Public Law 98-615
98th Congress

An Act

To provide retirement equity for former spouses of civil service retirees, and for other purposes.

Nov. 8, 1984
[H.R. 2300]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Service Retirement Spouse Equity Act of 1984".

Civil Service Retirement Spouse Equity Act of 1984.
5 USC 8331 note.

SEC. 2. Chapter 83 of title 5, United States Code, is amended—

5 USC 8331.

(1) in section 8331—

(A) by striking out "and" at the end of paragraph (21);

(B) by striking out the period at the end of paragraph (22) and inserting in lieu thereof a semicolon; and

(C) by adding at the end thereof the following new paragraphs:

"(23) 'former spouse' means a former spouse of an individual—

"(A) if such individual performed at least 18 months of civilian service covered under this subchapter as an employee or Member, and

"(B) if the former spouse was married to such individual for at least 9 months; and

"(24) 'Indian court' means an Indian court as defined by section 201(3) of the Act entitled 'An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes', approved April 11, 1968 (25 U.S.C. 1301(3); 82 Stat. 77).";

5 USC 8334.

(2) by amending section 8334(h) to read as follows:

"(h) For the purpose of survivor annuities, deposits authorized by subsections (c), (d), and (j) of this section and by section 8339(j)(5)(C) and the last sentence of section 8339(k)(2) of this title may also be made by a survivor of an employee or Member.";

Infra.
Infra.

(3) in section 8339—

(A) by amending subsection (j) to read as follows:

"(j)(1) The annuity computed under subsections (a)–(i) and (n) of this section (or a portion of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management) for an employee or Member who is married at the time of retiring under this subchapter is reduced as provided in paragraph (4) of this subsection in order to provide a survivor annuity for the spouse under section 8341(b) of this title, unless the employee or Member and the spouse jointly waive the spouse's right to a survivor annuity in a written election filed with the Office at the time that the employee or Member retires. Each such election shall be made in accordance with such requirements as the Office shall, by regulation, prescribe, and shall be irrevocable. The Office shall provide, by regulation, that an employee or Member may waive the survivor annuity without the spouse's consent if the employee or Member establishes to the satisfaction of the Office—

Post, p. 3199.

Regulations.
Waiver.

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"(A) that the spouse's whereabouts cannot be determined, or

"(B) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's consent would otherwise be inappropriate.

"(2) If an employee or Member has a former spouse who is entitled to a survivor annuity as provided in section 8341(h) of this title, the annuity of the employee or Member computed under subsections (a)–(i) and (n) of this section (or any designated portion of the annuity, in the event that the former spouse is entitled to less than 55 percent of the employee or Member's annuity) is reduced as provided in paragraph (4) of this subsection.

Post, p. 3199.

"(3) An employee or Member who has a former spouse may elect, under procedures prescribed by the Office, to have the annuity computed under subsections (a)–(i) and (n) of this section or a portion thereof reduced as provided in paragraph (4) of this subsection in order to provide a survivor annuity for such former spouse under section 8341(h) of this title. An election under this paragraph shall be made at the time of retirement or, if later, within 2 years after the date on which the marriage of the former spouse to the employee or Member is dissolved, subject to a deposit in the Fund by the retired employee or Member, within such 2-year period, of an amount determined by the Office, as nearly as may be administratively feasible, to reflect the amount by which the annuity of such employee or Member would have been reduced if the election had been continuously in effect since the date the annuity commenced, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which the annuity would have been reduced if the election had been in effect since the date the annuity commenced shall be 6 percent. If the employee or Member does not make such a deposit, the Office shall collect the amount of the deposit by offset against the employee or Member's annuity, up to a maximum of 25 percent of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset. An election under this paragraph—

"(A) shall not be effective to the extent that it—

"(i) conflicts with—

"(I) any court order or decree referred to in subsection (h)(1) of section 8341 of this title, which was issued before the date of such election; or

Post, p. 3199.

"(II) any agreement referred to in such subsection which was entered into before such date; or

"(ii) would cause the total of survivor annuities payable under subsections (b), (d), (f), and (h) of section 8341 of this title based on the service of the employee or Member to exceed 55 percent of the annuity to which the employee or Member is entitled under subsections (a)–(i) and (n) of this section; and

Post, p. 3199.

"(B) shall not be effective, in the case of an employee or Member who is then married, unless it is made with the spouse's written consent.

Regulations. Waiver.

The Office shall provide by regulation that subparagraph (B) of this paragraph may be waived for either of the reasons set forth in the last sentence of paragraph (1) of this subsection. In the case of a retired employee or Member whose annuity is being reduced in order to provide a survivor annuity for a former spouse, an election to provide or increase a survivor annuity for any other former spouse (and to continue an appropriate reduction) may be made

within the same period that, and subject to the same conditions under which, an election could be made under paragraph (5)(B) of this subsection for a current spouse (subject to the provisions of this paragraph relating to consent of a current spouse, if the retired employee or Member is then married). The opportunity to make an election under the preceding sentence is in addition to any opportunity otherwise afforded under this paragraph.

"(4) In order to provide a survivor annuity or combination of survivor annuities under subsections (b), (d), (f), and (h) of section 8341 of this title, the annuity of an employee or Member (or any designated portion or portions thereof) is reduced by 2½ percent of the first $3,600 thereof plus 10 percent of so much thereof as exceeds $3,600. *Post*, p. 3199.

"(5)(A) Any reduction in an annuity for the purpose of providing a survivor annuity for the current spouse of a retired employee or Member shall be terminated for each full month— Termination dates.

"(i) after the death of the spouse, or

"(ii) after the dissolution of the spouse's marriage to the employee or Member, except that an appropriate reduction shall be made thereafter if the spouse is entitled, as a former spouse, to a survivor annuity under section 8341(h) of this title. *Post*, p. 3199.

"(B)(i) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse of a retired employee or Member shall be terminated for each full month after the former spouse remarries before reaching age 55 or dies, unless the employee or Member elects, within 2 years after the former spouse's death or remarriage, to continue the reduction in order to provide a survivor annuity or increase the survivor annuity for the current spouse of the retired employee or Member.

"(ii) Notwithstanding clause (i) of this subparagraph—

"(I) a reduction in an annuity shall not be terminated under such clause, and

"(II) an election made under such clause with respect to a current spouse after a remarriage before age 55 or the death of a former spouse shall not be effective,

if, and to the extent that, continuation of the reduction is necessary in order to provide for any survivor annuity, or any increase in a survivor annuity, which becomes payable under section 8341(h)(2) of this title to any other former spouse as a result of such remarriage or death.

"(C)(i) Upon remarriage, a retired employee or Member who was married at the time of retirement (including an employee or Member whose annuity was not reduced to provide a survivor annuity for the employee or Member's spouse or former spouse as of the time of retirement) may irrevocably elect during such marriage, in a signed writing received by the Office within 2 years after such remarriage or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8341(h) of this title (or of the last such surviving former spouse, if there was more than one), a reduction in the employee or Member's annuity under paragraph (4) of this subsection for the purpose of providing an annuity for such employee or Member's spouse in the event such spouse survives the employee or Member.

"(ii) Such election and reduction shall be effective the first day of the second month after the election is received by the Office, but not less than 9 months after the date of the remarriage, and the retired Effective date.

employee or Member shall, within 2 years after the date of the remarriage or, if later, the death or remarriage of the former spouse (or of the last such surviving former spouse), deposit in the Fund an amount determined by the Office of Personnel Management, as nearly as may be administratively feasible, to reflect the amount by which the annuity of such retired employee or Member would have been reduced if the election had been in effect since the date of retirement or, if later, the date the previous reduction in such retired employee or Member's annuity was terminated under subparagraph (A) or (B) of this paragraph, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which an annuity would have been reduced if the election had been in effect on and after the applicable date referred to in such sentence shall be 6 percent.

