

§ 11.30

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order register for their functional specialty. If appointed as career candidates, the length of service under their previous limited non-career appointments may be counted as part of the trial period of service prescribed before a candidate can receive a career appointment.

(Secs. 206(a) and 301(b), Foreign Service Act of 1980 (secs. 206(a) and 301(b), Pub. L. 96-465, 94 Stat. 2079 and 2083 (22 U.S.C. 3926 and 3941)))

[48 FR 19704, May 2, 1983]

§ 11.30 Senior Foreign Service officer career candidate and limited non-career appointments.

(a) *General considerations.* (1) Career officers at the Senior Level normally shall be appointed as the result of promotion of Mid-Level career officers. Where the needs of the Foreign Service at the Senior Level cannot otherwise be met by this approach, limited appointments may be granted to applicants as Senior Career Candidates or as limited non-career appointees in accordance with these regulations. However, as required by section 305(b) of the Foreign Service Act of 1980 (hereinafter referred to as the Act), but qualified by section 305(b)(1) and (2) and section 2403(c) of the Act, the limited appointment of an individual in the Senior Foreign Service shall not cause the number of members of the Senior Foreign Service serving under limited appointments to exceed 5 percent of the total members of the Senior Foreign Service.

(2) Successful applicants under the Senior Career Candidate Program will be appointed to Career Candidate status for a period not to exceed 5 years. Such limited Career Candidate appointments may not be renewed or extended beyond 5 years.

(3) Under section 306 of the Act, Senior Career Candidates may be found qualified to become career members of the Senior Foreign Service. Those who are not found to be so qualified prior to the expiration of their limited appointments will be separated from the Career Candidate Program no later than the expiration date of their appointments. Separated candidates who originally were employees of a Federal department or agency, and who were ap-

pointed to the Senior Foreign Service with the consent of the head of that department or agency, will be entitled to reemployment rights in that department or agency in accordance with section 310 of the Act and section 3597 of title 5, United States Code.

(4) The following regulations shall be utilized in conjunction with section 593, Volume 3, Foreign Affairs Manual ("Senior Foreign Service Officer Career Candidate Program"). (Also see Foreign Affairs Manual Circulars No. 8 [applicable to the Department of State only] and No. 9 [applicable to the Departments of State, Agriculture, and Commerce, the Agency for International Development, and the United States Information Agency], dated March 6, 1981.)

(b) *Senior Career Candidate appointments*—(1) *Eligibility requirements.* Senior Career Candidates must meet the following eligibility requirements:

(i) *Citizenship.* Each person appointed as a Senior Career Candidate must be a citizen of the United States.

(ii) *Age.* All career candidate appointments shall be made before the candidate's 60th birthday. Appointments by the United States Information Agency shall be made before the candidate's 58th birthday. The maximum age for appointment under this program is based on the requirement that all career candidates shall be able to: (A) Complete at least two full tours of duty, exclusive of orientation and training; (B) complete the requisite eligibility period for tenure consideration and (C) complete the requisite eligibility period to receive retirement benefits, prior to reaching the mandatory retirement age of 65 prescribed by the Act.

(iii) *Service.* (A) On the date of application, an applicant must have completed a minimum of 15 years of professional work experience, including at least 5 years of service in a position of responsibility in a Federal Government agency or agencies or elsewhere equivalent to that of a Mid-Level Foreign Service officer (classes FS-1 through FS-3). The duties and responsibilities of the position occupied by the applicant must have been similar to or closely related to that of a Foreign Service officer in terms of knowledge,

skills, abilities, and overseas work experience. In addition, an applicant must currently be in, or have been in, a position comparable to a Foreign Service officer of class 1 (FS-1), or higher.

(B) Applicants from outside the Federal Government, and Federal employees who at the time of application lack the 15 years of professional work experience or the 5 years of service in a position of responsibility as defined in the preceding paragraph, may, however, be considered if they are found to possess a combination of educational background, professional work experience, and skills needed by the Foreign Service at the Senior Level in employment categories which normally are not staffed by promotion of Mid-Level career officers.

(C) Non-career members of the Senior Foreign Service of a Federal Government department or agency also may apply for the Senior Career Candidate Program if they meet the eligibility requirements for the program.

