

out regard to whether they are subject to title II of the Social Security Act [42 U.S.C. 401 et seq.].

(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, 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.) (determined without regard to any deposit or redeposit requirement under any such part, subchapter, or title, 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) are not participants in the System, except to the extent provided for under title III of the Federal Employees' Retirement System Act of 1986 pursuant to an election under such title to become subject to this part (under regulations issued by the Secretary of State pursuant to section 4071i of this title).

(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 3946 of this title.

(Pub. L. 96-465, title I, § 853, as added Pub. L. 99-335, title IV, § 415, June 6, 1986, 100 Stat. 616; amended Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103-178, title II, § 204(b)(1), Dec. 3, 1993, 107 Stat. 2033.)

Editorial Notes

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a) and (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. 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.

The Central Intelligence Agency Retirement Act, referred to in subsec. (c), is Pub. L. 88-643, as revised generally by Pub. L. 102-496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3196. Title II of the Act is classified generally to subchapter II (§ 2011 et seq.) of chapter 38 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 50 and Tables.

The Federal Employees' Retirement System Act of 1986, referred to in subsec. (c), is Pub. L. 99-335, June 6, 1986, 100 Stat. 514. Title III of the Federal Employees' Retirement System Act of 1986 amended sections 3121 and 6103 of Title 26, Internal Revenue Code, section 1005 of Title 39, Postal Service, and section 410 of Title 42, The Public Health and Welfare, enacted provisions set out as notes under sections 8331, 8401, 8432, and 8472 of Title 5, Government Organization and Employees, and section 6103 of Title 26, and amended provisions set out as a note under section 8331 of Title 5. For complete

classification of this Act to the Code, see Short Title note set out under section 8401 of Title 5 and Tables.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103-178 substituted “the Central Intelligence Agency Retirement Act (50 U.S.C. 2011 et seq.)” for “the Central Intelligence Agency Retirement Act of 1964 for Certain Employees”.

1986—Subsec. (a). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

§ 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), 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 (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 with respect to any service described in subsection (a)(3) 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) for which retirement deductions under part I 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:

3.25	January 1, 1999, to December 31, 1999.
3.4	January 1, 2000, to December 31, 2000.

(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 84 of title 5) or under title III of the Central Intelligence Agency Retirement Act (50 U.S.C. 2151 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 be in effect if the participant were in a pay status. The participant's employing Member or office in the Congress shall make a contribution (from the appropriation or fund which is used for payment of the salary of the participant) determined under section 4071f(a) of this title 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.

(Pub. L. 96-465, title I, § 854, as added Pub. L. 99-335, title IV, § 415, June 6, 1986, 100 Stat. 616; amended Pub. L. 99-556, title IV, § 405, Oct. 27, 1986, 100 Stat. 3137; Pub. L. 100-238, title II, § 242, Jan. 8, 1988, 101 Stat. 1776; Pub. L. 103-178, title II, § 204(b)(2), Dec. 3, 1993, 107 Stat. 2033; Pub. L. 105-33, title VII, § 7001(e)(1)(B), Aug. 5, 1997, 111

Stat. 661; Pub. L. 106-346, § 101(a) [title V, § 505(e)(2)], Oct. 23, 2000, 114 Stat. 1356, 1356A-54.)

Editorial Notes

REFERENCES IN TEXT

Section 204(a)(2) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, referred to in subsec. (a)(2), is section 204(a)(2) of Pub. L. 98-168, which is set out as a note under section 8331 of Title 5, Government Organization and Employees.

Section 414 of the Federal Employees' Retirement System Act of 1986, referred to in subsec. (a)(3), is section 414 of Pub. L. 99-335, title IV, June 6, 1986, 100 Stat. 614, which amended section 4043 of this title.

The Central Intelligence Agency Retirement Act, referred to in subsecs. (a)(3) and (d), is Pub. L. 88-643, as revised generally by Pub. L. 102-496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3196. Titles II and III of the Act are classified generally to subchapters II (§ 2011 et seq.) and III (§ 2151 et seq.), respectively, of chapter 38 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 50 and Tables.