"(iii) If the employee or Member does not make such deposit, the Office shall collect such amount by offset against the employee or Member's annuity, up to a maximum of 25 percent of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset.

"(iv) Notwithstanding any other provision of this subparagraph, an election under this subparagraph may not be made for the purpose of providing an annuity in the case of a spouse by remarriage if such spouse was married to the employee or Member at the time of such employee or Member's retirement, and all rights to survivor benefits for such spouse under this subchapter based on marriage to such employee or Member were then waived under paragraph (1) of this subsection or a similar prior provision of law.";

(B) in subsection (k)(1) by striking out "unmarried" in the first sentence thereof; and

(C) by amending subsection (k)(2) to read as follows:

"(2)(A) An employee or Member, who is unmarried at the time of retiring under a provision of law which permits election of a reduced annuity with a survivor annuity payable to such employee or Member's spouse and who later marries, may irrevocably elect, in a signed writing received in the Office within 2 years after such employee or Member marries or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8341(h) of this title (or of the last such surviving former spouse, if there was more than one), a reduction in the retired employee or Member's current annuity as provided in subsection (j) of this section.

Effective date.

"(B)(i) The election and reduction shall take effect the first day of the first month beginning 9 months after the date of marriage and shall prospectively void any election previously made under paragraph (1) of this subsection.

"(ii) Within 2 years after the date of marriage, the retired employee or Member (other than an employee or Member who made a previous election under paragraph (1) of this subsection) shall deposit in the Fund an amount determined by the Office of Personnel Management, as nearly as may be administratively feasible, to reflect the amount by which the retired employee or Member's annuity would have been reduced under subsection (j)(4) of this section since the commencing date of the annuity, if the employee or Member had been married at the time of retirement and had elected to provide a survivor annuity at that time, plus interest. For the purposes of the preceding sentence, the annual rate of interest for

each year during which the annuity would have been reduced if the election had been in effect since the date of the annuity commenced shall be 6 percent.

"(C) If the employee or Member does not make such deposit, the Office shall collect such amount by offset against the employee or Member's annuity, up to a maximum of 25 percent of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset.";

(4) in section 8341— 5 USC 8341.

(A) in paragraphs (1)(A) and (2)(A) of subsection (a), by striking out "1 year" and inserting in lieu thereof "9 months";

(B) in subsection (b)—

(i) by amending paragraph (1) to read as follows:

"(b)(1) Except as provided in paragraph (2) of this subsection, if an employee or Member dies after having retired under this subchapter and is survived by a widow or widower, the widow or widower is entitled to an annuity equal to 55 percent (or 50 percent if retired before October 11, 1962) of an annuity computed under section 8339(a)-(i) and (n) of this title as may apply with respect to the annuitant, or of such portion thereof as may have been designated for this purpose under section 8339(j)(1) of this title, unless the right to a survivor annuity was waived under such section 8339(j)(1) or, in the case of remarriage, the employee or Member did not file an election under section 8339(j)(5)(C) or section 8339(k)(2) of this title, as the case may be."; 5 USC 8339. *Ante*, p. 3195. *Ante*, p. 3195.

(ii) in the second and third sentences of paragraph (3) by striking out "spouse, widow," each place it appears and inserting in lieu thereof "widow";

(iii) by striking out "60 years of age" at the end of paragraph (3) and inserting in lieu thereof "55 years of age"; and

(iv) by adding at the end thereof the following new paragraph:

"(4) Notwithstanding the preceding provisions of this subsection, the annuity payable under this subsection to the widow or widower of a retired employee or Member may not exceed the difference between—

"(A) the amount which would otherwise be payable to such widow or widower under this subsection (determined without regard to any waiver or designation under section 8339(j)(1) of this title or a prior similar provision of law), and

"(B) the amount of the survivor annuity payable to any former spouse of such employee or Member under subsection (h) of this section.";

(C) in subsection (d)—

(i) by inserting after the first sentence the following: "Notwithstanding the preceding sentence, the annuity payable under this subsection to the widow or widower of an employee or Member may not exceed the difference between—

"(A) the amount which would otherwise be payable to such widow or widower under this subsection, and

"(B) the amount of the survivor annuity payable to any former spouse of such employee or Member under subsection (h) of this section."; and

(ii) in the last sentence, by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

and by striking out "60 years of age" and inserting in lieu thereof "55 years of age";

(D) in subsection (e)—

(i) in paragraph (1), by inserting "or a former spouse who is the natural or adoptive parent of a surviving child of the employee or Member" after "survived by a spouse" each place it appears; and

(ii) by amending the last sentence of paragraph (2) to read as follows: "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 employee or Member.";

(E) in subsection (f) by inserting after paragraph (2) the following:

"Notwithstanding the preceding sentence, an annuity payable under this subsection to the surviving spouse of a Member may not exceed the difference between—

"(A) the annuity which would otherwise be payable to such surviving spouse under this subsection, and

"(B) the amount of the survivor annuity payable to any former spouse of such Member under subsection (h) of this section."; and

(F) in subsection (g) by striking out "60 years of age" and inserting in lieu thereof "55 years of age"; and

(G) by adding at the end thereof the following new subsections:

"(h)(1) Subject to paragraphs (2) through (5) of this subsection, a former spouse of a deceased employee, Member, or annuitant is entitled to a survivor annuity under this subsection, if and to the extent expressly provided for in an election under section 8339(j)(3) of this title, or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

Ante, p. 3195.

"(2)(A) The annuity payable to a former spouse under this subsection may not exceed the difference between—

"(i) the amount applicable in the case of such former spouse, as determined under subparagraph (B) of this paragraph, and

"(ii) the amount of any annuity payable under this subsection to any other former spouse of the employee, Member, or annuitant, based on an election previously made under section 8339(j)(3) of this title, or a court order previously issued.

"(B) The applicable amount, for purposes of subparagraph (A)(i) of this paragraph in the case of a former spouse, is the amount which would be applicable—

"(i) under subsection (b)(4)(A) of this section in the case of a widow or widower, if the deceased was an employee or Member who died after retirement;

"(ii) under subparagraph (A) of subsection (d) of this section in the case of a widow or widower, if the deceased was an employee or Member described in the first sentence of such subsection; or

"(iii) under subparagraph (A) of subsection (f) of this section in the case of a surviving spouse, if the deceased was a Member described in the first sentence of such subsection.

Effective dates. Termination dates.

"(3) The commencement and termination of an annuity payable under this subsection shall be governed by the terms of the applica-

ble order, decree, agreement, or election, as the case may be, except that any such annuity—

"(A) shall not commence before—

"(i) the day after the employee, Member, or annuitant dies, or

"(ii) the first day of the second month beginning after the date on which the Office receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Office may prescribe,

whichever is later, and

"(B) shall terminate—

"(i) in the case of an annuity computed by reference to clause (i) or (ii) of paragraph (2)(B) of this subsection, no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies; or

"(ii) in the case of an annuity computed by reference to clause (iii) of such paragraph, no later than the last day of the month before the former spouse remarries or dies.

"(4) For purposes of this subchapter, a modification in a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective—

"(A) if such modification is made after the retirement of the employee or Member concerned, and

"(B) to the extent that such modification involves an annuity under this subsection.

"(5) For purposes of this subchapter, a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective, in the case of a former spouse, to the extent that it is inconsistent with any joint designation or waiver previously executed with respect to such former spouse under section 8339(j)(1) of this title or a similar prior provision of law. *Ante*, p. 3195.

