

8338 of title 5, if the participant had been covered under the Civil Service Retirement System rather than subject to this subchapter while a member of the Service, may receive an annuity under section 8336 or 8338, notwithstanding section 8333(b) of title 5, if all contributions transferred to the Fund under section 4045(c)(1) of this title, as well as all contributions withheld from the participant's pay or contributed by the employer, and deposited into the Fund during the period he or she was subject to this subchapter, including interest on these amounts, are transferred to the Civil Service Retirement and Disability Fund effective on the date the participant separates from the Service.

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

Editorial Notes

AMENDMENTS

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

Statutory Notes and Related Subsidiaries

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.

§ 4052. Mandatory retirement

(a)(1) Except as provided in subsection (b), any participant shall be retired from the Service at the end of the month in which the participant has reached age 65 and has at least 5 years of service credit toward retirement under the System (excluding military and naval service), and shall receive retirement benefits in accordance with section 4046 of this title.

(2) Notwithstanding paragraph (1)—

(A) 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 who would have been eligible for retirement pursuant to either section 8336(c) or 8412(d)(1) 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 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) 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) may be retained on active service for a period not to exceed 5 years.

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

(Pub. L. 96-465, title I, §812, Oct. 17, 1980, 94 Stat. 2113; Pub. L. 101-513, title V, §587(b), Nov. 5, 1990, 104 Stat. 2056; Pub. L. 102-499, §4(c), Oct. 24, 1992, 106 Stat. 3265; Pub. L. 105-382, §3, Nov. 13, 1998, 112 Stat. 3408; Pub. L. 117-225, §3(b)(2)(B)(ii), Dec. 9, 2022, 136 Stat. 2296.)

Editorial Notes

REFERENCES IN TEXT

Section 4(a)(2) of the Department of State Special Agents Retirement Act of 1998, referred to in subsec. (a)(2)(A), is section 4(a)(2) of Pub. L. 105-382, which is set out as a note under section 4044 of this title.

AMENDMENTS

2022—Subsec. (a)(2)(B). Pub. L. 117-225, which directed amendment of title VIII of the Foreign Service Act of 1980 by inserting “(1)” after “or 8412(d)” in subsec. (a)(2)(B) of this section, was executed as if the amendment had been directed to chapter 8 of title I of the Foreign Service Act of 1980, to reflect the probable intent of Congress.

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.”

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

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by Pub. L. 117-225 effective Dec. 9, 2022, and applicable to an individual who suffers an illness or injury described in certain Code provisions on or after the date that is 2 years after Dec. 9, 2022, see section 3(f) of Pub. L. 117-225, set out as a note under section 8336 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-382 effective Nov. 13, 1998, 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.

§ 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) and is subsequently employed by the United States Government, thereafter, shall be eligible to retire only under the terms of the applicable retirement system.

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

Editorial Notes

AMENDMENTS

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

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

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

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

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

tired from the Service and receive retirement benefits in accordance with section 4046 of this title.”

§ 4054. Former spouses

(a) Living Service members

(1) Unless otherwise expressly provided by any spousal agreement or court order under section 4060(b)(1) of this title, a former spouse of a participant or former participant is entitled to an annuity if such former spouse was married to the participant for at least 10 years during service of the participant which is creditable under this subchapter with at least 5 of such years occurring while the participant was a member of the Foreign Service and—

(A) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

(B) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 50 percent of such annuity.

For the purposes of this paragraph, the term “creditable service” means service which is creditable under part I or II.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

(3) The annuity of a former spouse under this subsection commences on the later of the day the participant upon whose service the annuity is based becomes entitled to an annuity under this part or the first day of the month in which the divorce or annulment involved becomes final. The annuity of such former spouse and the right thereto terminate on—

(A) the last day of the month before the former spouse dies or remarries before 60 years of age; or

(B) the date the annuity of the participant terminates (except in the case of an annuity subject to paragraph (5)(B)).

(4) No spousal agreement or court order under section 4060(b)(1) of this title involving any participant may provide for an annuity or any combination of annuities under this subsection which exceeds the annuity of the participant, nor may any such court order relating to an annuity under this subsection be given effect if it is issued more than 24 months after the date the divorce or annulment involved becomes final.

(5)(A) The annuity payable to any participant shall be reduced by the amount of an annuity under this subsection paid to any former spouse based upon the service of that participant. Such reduction shall be disregarded in calculating the survivor annuity for any spouse, former spouse, or other survivor under this part, and in calculating any reduction in the annuity of the participant to provide survivor benefits under subsection (b) or section 4046(b)(3) of this title.

(B) If any annuitant whose annuity is reduced under subparagraph (A) is recalled to service under section 3948 of this title, or reinstated or reappointed in the Service in the case of a recovered disability annuitant or if any annuitant is reemployed as provided for under section 4064 of