

which constitutes the prohibited practice before the Department during the period of suspension. The Director General shall take other appropriate disciplinary action as may be required by the final order.

PART 19—BENEFITS FOR SPOUSES AND FORMER SPOUSES OF PARTICIPANTS IN THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

Sec.

- 19.1 Authorities.
- 19.2 Definitions.
- 19.3 Participants.
- 19.4 Special rules for computing creditable service for purposes of payments to former spouses.
- 19.5 Required notifications to department respecting spouses and former spouses.
 - 19.5-1 Notification from participant or annuitant.
 - 19.5-2 Notification to Department from former spouses.
 - 19.5-3 Residence of spouse during service at unhealthful post.
- 19.6 Court orders and divorce decrees.
 - 19.6-1 Orders by a court.
 - 19.6-2 Qualifying court order.
 - 19.6-3 Application for payment.
 - 19.6-4 Date of court orders.
 - 19.6-5 Preliminary review.
 - 19.6-6 Notification.
 - 19.6-7 Decision.
 - 19.6-8 Allotment to beneficiary.
 - 19.6-9 Limitations.
 - 19.6-10 Liability.
- 19.7 Spousal agreements.
 - 19.7-1 Purpose.
 - 19.7-2 Agreement with spouse.
 - 19.7-3 Agreement with former spouse.
 - 19.7-4 Form of agreement.
 - 19.7-5 Limitations.
 - 19.7-6 Duration and precedence of spousal agreements.
- 19.8 Obligations of members.
- 19.9 Pension benefits for former spouses.
 - 19.9-1 Entitlement.
 - 19.9-2 Commencement and termination.
 - 19.9-3 Computation and payment of pension to former spouse.
 - 19.9-4 Effect on annuitant.
- 19.10 Types of annuities to members.
 - 19.10-1 Full annuity.
 - 19.10-2 Reduced annuity with regular survivor annuity to spouse or former spouse.
 - 19.10-3 Marriage after retirement.
 - 19.10-4 Death or divorce of a spouse and remarriage after retirement.
 - 19.10-5 Reduced annuity with additional survivor annuity to spouse of former spouse.

- 19.10-6 Benefits for recall service.
- 19.11 Survivor benefits.
 - 19.11-1 Kinds of survivor benefits.
 - 19.11-2 Regular survivor annuity for a former spouse.
 - 19.11-3 Regular survivor annuity for a spouse.
 - 19.11-4 Procedure in event a spouse or former spouse is missing.
 - 19.11-5 Commencement, termination and adjustment of annuities.
 - 19.11-6 Death during active duty.
 - 19.11-7 Annuity payable to surviving child or children.
 - 19.11-8 Required elections between survivor benefits.
- 19.12 Employment in a Government agency.
- 19.13 Lump-sum payment.
 - 19.13-1 Lump-sum credit.
 - 19.13-2 Share payable to a former spouse.
 - 19.13-3 Payment after death of principal.
- 19.14 Waiver of annuity.

AUTHORITY: Secs. 206 and 801 of Foreign Service Act of 1980 (94 Stat. 2079, 2102); Sec. 4 of Act of May 26, 1949 (22 U.S.C. 2658).

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§ 19.1 Authorities.

Chapter 8 of the Foreign Service Act of 1980 (Pub. L. 96-465, 94 Stat. 2102) (hereafter “the Act”), and any Executive order issued under authority of section 827 of the Act.

§ 19.2 Definitions.

(a) *Agencies* means the Department, the Agency for International Development (AID), the International Communication Agency (USICA), the Foreign Agricultural Service (FAS), and the Foreign Commercial Service (FCS).

(b) *Annuitant* means any person including a former participant or survivor who meets all requirements for an annuity from the Fund under the provisions of the Foreign Service Act of 1980, or any other law and who has filed claim therefor.

(c) *Basic salary* means the salary fixed by law or administrative action before deductions and exclusive of additional compensation of any kind. It includes the salary fixed by sections 401, 402, 403, and 406 of the Act and salary incident to assignment under section 503 of the Act. Basic salary excludes premium pay for overtime,

Department of State

§ 19.2

night, Sunday and holiday work, allowances, post and special differentials, and chargé pay.

(d) *Chief of Mission* means a principal officer in charge of a diplomatic mission of the United States or of a United States Office abroad which has been designated diplomatic in nature or any member of the Foreign Service assigned under the terms of the Act to be chargé d'affaires or head of such a mission or office.

(e) *Child* means, except with reference to lump-sum payments, an unmarried child, under the age of 18 years, or such unmarried child regardless of age who because of physical or mental disability incurred before age 18 is incapable of self-support. In addition to the offspring of the participant, the term includes:

(1) An adopted child;

(2) A stepchild or recognized natural child who received more than one-half support from the participant; and

(3) A child who lived with and for whom a petition of adoption was filed by a participant, and who is adopted by the surviving spouse of the participant after the latter's death. "Child" also means an unmarried student under the age of 22 years. For this purpose, a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while a student, is deemed to have become 22 years of age on the first day of July after the birthday.