"(6) Any payment under this subsection to a person bars recovery by any other person.

"(7) As used in this subsection, '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.

"(i) The requirement in subsections (a)(1)(A) and (a)(2)(A) of this section that the surviving spouse of an employee or Member have been married to such employee or Member for at least 9 months immediately before the employee or Member's death in order to qualify as the widow or widower of such employee or Member shall be deemed satisfied in any case in which the employee or Member dies within the applicable 9-month period, if—

"(1) the death of the employee or Member was accidental; or

"(2) 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.";

(5) in section 8342(a)— 5 USC 8342.

(A) by striking out "An" and inserting in lieu thereof "Subject to subsection (j) of this section, an"; and

(B) by adding at the end thereof the following new subsection:

"(j)(1) Payment of the lump-sum credit under subsection (a) of this section—

"(A) may be made only if any current spouse and any former spouse of the employee or Member are notified of the employee or Member's application; and

"(B) in any case in which there is a former spouse, shall be subject to the terms of a court order or decree issued with respect to such former spouse if—

"(i) the order or decree expressly relates to any portion of the lump-sum credit involved, and

"(ii) payment of the lump-sum credit would extinguish entitlement of the former spouse to a survivor annuity under section 8341(h) of this title or to any portion of an annuity under section 8345(j) of this title.

Ante, p. 3199.
Infra.

Regulations.

"(2)(A) Notification of a spouse or former spouse under this subsection shall be made in accordance with such requirements as the Office shall by regulation prescribe.

Waiver.

"(B) Under the regulations, the Office may provide that paragraph (1)(A) of this subsection may be waived with respect to a spouse or former spouse if the employee or Member establishes to the satisfaction of the Office that the whereabouts of such spouse or former spouse cannot be determined.

Regulations.

"(3) The Office shall prescribe regulations under which this subsection shall be applied in any case in which the Office receives two or more such orders or decrees.";

5 USC 8345.

(6) in section 8345—

(A) in subsection (f) by adding at the end thereof the following new paragraph:

"(4) The provisions of this subsection shall not apply—

"(A) to any survivor annuity payable under subsection (h) of section 8341 of this title; or

"(B) to any survivor annuity payable under subsection (b), (d), or (f) of such section which is reduced on account of any survivor annuity referred to in subparagraph (A) of this paragraph."; and

(B) in subsection (j)(3) by striking out "or the District of Columbia" and inserting in lieu thereof the following: ", the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court"; and

5 USC 8348.

(7) in section 8348(a)(1)(B) by striking out "this title" and inserting in lieu thereof "this title, in administering survivor annuities and elections providing therefor under sections 8339 and 8341 of this title,".

SEC. 3. Chapter 89 of title 5, United States Code, is amended—

5 USC 8901.

(1) in section 8901—

(A) by striking out "and" at the end of paragraph (8);

(B) by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(10) 'former spouse' means a former spouse of an employee, former employee, or annuitant—

"(A) who has not remarried before age 55 after the marriage to the employee, former employee, or annuitant was dissolved,

"(B) who was enrolled in an approved health benefits plan under this chapter as a family member at any time during the 18-month period before the date of the dissolu-

tion of the marriage to the employee, former employee, or annuitant, and

"(C)(i) who is receiving any portion of an annuity under section 8345(j) of this title or a survivor annuity under section 8341(h) of this title (or benefits similar to either of the aforementioned annuity benefits under a retirement system for Government employees other than the Civil Service Retirement System), *Ante*, p. 3202. *Ante*, p. 3199.

"(ii) as to whom a court order or decree referred to in section 8341(h) or 8345(j) of this title (or similar provision of law under any such retirement system other than the Civil Service Retirement System) has been issued, or for whom an election has been made under section 8339(j)(3) of this title (or similar provision of law), or *Ante*, p. 3195.

"(iii) who is otherwise entitled to an annuity or any portion of an annuity as a former spouse under a retirement system for Government employees,

except that such term shall not include any such unremarried former spouse of a former employee whose marriage was dissolved after the former employee's separation from the service (other than by retirement).";

(2) in section 8902— 5 USC 8902.

(A) in subsection (g) by striking out "employee or annuitant" each place it appears and inserting in lieu thereof "employee, annuitant, family member, or former spouse"; and

(B) in subsections (j) and (k) by striking out "or family member" and inserting in lieu thereof "family member, or former spouse";

(3) in section 8903(1)— 5 USC 8903.

(A) by striking out "employees or annuitants, or members of their families" and inserting in lieu thereof "employees, annuitants, members of their families, or former spouses"; and

(B) by striking out "employee or annuitant or member of his family" and inserting in lieu thereof "employee, annuitant, family member, or former spouse";

(4) in section 8905— 5 USC 8905.

(A) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and inserting after subsection (b) the following new subsection:

"(c)(1) A former spouse may— Health.

"(A) within 60 days after the dissolution of the marriage, or

"(B) in the case of a former spouse of a former employee whose marriage was dissolved after the employee's retirement, within 60 days after the dissolution of the marriage or, if later, within 60 days after an election is made under section 8339(j)(3) of this title for such former spouse by the retired employee, *Ante*, p. 3195. enroll in an approved health benefits plan described by section 8903 of this title as an individual or for self and family as provided in 5 USC 8903. paragraph (2) of this subsection, subject to agreement to pay the full subscription charge of the enrollment, including the amounts determined by the Office to be necessary for administration and reserves pursuant to section 8909(b) of this title. The former spouse shall *Post*, p. 3204. submit an enrollment application and make premium payments to the agency which, at the time of divorce or annulment, employed the employee to whom the former spouse was married or, in the case

of a former spouse who is receiving annuity payments under section 8341(h) or 8345(j) of this title, to the Office of Personnel Management.

Ante, pp. 3199, 3202.

"(2) Coverage for self and family under this subsection shall be limited to—

"(A) the former spouse; and

"(B) unmarried dependent natural or adopted children of the former spouse and the employee who are—

"(i) under 22 years of age; or

"(ii) incapable of self-support because of mental or physical disability which existed before age 22."; and

(B) in subsections (e) and (f), as so designated by subparagraph (A) of this paragraph, by striking out "An employee or annuitant" and inserting in lieu thereof "An employee, annuitant, or former spouse";

5 USC 8907.

(5) in section 8907—

(A) in subsection (a) by striking out "employee" each place it appears and inserting in lieu thereof "individual";

(B) in subsection (b)—

(i) by striking out "employee enrolled" and inserting in lieu thereof "enrollee";

(ii) in paragraph (1) by striking out "employee or the employee and members of his family" and inserting in lieu thereof "enrollee or the enrollee and any eligible family members"; and

(iii) in paragraph (3) by striking out "the employee or members of his family" and inserting in lieu thereof "the enrollee and any eligible family members"; and

(C) by amending the section heading to read as follows:

"§ 8907. Information to individuals eligible to enroll";

5 USC 8909.

(6) in section 8909—

(A) in subsections (a) and (b) by striking out "employees, annuitants," and inserting in lieu thereof "enrollees"; and

(B) in subsection (d) by striking out "Each employee or annuitant" and inserting in lieu thereof "Each employee, annuitant, or former spouse";

5 USC 8913.

(7) in section 8913(c)—

(A) in the first sentence by striking out "employees and annuitants and members of their families" and inserting in lieu thereof "employees, annuitants, members of their families, and former spouses"; and

(B) in the second sentence by inserting "or former spouse" after "in which an annuitant"; and

(8) in the chapter analysis, by striking out the item relating to section 8907 and inserting in lieu thereof the following:

"8907. Information to individuals eligible to enroll.".