The Peace Corps Act, referred to in subsec. (c)(1)(A), is Pub. L. 87-293, Sept. 22, 1961, 75 Stat. 612, which is classified principally to chapter 34 (§ 2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

The Economic Opportunity Act of 1964, referred to in subsec. (c)(1)(B), is Pub. L. 88-452, Aug. 20, 1964, 73 Stat. 508. Part A of title VIII of the Act is part A of title VIII of Pub. L. 88-452, as added by Pub. L. 90-222, title I, § 110, Dec. 23, 1967, 81 Stat. 722, which was classified generally to part A (§ 2992 et seq.) of subchapter VIII of chapter 34 of Title 42, The Public Health and Welfare, prior to its repeal by Pub. L. 93-113, title VI, § 603, Oct. 1, 1973, 87 Stat. 417. See sections 4951 et seq., 5042(13)(A), and 5055 of Title 42.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (c)(1)(C), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394. Parts A and C of title I of the Act are classified generally to parts A (§ 4951 et seq.) and C (§ 4991 et seq.), respectively, of subchapter I of chapter 66 of Title 42, The Public Health and Welfare. Part B of title I of the Act, which had been classified generally to part B (§ 4971 et seq.) of subchapter I of chapter 66 of Title 42, was repealed by Pub. L. 111-13, title II, § 2121, Apr. 21, 2009, 123 Stat. 1584. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of Title 42 and Tables.

AMENDMENTS

2000—Subsec. (c)(1). Pub. L. 106-346, in concluding provisions, substituted "December 31, 2000" for "December 31, 2002", and in table in concluding provisions, struck out item at end relating to service period January 1, 2001, to December 31, 2002.

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 for a period of prior satisfactory service as—

"(1) a volunteer or volunteer leader under the Peace Corps Act (22 U.S.C. 2501 et seq.),

"(2) a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, or

"(3) a full-time volunteer for a period of service of at least one year's duration under part A, B, 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 (as 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."

1993—Subsec. (a)(3). Pub. L. 103-178, § 204(b)(1), substituted "the Central Intelligence Agency Retirement

¹ See References in Text note below.

Act (50 U.S.C. 2011 et seq.)” for “the Central Intelligence Agency Retirement Act of 1964 for Certain Employees”.

Subsec. (d). Pub. L. 103-178, §204(b)(2)(B), substituted “the Central Intelligence Agency Retirement Act (50 U.S.C. 2151 et seq.)” for “the Central Intelligence Agency Retirement Act of 1964 for Certain Employees”.

1988—Subsec. (e). Pub. L. 100-238 struck out “matching” after “shall make a” and inserted “determined under section 4071f(a) of this title” after “participant”.

1986—Subsec. (d). Pub. L. 99-556, §405(a), which directed that subsec. (d) be amended by substituting “which was deducted and withheld from the individual’s basic pay under the other retirement system” for “which would have been deducted from pay under section 4071c(a) of this title had the individual been a participant”, was executed by making the substitution for “which would have been deducted from pay under section 4071e(a) of this title had the individual been a participant”, as the probable intent of Congress.

Subsec. (e). Pub. L. 99-556, §405(b), added subsec. (e).

Statutory Notes and Related Subsidiaries

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(i)] of Pub. L. 106-346, set out as a note under section 8334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective Oct. 1, 1997, see section 7001(f) of Pub. L. 105-33, set out as a note under section 8334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-556 effective Jan. 1, 1987, see section 408 of Pub. L. 99-556, set out as a note under section 4046 of this title.

IMPACT OF AMENDMENTS BY PUB. L. 105-33 ON AGENCY CONTRIBUTIONS

Pub. L. 105-33, title VII, §7001(e)(2), Aug. 5, 1997, 111 Stat. 662, provided that: “Agency contributions under section 857 of the Foreign Service Act of 1980 (22 U.S.C. 4071f) shall not be reduced as a result of the amendments made under paragraph (1) of this subsection [amending this section and section 4071e of this title].”

§ 4071d. Entitlement to annuity

(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 8414¹ of title 5) of any member of the

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(e)(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. 2152(a), 2153(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, become eligible for a refund of contributions or a deferred annuity under part I, 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). 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

¹ See References in Text note below.