(iv) *Certification of need.* Before an application can be processed, the Director of Personnel of the foreign affairs agency concerned must certify that there is a need for the applicant as a Senior Career Candidate based upon (A) the projections of personnel flows and needs mandated by section 601(c)(2) of the Act, and (B) a finding that the combination of educational background, professional work experience, and skills possessed by the applicant is not expected to be available in the immediate future in sufficient numbers within the Senior Foreign Service, including by promotion and/or special training of career personnel. This certification of need will be requested by the Board of Examiners for the Foreign Service from the appropriate foreign affairs agency Director of Personnel.

(2) *Application.* All applicants for the Senior Career Candidate Program must apply in writing through the prospective employing agency to the Board of Examiners for consideration. The applicant shall submit a completed Standard Form 171, "Personnel Qualifications Statement," and Form DSP-34, "Supplement to Application for Federal Employment," to the Board. In addition, the applicant shall submit a

narrative statement, not exceeding four typewritten pages in length, describing the applicant's pertinent background and professional work experience, which includes a statement of the applicant's willingness and ability to accept the obligation of world-wide service. The Board may request additional written information from the applicant following receipt of the initial application.

(3) *Qualifications evaluation panel.* (i) The Board of Examiners will establish a file for each applicant, placing in it all available documentation of value in evaluating the applicant's potential for service as a Senior Career Candidate. For an applicant from within the Federal Government, this will include the personnel file from the employing department or agency.

(ii) The complete file will be reviewed by a Qualifications Evaluation Panel of the Board of Examiners to determine whether the applicant meets the statutory and other eligibility requirements, to assess the applicant's skills under the certification of need issued by the prospective employing agency, and to recommend whether the applicant should be examined for possible appointment as a Senior Career Candidate. If the Qualifications Evaluation Panel decides that the applicant is not eligible for examination, the prospective employing agency shall be informed by the Board of the reasons for that decision.

(4) *Written examination.* The Board of Examiners normally will not require Senior Career Candidate applicants to undergo a written examination. However, the Board may, upon securing the agreement of the prospective employing agency, decide that such applicants should be required to take an appropriate written examination prescribed by the Board. If so, an applicant whose score on the written examination is at or above the passing level set by the Board will be eligible for selection for the oral examination.

(5) *Oral examination—(i) Examining panel.* Applicants recommended by the Qualifications Evaluation Panel will be given an appropriate oral examination by a Panel of Senior Foreign Service deputy examiners of the Board of Examiners. The Oral Examining Panel

shall be composed of at least two deputy examiners who are Senior Foreign Service career officers of the prospective employing agency, and at least one deputy examiner who is a Senior Foreign Service career officer from another foreign affairs agency operating under the Foreign Service Act. The Examining Panel shall be chaired by a deputy examiner who is a Senior Foreign Service career officer of the prospective employing agency. At least one of the Examining Panel members shall represent the functional or specialist field for which the applicant is being examined. Determinations of duly constituted panels of deputy examiners are final, unless modified by specific action of the Board of Examiners.

(ii) *Criteria.* (A) The Examining Panel will question the applicant regarding the indicated functional or specialist field and other matters relevant to the applicant's qualifications for appointment as a Senior Career Candidate. Prior to the oral examination, the applicant will be asked to write an essay, on a topic related to Foreign Service work, to enable the Examining Panel to judge the applicant's effectiveness of written expression. This essay requirement may be waived at the request of the head of the prospective employing agency, if, for example, the applicant is a career member of the Senior Executive Service.

(B) The oral examination will be conducted under written criteria, established in consultation with the prospective employing agency and publicly announced by the Board of Examiners. The examination will seek to determine the ability of the applicant to meet the objective of section 101 of the Act, which provides for a Senior Foreign Service "characterized by strong policy formulation capabilities, outstanding executive leadership qualities, and highly developed functional, foreign language, and area expertise."

(iii) *Grading.* Applicants taking the oral examination will be graded as "recommended," or "not recommended" by the Examining Panel. Those graded as "recommended" also will be given a numerical score, under the standard Board of Examiners scor-

ing criteria, for use by the Final Review Panel.