Effective dates.
5 USC 8341 note.

SEC. 4. (a)(1) Except as provided in subsections (b) and (c), the amendments made by section 2 of this Act shall take effect one hundred and eighty days after the date of enactment of this Act and shall apply to any individual who, on or after such effective date, is married to an employee or Member who, on or after such effective date, retires, dies, or applies for a refund of contributions under subchapter III of chapter 83 of title 5, United States Code.

5 USC 8331.

(2) Except as provided in subsection (f), the amendments made by section 3 of this Act shall take effect one hundred and eighty days

after the date of enactment of this Act and shall apply to any individual who, on or after such effective date, is married to an employee or annuitant.

(b)(1) Notwithstanding subsection (a)(1) of this section, a former spouse of an employee or Member who retired before the one hundred and eightieth day after the date of enactment of this Act is entitled to a survivor annuity under section 8341(b) of title 5, United States Code, as amended by this Act, if— *Ante*, p. 3199.

(A) the retired employee or Member elects, in writing, within eighteen months after the date of enactment of this Act, according to procedures prescribed by the Office of Personnel Management, to have the annuity of such employee or Member reduced under section 8339(j) of title 5, United States Code, as amended by this Act, and, except as provided in paragraph (3) of this subsection, to deposit in the Civil Service Retirement and Disability Fund an amount determined by the Office, as nearly as may be administratively feasible, to reflect the amount by which such employee or Member's annuity would have been reduced had the reduction been in effect since such employee or Member's annuity commenced, plus interest computed at the annual rate of six percent for each year during which the annuity would have been reduced if the election had been in effect on and after the date the annuity commenced; or *Ante*, p. 3195.

(B) where the retired employee or Member dies or died on or before the one hundred and eightieth day after the date of enactment of this Act or does not make the election described in subparagraph (A)—

(i) the former spouse's marriage to the employee or Member was dissolved after September 14, 1978;

(ii) the former spouse was married to the employee or Member for at least ten years during periods of creditable service under section 8332 of title 5, United States Code;

(iii) the former spouse is not entitled to any other retirement or survivor annuity (other than benefits under title II of the Social Security Act or under section 8345(j) of title 5, United States Code, as amended by this Act) based on any previous employment of the former spouse or of the employee or Member; 42 USC 201. *Ante*, p. 3202.

(iv) the former spouse has not remarried before age fifty-five after September 14, 1978;

(v) the former spouse files an application for the survivor annuity with the Office within thirty months after the date of enactment of this Act; and

(vi) the former spouse is at least fifty years of age at the time of filing such application.

A survivor annuity under subparagraph (B) shall commence on the day after the employee or Member dies or the first day of the second month after the former spouse's application is received by the Office, whichever occurs later.

(2) Except as provided in paragraph (3), if a retired employee or Member who makes an election under subparagraph (A) of paragraph (1) does not make the deposit required by such subparagraph, the Office shall collect the amount of the deposit by offset against the employee or Member's annuity, up to a maximum of 25 per centum of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset.

(3) An election made by an individual under subparagraph (A) of paragraph (1) of this subsection to provide a survivor annuity for any person prospectively voids any election previously made by such individual with respect to such person under section 8339(k)(1) of title 5, United States Code, as amended by this Act, or any similar prior provision of law. Notwithstanding the provisions of such subparagraph (A), an individual who made such an election under such section 8339(k)(1) (or prior provision) shall not be required to make the deposit described in such subparagraph.

Ante, p. 3195.

(4) A survivor annuity provided under this subsection shall be 55 per centum of the annuity of the retired employee or Member, as determined under section 8339(a)–(i) and (n) of title 5, United States Code, increased by—

(A) the total percent increase the retired employee or Member was receiving under section 8340 of such title at death, or

5 USC 8340.

(B) in the case of a retired employee or Member whose date of death precedes the one hundred and eightieth day after the date of enactment of this Act, the total percent increase the retired employee or Member would have received under such section 8340 had such individual died on the one hundred and eightieth day after such date of enactment,

and shall not be subject to reduction under section 8341(b)(4) of such title, as amended by this Act.

Ante, p. 3199.

(c) Notwithstanding subsection (a)(1) of this section, an employee or Member who retired before the one hundred and eightieth day after the date of enactment of this Act and who is married to a spouse acquired after retirement for whom such employee or Member was unable to provide a survivor annuity because—

(1) the employee or Member was married at the time of retirement and elected not to provide a survivor annuity for the employee or Member's spouse at the time of retirement, or

(2) the employee or Member failed to notify the Office of the employee or Member's post-retirement marriage within one year after the marriage,

may elect in writing, within one year after the date of enactment of this Act, in accordance with procedures prescribed by the Office, to provide for a survivor annuity for such spouse under section 8341(b) of title 5, United States Code, as amended by this Act, to have the retired employee or Member's annuity reduced under section 8339(j) of such title, as so amended, and to deposit in the Civil Service Retirement and Disability Fund an amount determined by the Office, as nearly as may be administratively feasible, to reflect the amount by which such employee or Member's annuity would have been reduced had the election been continuously in effect since the annuity commenced, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which the annuity would have been reduced if the election had been in effect on and after the date the annuity commenced shall be 6 percent. If the retired employee or Member does not make such deposit, the Office shall collect such amount by offset against such employee or Member's annuity, up to a maximum of 25 percent of the net annuity otherwise payable to such employee or Member, and such employee or Member is deemed to consent to such offset. The Office shall provide for general public notice of the right to make an election under this subsection. In cases to which paragraph (2) of this subsection applies, the retired employee or Member shall provide the Office with such documentation as the Office shall decide is

Ante, p. 3195.

Public notice.

appropriate, that such employee or Member attempted to elect a reduced annuity with survivor benefit for such employee or Member's current spouse and that such employee or Member's election was rejected by the Office because it was untimely filed.

(d) A deposit required by subsection (b)(1)(A) or (c) of this section may be made by the surviving former spouse or spouse, as applicable, of the retired employee or Member.

(e) The Office shall determine at the end of each fiscal year—

(1) the cost of survivor annuities provided under subsections (b) and (c) of this section, less an amount determined appropriate by the Office to reflect the value of any deposits made under subsection (b)(1)(A), (c), or (d), and

(2) the cost of administering subsections (b) and (c).

The Office shall notify the Secretary of the Treasury of the amounts so determined. The Secretary of the Treasury, before closing the account for the fiscal year in question, shall credit to the Civil Service Retirement and Disability Fund, out of any money in the Treasury not otherwise appropriated, such amounts, which shall be available in the same manner as provided under subparagraphs (A) and (B) of section 8348(a)(1) of title 5, United States Code, as amended by this Act.

Ante, p. 3202.

(f) An individual who is entitled to a survivor annuity under subsection (b) of this section is deemed to be in receipt of annuity payments under section 8341(h) of title 5, United States Code, as amended by this Act, for the purpose of chapter 89 of such title, as so amended. Notwithstanding subsection (a)(2) of this section, any such individual who otherwise meets the definition of a former spouse under section 8901 of title 5, United States Code, as so amended, may enroll in an approved health benefits plan described by section 8903 of such title, under the conditions set forth in section 8905(c) of such title, as so amended.

Ante, p. 3199.
Ante, p. 3202.
5 USC 8901 *et seq.*

(g)(1) For purposes of subsections (a) (1), (b), (c), (d), and (e), "employee", "Member", and "former spouse" each has the meaning given that term under section 8331 of title 5, United States Code, as amended by this Act.

Ante, p. 3195.

(2) For purposes of subsection (a)(2), "employee" and "annuitant" each has the meaning given that term under section 8901 of title 5, United States Code.