(f) *Court* means any court of any State or of the District of Columbia.

(g) *Court Order* means any court decree of divorce or annulment, or any court approved property settlement agreement incident to any court decree of divorce or annulment.

(h) *Department* means the Department of State.

(i) *Divorce* means the dissolution of a marriage by a final decree of divorce or annulment.

(j) *Expressly provided for* means a direction by a court order to divide a member's Foreign Service Retirement benefits or survivor benefits and awarding a portion of such benefits to an eligible beneficiary.

(k) *Former spouse*¹ means a former wife or husband of a participant or former participant who was married to such participant for not less than ten years during periods of service by that participant which are creditable under section 816 of the Act provided the participant was making contributions to the Fund under section 805 of the Act during some portion of such service, and provided the divorce occurred after February 15, 1981. For this purpose, a former spouse shall not be considered as married to a participant for periods assumed to be creditable under section 808 of the Act in the case of a disability annuity or section 809 of the Act in the case of a death in service. A former spouse will be considered married to a participant for any extra period of creditable service provided under section 817 of the Act for service at an unhealthful post during which the former spouse resided with the participant. See §19.5-3 for procedures to determine this extra period of marriage.

(1) *Fund* means the Foreign Service Retirement and Disability Fund.

(m) *M/MED* means the Department's Office of Medical Services.

(n) *Military and naval service* means honorable active service:

(1) In the Armed Forces of the United States;

(2) In the Regular or Reserve Corps of the Public Health Service after June 30, 1960; or

(3) As commissioned officer of the National Oceanic and Atmospheric Administration or predecessor organization after June 30, 1961.

However, this definition does not include service in the National Guard, except when ordered to active duty in the service of the United States.

(o) *Participant* means a person as described in §19.3.

¹Note: Section 804(6) of the Act defines "former spouse" with respect to duration of marriage as being married to a participant "for not less than 10 years during periods of service by that participant which are creditable under section 816." The Department interprets this as necessarily implying that the marriage must have covered a period of at least one day while the member of the Foreign Service was a participant in the System.

§ 19.3

22 CFR Ch. I (4–1–12 Edition)

(p) *Previous spouse* means any person formerly married to a principal, whether or not such person qualifies as a former spouse under paragraph (k) of this section.

(q) *Principal* means a participant or former participant whose service forms the basis for a benefit under chapter 8 of the Act for a spouse, previous spouse, former spouse or child of a participant.

(r) *PER/ER/RET* means the Department's Retirement Division in the Bureau of Personnel.

(s) *Pro rata share* means, in the case of any former spouse of any participant or former participant, a percentage which is equal to the percentage that (1) the number of years and months during which the former spouse was married to the participant during the creditable service of that participant is of (2) the total number of years and months of such creditable service. When making this calculation, item (1) is adjusted in accordance with paragraph (k) of this section and item (2) is adjusted in accordance with § 19.4. In the total period, 30 days constitutes a month and any period of less than 30 days is not counted.

(t) *Spousal agreement* means any written agreement between a participant or former participant, and the participant's spouse or former spouse.

(u) *Student* means a child regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, university, or comparable recognized educational institution. A child who is a student shall not be deemed to have ceased to be a student during any interim between school years, semesters, or terms if the interim or other period of nonattendance does not exceed 5 calendar months and if the child shows to the satisfaction of the Retirement Division (PER/ER/RET) that the child has a bona fide intention of continuing to pursue such course during the school year, semester, or term immediately following the interim.

(v) *Surviving spouse* means the surviving wife or husband of a participant or annuitant who, in the case of death in service or marriage after retirement, was married to the participant

or annuitant for at least one year immediately preceding death or is the parent of a child born of the marriage.

(w) *System* means the Foreign Service Retirement and Disability System.

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§ 19.3 Participants.

The following persons are participants in the System:

(a) Members of the Service serving under a career appointment or as a career candidate under section 306 of the Act (1) in the Senior Foreign Service, or (2) assigned to a salary class in the Foreign Service Schedule;

(b) Any person not otherwise entitled to be a participant who has served as chief of mission or an ambassador at large for an aggregate period of 20 years or more, exclusive of extra service credit for service at unhealthful posts, and who has paid into the Fund a special contribution for each year of service;

(c) Any individual who was appointed as a Binational Center Grantee and who completed, prior to February 15, 1981, at least 5 years of satisfactory service as a grantee, as determined by the Director of Personnel of USICA, or under any other appointment under the Foreign Service Act of 1946, as amended, who has paid into the Fund a special contribution for such service.

(d) Any person converted to the competitive service pursuant to section 2104 of the Act who elects to participate in the System pursuant to section 2106(b)(1) or (2) shall remain a participant so long as he/she is employed in an agency which is authorized to utilize the Foreign Service personnel system.

§ 19.4 Special rules for computing creditable service for purposes of payments to former spouses.

For purposes of determining the pro rata share of annuity, survivor annuity or lump-sum payable to a former spouse, the following shall be considered creditable service—

(a) The entire period of a principal's approved leave without pay during full-time service with an organization composed primarily of Government employees irrespective of whether the