(6) *Background investigation.* Senior Career Candidate applicants recommended by the Examining Panel will be subject to the same background investigation as required for Junior and Mid-Level Foreign Service Officer Career Candidates. The background investigation shall be conducted to determine suitability for appointment to the Foreign Service.

(7) *Medical examination.* Senior Career Candidate applicants recommended by the Examining Panel, and their dependents, will be subject to the same medical examination as required for the Junior and Mid-Level Foreign Service Career Candidates. The medical examination shall be conducted to determine the applicant's physical fitness to perform the duties of a Foreign Service officer on a world-wide basis and, for applicants and dependents, to determine the presence of any physical, neurological, or mental condition of such a nature as to make it unlikely that they would be able to function on a world-wide basis. Applicants and/or dependents who do not meet the required medical standards may be given further consideration, as appropriate, under the procedures of the prospective employing agency.

(8) *Foreign language requirement.* Applicants recommended by the Examining Panel will be required to take a subsequent examination to measure their fluency in foreign languages, and/or their aptitude for learning them. Senior Career Candidates will be subject to the foreign language requirements established for their occupational category by their prospective employing agency. Senior Career Candidate applicants for the Foreign Commercial Service must demonstrate proficiency by examination in two foreign languages. United States Information Agency Senior Career Candidates, other than Senior Specialist Career Candidates, must demonstrate proficiency in at least one foreign language. Except for the Foreign Commercial Service and the United States Information Agency, an applicant may be appointed without first having passed an examination in a foreign language,

but the appointed Senior Career Candidate may not be commissioned as a Career Senior Foreign Service officer unless adequate proficiency in a foreign language is achieved. This language requirement will not apply to candidates in occupational categories which, in the judgment of the prospective employing agency, do not require foreign language proficiency.

(9) *Final review panel.* (i) The entire file of an applicant recommended by the Examining Panel will be reviewed and graded by a Final Review Panel, after the results of the background investigation, medical examination and language examination are received. The Final Review Panel will decide whether or not to recommend the applicant for appointment, taking into account all of the available information concerning the applicant.

(ii) The Final Review Panel shall consist of a chairperson who shall be a Deputy Examiner who is a career Senior Foreign Service officer of the prospective employing agency, and at least two other Deputy Examiners of the Board of Examiners. Of the Deputy Examiners serving on the Final Review Panel, the majority shall be career Senior Foreign Service officers of the prospective employing agency; and at least one shall be a career Senior Foreign Service officer of one of the other foreign affairs agencies operating under the Act.

(10) *Certification of appointment.* The file of an applicant recommended by the Final Review Panel will be submitted to the Board of Examiners for consideration and approval. An applicant found by the Board to meet the standards for appointment as a Senior Foreign Service Career Candidate shall be so certified to the Director of Personnel of the prospective employing agency.

(c) *Limited non-career appointments.* (1) Other Senior Foreign Service appointments may be made on a limited non-career basis for individuals who do not wish to compete for career appointments, but for whom a need can be certified by the Director of Personnel of the foreign affairs agency concerned. Such limited non-career senior appointees will be subject to the eligibility requirements set forth in

§ 11.30(b)(1) (i) and (iv). The maximum age set forth in § 11.30(b)(1)(ii) does not apply to such appointments. However, because Foreign Service members generally are subject to the mandatory retirement age of 65, under section 812 of the Act, limited non-career Senior appointments normally will not extend beyond the appointee's 65th birthday. Limited non-career appointees of the Department of Commerce and the United States Information Agency will not be subject to the language requirements of § 11.30(b)(8). Applicants for limited non-career senior appointments will be subject to the same background investigation and medical examination required of career candidates, but normally they will not be subject to a written or oral examination, or to approval by the Board of Examiners. Processing procedures for such applicants will be established by the Director of Personnel of the foreign affairs agency concerned. Their appointments normally will be limited to the duration of the specific assignments for which they are to be hired, may not exceed 5 years in duration, and may not be renewed or extended beyond 5 years.