Ante, p. 3202.

(h) Section 827 of the Foreign Service Act of 1980 and section 292 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees shall not apply with respect to either the amendments made by section 2 or the preceding provisions of this section.

22 USC 4067.

50 USC 403 note.

TITLE II—PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM

ESTABLISHMENT OF PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM

SEC. 201. (a) Chapter 54 of title 5, United States Code, is amended to read as follows:

"CHAPTER 54—PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM

"Sec.
"5401. Purpose.
"5402. Coverage.
"5403. General pay increases.
"5404. Merit increases.
"5405. Pay administration.
"5406. Performance awards.
"5407. Cash award program.
"5408. Report.
"5409. Regulations.
"5410. Termination.

5 USC 5401.

"§ 5401. Purpose

"It is the purpose of this chapter to provide for a performance management and recognition system which shall—

"(1) use performance appraisals as the basis for (a) determining adjustments in basic pay by general pay increases and merit increases, and (b) making performance award determinations;

"(2) within available funds, recognize and reward quality performance by varying amounts of performance and cash awards;

"(3) within available funds, provide for training to improve accuracy, objectivity, and fairness in the evaluation of performance;

"(4) regulate the costs of performance awards by establishing funding level requirements; and

"(5) provide the means to reduce or withhold certain pay increases for less than fully successful performance.

5 USC 5402.

"§ 5402. Coverage

"(a) Except as provided in subsection (b) or (c) of this section, this chapter shall apply to any supervisor or management official (as defined in paragraphs (10) and (11) of section 7103(a) of this title, respectively) who is in a position within grade GS-13, GS-14, or GS-15 of the General Schedule described in section 5104 of this title.

5 USC 7103.

5 USC 5104, 5332.

Exclusions.

"(b)(1) Upon request filed under paragraph (3) of this subsection, the President may, in writing, exclude an agency, any unit of an agency, or any class of employees within any such unit, from the application of this chapter, if the President considers such exclusion to be required as a result of conditions arising from—

"(A) the recent establishment of the agency, unit, or class, or the implementation of a new program;

"(B) an emergency situation; or

"(C) any other situation or circumstance.

Effective date.

President of U.S. Report.

"(2) Any exclusion under this subsection shall not take effect earlier than 30 calendar days after the President transmits to each House of the Congress a report describing the agency, unit, or class to be excluded and the reasons therefor.

"(3) A request for exclusion of an agency, any unit of an agency, or any class of employees within any such unit, under this subsection shall be filed by the head of the agency with the Office of Personnel Management, and shall set forth reasons why the agency, unit, or class should be excluded from the application of this chapter. The Office shall review the request and reasons therefor, undertake such

other review as it considers appropriate to determine whether the agency, unit, or class should be excluded from the application of this chapter and, upon completion of its review, recommend to the President whether the agency, unit, or class should be so excluded.

"(4) Any agency, unit, or class which is excluded pursuant to this subsection shall, insofar as practicable, make a sustained effort to eliminate the conditions on which the exclusion is based.

"(5) The Office shall periodically review any exclusion from coverage and may at any time recommend to the President that an exclusion under this subsection be revoked. The President may at any time revoke, in writing, any exclusion under this subsection.

President of U.S.

"(6) The Office shall prescribe regulations under which an employee may be excluded from the application of this chapter other than as part of an agency, unit, or class so excluded under the preceding paragraphs of this subsection. To the extent practicable, the regulations shall be based on the provisions of such paragraphs.

Regulations.

"(c) This chapter shall not apply to individuals employed under the Office of the Architect of the Capitol, the Library of Congress, the Botanic Garden, or the Administrative Office of the United States Courts.

"§ 5403. General pay increases

5 USC 5403.

"(a) For purposes of this section, a pay adjustment period, in the case of an employee covered by this chapter, shall be the period beginning on the first day of the first pay period applicable to such employee commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title and ending at the close of the day before the beginning of the following pay adjustment period.

5 USC 5305.

"(b) A determination concerning a general pay increase under this section shall, for any pay adjustment period, be made based on the level of performance of the employee involved, as determined for the latest appraisal period under section 4302a of this title (or an equivalent rating system) before the beginning of such pay adjustment period.

Post, p. 3214.

"(c) Subject to section 5405(a)(1)(A) of this title, if the employee's performance is rated—

Post, p. 3211.

"(1) at the fully successful level or either of the 2 levels above the fully successful level, the rate of basic pay of the employee shall be increased by the full general pay increase, effective as of the beginning of the pay adjustment period;

"(2) at the level 1 level below the fully successful level, the rate of basic pay of the employee shall be increased by one-half of the full general pay increase, effective as of the beginning of the pay adjustment period; or

"(3) at the level 2 levels below the fully successful level, the rate of basic pay of the employee shall not be increased under this section.

"(d) A full general pay increase for any pay adjustment period under this section shall be determined by multiplying the rate of basic pay of the employee involved on the day immediately preceding the pay adjustment period by the percentage corresponding to the percentage generally applicable under section 5305 of this title to positions not covered by this chapter which are in the same grade as the position held by such employee.

5 USC 5305.

"(e)(1) The basic pay of an employee for whom a determination under section 4302a of this title (or an equivalent rating system) for the latest appraisal period is not available shall be adjusted under

Regulations.
Post, p. 3214.

this subsection in such circumstances as the Office of Personnel Management shall by regulation prescribe.

"(2) Any adjustment made under this subsection shall be equal to an adjustment under subsection (c)(1) of this section.

5 USC 5404.

"§ 5404. Merit increases

"(a) For purposes of this section—

"(1) the term 'applicable reference rate', as used with respect to the rate of basic pay of an employee, means the rate equal to the sum of—

"(A) the minimum rate of basic pay provided under section 5332 of this title for the grade of the position held by such employee; and

5 USC 5332.

"(B) one-third of the difference between the maximum rate of basic pay provided for such grade under such section and the minimum rate of basic pay so provided;

"(2) the term 'merit increase' means, with respect to a grade, an increase equal to one-ninth of the difference between the maximum rate of basic pay provided for such grade under section 5332 of this title and the minimum rate of basic pay so provided; and

"(3) a reference to the performance rating of an employee shall, for purposes of any increase which may take effect under this section in a year, be considered to be a reference to the level of performance of such employee, as determined for the latest appraisal period under section 4302a of this title (or an equivalent rating system) before the effective date of such increase.

Post, p. 3214.

Effective date.
Post, p. 3211.

"(b) Subject to section 5405(a)(1)(A) of this title, under regulations prescribed by the Office of Personnel Management, the rate of basic pay of an employee covered by this chapter shall be increased each year in accordance with the applicable provisions of subsection (c) of this section, effective as of the beginning of the first applicable pay period commencing on or after October 1 of such year.

"(c)(1)(A) If the rate of basic pay of the employee does not equal or exceed the applicable reference rate on the day before the effective date of an increase under this section, and the performance of such employee is rated at the fully successful level or either of the 2 levels above the fully successful level, the rate of basic pay of the employee shall be increased by an amount equivalent to a merit increase.

"(B) If the rate of basic pay of the employee equals or exceeds the applicable reference rate on the day before the effective date of an increase under this section, and the performance of such employee is rated—

"(i) at the level 2 levels above the fully successful level, the rate of basic pay of the employee shall be increased by an amount equivalent to a merit increase;

"(ii) at the level 1 level above the fully successful level, the rate of basic pay of the employee shall be increased by an amount equivalent to one-half of a merit increase; or

"(iii) at the fully successful level, the rate of basic pay of the employee shall be increased by an amount equivalent to one-third of a merit increase.

