or former participant; and

(B) his or her spouse or former spouse;

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

(13) “surviving spouse” means the surviving wife or husband of a participant or annuitant who was married to the participant or annuitant for at least 9 months immediately preceding his or her death or is a parent of a child born of the marriage, except that the require-

¹ See Change of Name note below.