(2) Prior to the expiration of their limited non-career senior appointments, if they meet all the eligibility requirements set forth in § 11.30(b)(1), such individuals may elect to compete for career candidate status in the Senior Foreign Service by qualifying at that time for and taking the examinations required of career candidates. If appointed as career candidates, the length of service under their previous limited non-career appointments may be counted under the procedures of the employing agency as part of the trial period of service prescribed before a career candidate can receive a career appointment. The total period of limited appointment (non-career and career candidate) of such individuals may not exceed 5 years in duration.

(3) Nothing in this section will limit the right of an individual who has previously served as a limited non-career senior appointee from subsequently applying for consideration as a new applicant and being appointed as a Senior Career Candidate after a limited non-career appointment has expired.

(d) *Reporting requirement.* The Director of Personnel of each foreign affairs agency shall report annually to the Director General of the Foreign Service, Department of State, the number and nature of the limited Senior Foreign Service appointments (non-career and career candidates) made by that agency under these regulations.

(Secs. 206(a) and 301(b), Foreign Service Act of 1980 (secs. 206(a) and 301(b), Pub. L. 96-465, 94 Stat. 2079 and 2083 (22 U.S.C. 3926 and 3941)))

[48 FR 38607, Aug. 25, 1983]

PART 12—COMPLAINTS AGAINST EMPLOYEES BY ALLEGED CREDITORS

Sec.

- 12.1 No cognizance taken of complaint.
12.2 Claimants denied access to employees.

§ 12.1 No cognizance taken of complaint.

The Department of State will take no cognizance of a complaint against an employee by an alleged creditor, so far as the complainant is concerned, beyond acknowledging receipt of his communication.

(Sec. 4, 63 Stat. 111, as amended; 22 U.S.C. 2658)

[22 FR 10789, Dec. 27, 1957]

§ 12.2 Claimants denied access to employees.

Persons claiming to be creditors or collectors of debts or claims will be denied access to employees for the purpose of presenting or collecting claims during the hours set apart for the transaction of public business or while the employees concerned are on duty.

(Sec. 4, 63 Stat. 111, as amended; 22 U.S.C. 2658)

[22 FR 10789, Dec. 27, 1957]

PART 13—PERSONNEL

Sec.

- 13.1 Improper exaction of fees.
13.2 Embezzlement.
13.3 Liability for neglect of duty or for malfeasance generally; action on bond; penalty.
13.4 False certificate as to ownership of property.

AUTHORITY: Sec. 302, 60 Stat. 1001; 22 U.S.C. 842.

SOURCE: 22 FR 10789, Dec. 27, 1957, unless otherwise noted.

§ 13.1 Improper exaction of fees.

Any consular officer who collects, or knowingly allows to be collected, for any services any other or greater fees than are allowed by law for such services, shall, besides his or her liability to refund the same, be liable to pay to the person by whom or in whose behalf the same are paid, treble the amount of the unlawful charge so collected, as a penalty. The refund and penalty may be recovered with costs, in any proper form of action, by such person for his or her own use. The amount of such overcharge and penalty may at the discretion of the Secretary of the Treasury be ordered withheld from the compensation of such officer for payment to the person entitled to the same (22 U.S.C. 1189).

NOTE: The foregoing relates to improper collection and personal withholding of funds by consular officers. For procedure where a collection, having been erroneously made, has been returned by the officer to the Treasury in good faith, making a subsequent accounting adjustment necessary, see § 22.4, *Refund of fees* of this chapter.

(22 U.S.C. 2658 and 3926)

[22 FR 10789, Dec. 27, 1957, as amended at 49 FR 16989, Apr. 23, 1984]

§ 13.2 Embezzlement.

Every consular officer who shall receive money, property, or effects belonging to a citizen of the United States and shall not within a reasonable time after demand made upon him or her by the Secretary of State or by such citizen, his or her executor, administrator, or legal representative, account for and pay over all moneys, property, and effects, less his or her lawful fees, due to such citizen, shall be deemed guilty of embezzlement, and shall be punishable by imprisonment for not more than five years, and by a fine of not more than \$2,000 (22 U.S.C. 1198). Penalties of imprisonment and fine are also prescribed for embezzlement in connection with the acceptance, without execution of a prescribed form of bond, of appointment from any