"(2) The rate of basic pay of an employee whose performance is rated at either of the 2 levels below the fully successful level shall not be increased under this section for the year involved.

Regulations.

"(d) The Office of Personnel Management shall prescribe regulations under which this section shall be applied in the case of an employee for whom a determination under section 4302a of this title

Post, p. 3214.

(or an equivalent rating system) for the latest appraisal period is not available.

"§ 5405. Pay administration

5 USC 5405.

"(a)(1) An employee covered by this chapter—

"(A) may not be paid at a rate greater than the maximum rate of basic pay for the grade of the employee's position, as set forth in section 5332 of this title; and

5 USC 5332.

"(B) except as provided in paragraph (2) of this subsection, may not be paid at a rate less than the minimum rate of basic pay for such grade, as set forth in section 5332 of this title.

"(2) An employee may be paid at a rate less than the minimum rate of basic pay for the grade of such employee's position to the extent that payment of the lesser rate is the result of the employee having received less than a full general pay increase under section 5403 of this title.

"(b) Any employee whose position is brought under this chapter shall, so long as the employee continues to occupy the position, be entitled to receive basic pay at a rate of basic pay not less than the rate the employee was receiving when the position was brought under this chapter, plus any subsequent increases under sections 5403 and 5404 of this title.

"(c) The Office of Personnel Management shall prescribe regulations governing the method by which an increase under section 5403 of this title and an increase under section 5404 of this title shall be made in any case in which both of those increases are to take effect beginning on the same date.

Regulations. Effective dates. *Ante*, pp. 3209, 3210.

"(d) Under regulations which the Office shall prescribe, the benefit of advancement through the range of basic pay for a grade shall be preserved for any employee who is covered by this chapter and whose continuous service is interrupted in the public interest by service in the Armed Forces, or by service in essential non-Government civilian employment during a period of war or national emergency.

"(e) For the purpose of section 5941 of this title, rates of basic pay of employees covered by this chapter shall be considered rates of basic pay fixed by statute.

5 USC 5941.

"(f) In the case of an employee covered by this chapter for whose position a higher rate of basic pay has been established under section 5303 of this title, any reference in this chapter to a rate of basic pay provided under or set forth in section 5332 of this title shall be deemed to be a reference to the corresponding rate of basic pay established under such section 5303.

"§ 5406. Performance awards

5 USC 5406.

"(a)(1) Any employee who is covered by this chapter, and whose performance for an appraisal period is rated under section 4302a of this title (or an equivalent rating system) at the level 2 levels above the fully successful level, shall be paid a performance award under this section for such period.

Post, p. 3214.

"(2)(A) The amount of a performance award referred to in paragraph (1) of this subsection shall be determined by the appropriate agency head, except that any such award shall be not more than 10 percent of the employee's annual rate of basic pay and, effective after fiscal year 1985, shall be not less than 2 percent of such annual rate.

Effective date.

"(B) Notwithstanding subparagraph (A) of this paragraph, a performance award exceeding 10 percent but not exceeding 20 percent of the employee's annual rate of basic pay may be paid if the agency head determines that such award is warranted by unusually outstanding performance.

"(b)(1) Any employee who is covered by this chapter, and whose performance for an appraisal period is rated under section 4302a of this title (or an equivalent rating system) at the level 1 level above the fully successful level or at the fully successful level, may be paid a performance award under this section for such period.

Post, p. 3214.

"(2) The amount of a performance award referred to in paragraph (1) of this subsection shall be determined by the appropriate agency head, except that any such award shall be not more than 10 percent of the employee's annual rate of basic pay.

"(c)(1) Subject to subsections (a)(2) and (b)(2) of this section, the aggregate amount of performance awards paid under this section by an agency during any fiscal year shall be—

"(A) not less than the product of—

"(i) the applicable minimum percentage for such year under paragraph (2) of this subsection, multiplied by

"(ii) an estimated aggregate amount of basic pay which will be payable to employees of the agency covered by the performance management and recognition system during such year, as determined by the head of the agency, taking into consideration the number of employees who were covered by such system during the preceding fiscal year (or by the merit pay system in the case of fiscal year 1984) and the applicable rates of basic pay in such preceding year; and

"(B) not more than the product of—

"(i) the applicable maximum percentage for such year under paragraph (2) of this subsection, multiplied by

"(ii) the amount under subparagraph (A)(ii) of this paragraph for such year.

Regulations.

"(2)(A)(i) The applicable minimum percentage—

"(I) shall be 0.75 percent for fiscal year 1985;

"(II) shall, for each of the 4 fiscal years thereafter, be adjusted incrementally (by equal increments or otherwise) over the percentage for the preceding fiscal year by the appropriate agency head in accordance with regulations which the Office of Personnel Management shall prescribe; and

"(III) shall, as a result of the final adjustment, be increased to 1.15 percent for fiscal year 1989.

"(ii) The applicable maximum percentage for each of the 5 fiscal years during which this chapter is in effect shall be 1.5 percent.

"(B)(i) Notwithstanding subparagraph (A) of this paragraph, in the case of an agency described in clause (ii) of this subparagraph the applicable minimum percentage for any fiscal year during which this chapter is in effect shall be a percentage, not less than the minimum percentage described in subsection (2)(A)(i) and not to exceed 10 percent, which the Office shall by regulation prescribe.

"(ii) This subparagraph applies to an agency in a fiscal year if the average number of employees employed under such agency during the immediately preceding fiscal year was equal to or less than the equivalent of 20 full-time employees.".

"(d) A failure to pay a performance award authorized by subsection (b) of this section may not be appealed.

"(e) A performance award paid to an employee under this section shall be in addition to the basic pay of the employee and any cash award paid under section 5407 of this title. *Infra.*

"§ 5407. Cash award program 5 USC 5407.

"(a) The head of an agency may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee who is covered by this chapter, and who—

"(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations, or achieves a significant reduction in paperwork; or

"(2) performs a special act or service in the public interest in connection with or related to the employee's Federal employment.

"(b) The President may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee who is covered by this chapter, and who—

"(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations, or achieves a significant reduction in paperwork; or

"(2) performs an exceptionally meritorious special act or service in the public interest in connection with or related to the employee's Federal employment.

A Presidential cash award may be in addition to an agency cash award under subsection (a) of this section.

"(c) A cash award paid to an employee under this section shall be in addition to the basic pay of the employee and any performance award paid under section 5406 of this title. Acceptance of a cash award under this section constitutes an agreement that the use by the Government of any idea, method, or device for which the award is made does not form the basis of any claim of any nature against the Government by the employee accepting the award, or the employee's heirs or assigns. Claims. *Ante*, p. 3211.

"(d) A cash award to, and expenses for the honorary recognition of, any employee who is covered by this chapter may be paid from the fund or appropriation available to the activity primarily benefiting, or the various activities benefiting, from the suggestion, invention, superior accomplishment, or other meritorious effort of the employee. The head of the agency concerned shall determine the amount to be contributed by each activity to any agency cash award under subsection (a) of this section. The President shall determine the amount to be contributed by each activity to a Presidential award under subsection (b) of this section. President of U.S.

"(e)(1) Except as provided in paragraph (2) of this subsection, a cash award under this section may not exceed $10,000.

"(2) If the head of an agency certifies to the Office of Personnel Management that the suggestion, invention, superior accomplishment or other meritorious effort of an employee for which a cash award is proposed is highly exceptional and unusually outstanding, a cash award in excess of $10,000 but not in excess of $25,000 may be awarded to the employee on the approval of the Office.

"(f) The President or the head of an agency may pay a cash award under this section notwithstanding the death or separation from the service of an employee, if the suggestion, invention, superior accomplishment, or other meritorious effort of the employee for which the

award is proposed was made or performed while the employee was covered by this chapter.

5 USC 5408. **"§ 5408. Report**

"The Office of Personnel Management shall submit an annual report to the President and each House of the Congress evaluating the effectiveness of the performance management and recognition system established by this chapter. Each such report shall be prepared after consultation with the respective heads of a sufficient range of agencies so as to permit an adequate basis for making a meaningful evaluation.

5 USC 5409. **"§ 5409. Regulations**

"The Office of Personnel Management shall prescribe regulations to carry out this chapter.

5 USC 5410. **"§ 5410. Termination**

"This chapter and any regulations prescribed under this chapter shall cease to be effective after September 30, 1989.".

(b) The table of chapters at the beginning of part III of title 5, United States Code, is amended by striking out the item relating to chapter 54 and inserting in lieu thereof the following:

"54. Performance Management and Recognition System ..... 5401".

PERFORMANCE APPRAISAL SYSTEMS

SEC. 202. (a) Chapter 43 of title 5, United States Code, is amended by inserting after section 4302 the following new section:

5 USC 4302a. **"§ 4302a. Establishment of performance appraisal systems for performance management and recognition system employees**

"(a) Each agency shall develop one or more performance appraisal systems for employees covered by chapter 54 of this title which— *Ante*, p. 3207.

"(1) provide for periodic appraisals of job performance of such employees;

"(2) require the joint participation of the supervising official and the employee in developing performance standards with authority for establishing standards resting with the supervising official; and

"(3) use the results of performance appraisals as a basis—

"(A) for adjusting the base pay and making performance award decisions with respect to any such employee in accordance with the applicable provisions of such chapter 54; and

"(B) for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing any such employee.

Regulations. "(b) Under regulations which the Office of Personnel Management shall prescribe, each performance appraisal system under this section shall provide for—

"(1) five levels of summary performance ratings as follows:

"(A) two levels which are above the fully successful level;

"(B) a fully successful level; and

"(C) two levels which are below the fully successful level;

"(2) establishing, in writing, the critical elements of each employee's position and the performance standards for the fully

successful level for each such element which will, to the maximum extent feasible, permit accurate evaluation of job performance on the basis of objective criteria related to the job in question;

"(3) communicating, at the beginning of each appraisal period and in writing, to each employee who is covered by chapter 54 of this title the performance standards and critical elements of the employee's position; *Ante*, p. 3207.

"(4) evaluating each such employee during the appraisal period on the basis of such standards;

"(5) assisting any such employee in improving performance rated at a level below the fully successful level; and

"(6) reassigning, reducing in grade, or removing any employee who continues to perform at the level which is 2 levels below the fully successful level, after such employee has been provided with written notice of such employee's rating and afforded reasonable opportunity to raise such employee's level of performance to the fully successful level or higher.

"(c)(1) Appraisals of performance under this section—

"(A) shall take into account individual performance and may take into account organizational accomplishment;

"(B) shall be based on factors such as—

"(i) any improvement in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork;

"(ii) cost efficiency;

"(iii) timeliness of performance;

"(iv) other indications of the effectiveness, productivity, and quality of performance of the employees for whom the employee is responsible; and

"(v) meeting affirmative action goals and achievement of equal employment opportunity requirements;

"(C) may be reviewed by an employee of the agency in accordance with procedures established by the Office of Personnel Management;

"(D) shall, on request of the employee whose performance is appraised, by reconsidered by an employee of the agency in accordance with procedures established by the Office; and

"(E) may not be appealed outside the agency.

"(2) Reconsideration of an appraisal under paragraph (1)(D) of this subsection may be made only by an employee who is in a higher position in the agency than each employee who made, reviewed, or approved the appraisal.

Performance standards review boards, establishment.

"(d)(1) In order to promote the purposes of this section, there shall be established within each agency a performance standards review board (hereinafter in this subsection referred to as the 'board'), consisting of at least six members, all of whom shall be chosen by the agency head from individuals employed in or under such agency. Of the members, at least one-half shall be employees who are covered by chapter 54 of this title and who are in the competitive service. A board shall be chaired by the member of the board designated for that purpose by the agency head.

"(2) It shall be the function of each board—

"(A) to assess, by the use of representative sampling techniques, the appropriateness of performance standards developed and used by the agency under this section;

"(B) to study the feasibility of an awards program based on the collective performance of units or other groups of employees who are covered by chapter 54 of this title, and to submit as part of its annual report under paragraph (3) of this subsection recommendations for any actions which the board considers appropriate with respect to any such program; and

Ante, p. 3207.

"(C) to provide technical assistance with respect to any demonstration projects which may relate to performance standards of the agency under this section.

Report.

"(3) A board shall report to the head of the agency on its activities under this subsection annually.

"(e) In carrying out this section, neither the Office nor any other agency may prescribe a distribution of levels of performance ratings for employees covered by chapter 54 of this title.

"(f) The Office may not prescribe, or require an agency to prescribe, any specific performance standard or element for purposes of this section.

Expiration date.

"(g) This section and any regulations prescribed under this section shall cease to be effective as of the date on which chapter 54 of this title ceases to be effective.".

(b) The table of sections for chapter 43 of title 5, United States Code, is amended by inserting after the item relating to section 4302 the following new item:

"4302a. Establishment of performance appraisal systems for performance management and recognition system employees.".

MERIT INCREASES AS EQUIVALENT INCREASES IN PAY

SEC. 203. Section 5335 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) Notwithstanding subsection (b) or (e) of this section, an increase in pay granted under section 5404 of this title is an equivalent increase in pay within the meaning of subsection (a) of this section and shall be taken into account in the case of any employee who, before becoming subject to this section, was granted such an increase while covered by the performance management and recognition system established under chapter 54 of this title.".

Ante, p. 3210.

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 204. (a) Title 5, United States Code, is amended—

(1) in sections 4501(2)(A), 5332(a), 5334(c)(2), 5334(f), 5335(e), 5336(c), and 5362(c)(3), by striking out "the merit pay system established under section 5402" each place it appears and inserting in lieu thereof "the performance management and recognition system established under chapter 54";

(2) in section 5361(5), by striking out "merit pay system" and inserting in lieu thereof "performance management and recognition system"; and

(3) in section 5948(g)(1)(C), by striking out "Merit Pay System" and inserting "performance management and recognition system".

(b) Section 1602 of title 10, United States Code, and section 731(b) of title 31, United States Code, are each amended by striking out "5401(a)" and inserting in lieu thereof "5401".

EFFECTIVE DATE; TRANSITION PROVISIONS

SEC. 205. (a) The amendments made by this title shall be effective as of October 1, 1984, and shall apply with respect to pay periods commencing on or after that date. 5 USC 5401 note.

(b) The rate of basic pay for any individual serving in a position—

(1) which is in the merit pay system before the date on which the amendments made by this title take effect, but

(2) which does not become covered by the performance management and recognition system,

shall not be reduced on account of such position not becoming so covered.

(c) The rate of basic pay for any individual serving in a position which ceases to be covered by the performance management and recognition system as a result of the termination of such system under section 5410 of title 5, United States Code, as amended by this title, shall not be reduced on account of such termination. *Ante*, p. 3214.

(d)(1) Except as provided in paragraph (2), any agency or unit of an agency which, immediately before the date of enactment of this Act, was excluded from coverage under the merit pay system shall be excluded from coverage under the performance management and recognition system for the 12-month period beginning on such date of enactment.

(2) An exclusion under paragraph (1) may be revoked at any time in accordance with section 5402(b)(5) of title 5, United States Code, as amended by this Act. *Ante*, p. 3208.

TITLE III—SENIOR EXECUTIVE SERVICE

Continuation.

CONGRESSIONAL FINDINGS

SEC. 301. The Congress finds that the Senior Executive Service should be continued indefinitely. 5 USC 3131 note.

PERFORMANCE AWARDS

SEC. 302. Subsection (b) of section 5384 of title 5, United States Code, is amended—

(1) in paragraph (2), by striking out "exceed" and inserting in lieu thereof "be less than 5 percent nor more than"; and

(2) by amending paragraph (3) of such subsection to read as follows:

"(3) The aggregate amount of performance awards paid under this section by an agency during any fiscal year may not exceed the greater of—

"(A) an amount equal to 3 percent of the aggregate amount of basic pay paid to career appointees in such agency during the preceding fiscal year; or

"(B) an amount equal to 15 percent of the average of the annual rates of basic pay paid to career appointees in such agency during the preceding fiscal year.".

REDUCTIONS IN FORCE

SEC. 303. (a) Section 3593(c)(1)(B) of title 5, United States Code, is amended by inserting "before October 1, 1984," after "title".

(b) Section 3594(b) of such title is amended to read as follows: 5 USC 3594.

"(b) A career appointee who has completed the probationary period under section 3393(d) of this title, and who— 5 USC 3393.

"(1) is removed from the Senior Executive Service for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title; or 5 USC 4311.

"(2) is removed from the Senior Executive Service under paragraph (4) or (5) of section 3595(b) of this title; *Infra.*

shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.".

(c) Section 3595(b) of such title is amended— 5 USC 3595.

(1) in paragraph (3)(B), by striking out "is entitled" and all that follows thereafter through "position." and inserting in lieu thereof "shall be placed by the Office in any agency in any vacant Senior Executive Service position unless the head of that agency determines that the career appointee is not qualified for that position."; and

(2) by striking out paragraphs (4) and (5) and inserting in lieu thereof the following:

"(4) A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if the career appointee declines a reasonable offer for placement in a Senior Executive Service position under paragraph (3)(B).

"(5) A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if the career appointee is not placed in another Senior Executive Service position under paragraph (3)(B) within 45 days after the Office receives certification regarding that appointee under paragraph (3)(B).".

(d) Section 3595(c) of such title is amended to read as follows:

"(c) A career appointee is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title whether the reduction in force complies with the competitive procedures required under subsection (a).". 5 USC 7701.

DIRECTED REASSIGNMENT; TRANSFER OF FUNCTION

SEC. 304. (a) Section 3395(a)(2) of title 5, United States Code, is amended to read as follows:

"(2)(A) Except as provided in subparagraph (B) of this paragraph, a career appointee may be reassigned to any Senior Executive Service position only if the career appointee receives written notice of the reassignment at least 15 days before the effective date of such reassignment.

"(B)(i) A career appointee may not be reassigned to a Senior Executive Service position outside the career appointee's commuting area unless—

"(I) before providing notice under subclause (II) of this clause (or seeking or obtaining the consent of the career appointee under clause (ii) of this subparagraph to waive such notice), the agency consults with the career appointee on the reasons for, and the appointee's preferences with respect to, the proposed reassignment; and

"(II) the career appointee receives written notice of the reassignment, including a statement of the reasons for the reassignment, at least 60 days before the effective date of the reassignment.

"(ii) Notice of reassignment under clause (i)(II) of this subparagraph may be waived with the written consent of the career appointee involved. Waiver.

(b) Section 3595 of such title is amended by adding at the end thereof the following new subsection: 5 USC 3595.

"(e) The Office shall prescribe regulations under which the rights accorded to a career appointee in the event of a transfer of function are comparable to the rights accorded to a competing employee under section 3503 of this title in the event of such a transfer.". Regulations. 5 USC 3503.

(c) Section 7543(a) of such title is amended by striking out "or malfeasance." and inserting in lieu thereof "malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.". 5 USC 7543.

(d) Section 8336(d) of such title is amended by inserting after the first sentence the following new sentence: "For purposes of paragraph (1) of this subsection, separation for failure to accept a directed reassignment to a position outside the commuting area of the employee concerned or to accompany a position outside of such area pursuant to a transfer of function shall not be considered to be a removal for cause on charges of misconduct or delinquency.". 5 USC 8336.

PAY LIMITATION

SEC. 305. Section 5383(b) of title 5, United States Code, is amended to read as follows:

"(b)(1) In no event may the aggregate amount paid to a senior executive during any fiscal year under sections 4507, 5382, 5384, and 5948 of this title exceed the annual rate payable for positions at level I of the Executive Schedule in effect at the end of such fiscal year. 5 USC 4507, 5382, 5384, 5948.

"(2)(A) Any amount which is not paid to a senior executive during a fiscal year because of the limitation under paragraph (1) of this subsection shall be paid to that individual in a lump sum at the beginning of the following fiscal year.

"(B) Any amount paid under this paragraph during a fiscal year shall be taken into account for purposes of applying the limitation under paragraph (1) of this subsection with respect to such fiscal year.

"(C) The Office of Personnel Management shall prescribe regulations, consistent with section 5582 of this title, under which payment under this paragraph shall be made in the case of any individual whose death precludes payment under subparagraph (A) of this paragraph.". Regulations. 5 USC 5582.

MISCELLANEOUS SENIOR EXECUTIVE SERVICE AMENDMENTS

SEC. 306. (a) Section 3135(a) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (8);

(2) by redesignating paragraph (9) as paragraph (10); and

(3) by inserting after paragraph (8) the following new paragraph:

"(9) the number of career appointees who have been placed in positions outside the Senior Executive Service under section 3594 of this title as a result of a removal under section 3595 of this title; and".

5 USC 3393.

(b)(1) The first sentence of section 3393(b) of such title is amended by inserting before the period the following: "or commissioned officers of the uniformed services serving on active duty in such agency".

5 USC 4312.

(2) Section 4312(b)(3) of such title is amended by inserting ", or (with the consent of the senior executive) a commissioned officer in the uniformed services serving on active duty," after "employee", and by striking out "executive".

(c)(1) Such title is amended by adding after section 3595 the following new section:

5 USC 3595a.

"§ 3595a. Furlough in the Senior Executive Service

"(a) For the purposes of this section, 'furlough' means the placement of a senior executive in a temporary status in which the senior executive has no duties and is not paid when the placement in such status is by reason of insufficient work or funds or for other nondisciplinary reasons.

"(b) An agency may furlough a career appointee only in accordance with regulations issued by the Office of Personnel Management.

Appeal.

"(c) A career appointee who is furloughed is entitled to appeal to the Merit Systems Protection Board under section 7701 of this

5 USC 7701.

title.".

(2) The table of sections for chapter 35 of such title is amended by inserting after the item relating to section 3595 the following new item:

"3595a. Furlough in the Senior Executive Service.".

EFFECTIVE DATE

5 USC 3135 note.

SEC. 307. The amendments made by this title shall be effective following the expiration of the 90-day period beginning on the date of enactment of this Act, except that the amendments made by section 304 shall be effective as of such date of enactment.

Approved November 8, 1984.

LEGISLATIVE HISTORY—H.R. 2300:

HOUSE REPORT No. 98-1054 (Comm. on Post Office and Civil Service).
CONGRESSIONAL RECORD, Vol. 130 (1984):
Sept. 24, considered and passed House.
Oct. 10, considered and passed Senate, amended; House concurred in Senate amendments.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 20, No. 45 (1984):
Nov. 9, Presidential statement.